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Rules and Regulations

Federal Register

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Tuesday, August 2, 2005

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 and 315

RIN 3206–AJ28

Excepted Service; Career and Career-Conditional Employment

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement the staffing provisions of the Federal Career Intern Program (FCIP). This program will help agencies to recruit and to attract exceptional men and women who have a variety of experiences, academic disciplines, and competencies necessary for the effective analysis and execution of public programs.

DATES: Effective September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Hakeem Basheerud-Deen, *hakeem.basheerud-deen@opm.gov;* on 202–606–1434 or FAX (202) 606–0390.

SUPPLEMENTARY INFORMATION: Executive Order 13162, dated July 6, 2000, authorized the establishment of the Federal Career Intern Program (FCIP) to assist agencies in recruiting and attracting exceptional individuals with a variety of experiences, academic disciplines, and competencies necessary for the effective analysis and execution of public programs. On December 14, 2000, the Office of Personnel Management (OPM) published an interim rule at 65 FR 78078, now codified at 5 CFR 213.3202(o), to implement the Executive order. The interim rule is adopted as a final rule with the following changes based on agency comments.

OPM received written comments from eight agencies. We also received a number of oral comments and questions from agencies asking for additional information and/or clarification. The majority of the comments were favorable.

Comments

Appointments, Section 213.3202(o)(1)

Section 213.3202(o)(1) authorizes excepted service appointments under the FCIP. A number of agencies requested clarification on the duration of the internship. In general, career interns are appointed to a 2-year internship, consistent with the time served by individuals appointed under the Presidential Management Fellows (PMF) Program and those appointed under the Veterans' Recruitment Act (VRA) Program. Career intern appointments are made without the not-to-exceed (NTE) dates used with other temporary or time-limited appointments.

The internship portion of the FCIP is generally made for 2 years, but because the appointment permits the noncompetitive conversion to a permanent job, the appointment is not treated as temporary or time-limited. In December, 2000, OPM's Office of Workforce Information provided agencies with the following information on documenting personnel actions under the FCIP:

Appointment Type: Exc Appt; Conv to Exc Apt.

Nature of Action: 170; 570.

Legal Authority: Sch B. 213.3202(o).

Legal Authority Code: YCM.

Agencies should document career intern appointments by including a remark on the Standard Form 50 indicating the nature of the appointment. Such a remark is used when appointing individuals under the PMF and VRA programs. The remark could read as follows:

''This appointment is intended to continue for 2 years, unless extended up to 1 additional year. Upon satisfactory completion of the internship, you may be noncompetitively converted to a career or career-conditional appointment. If you fail to satisfactorily complete the internship, your employment will be terminated.''

For employees afforded reemployment rights under § 213.3202(o)(6)(ii), you may end the remark with:

''If your performance is not satisfactory or if you fail to satisfactorily complete the internship, you will be returned to a position at no lower grade or pay than the position you left to enter the Federal Career Intern Program.''

One agency asked if it needed OPM approval for making appointments to trainee positions at grades other than GS–5/7/9. As stated in Executive Order 13162, agencies may make appointments to positions at grades GS–5, 7, and 9 (or equivalent) or other trainee levels (including at one-grade rather than two-grade intervals), appropriate for the FCIP. Agencies do not need OPM approval to fill career intern positions traditionally considered at the trainee level. However, agencies must request OPM approval to fill higher graded positions.

A few agencies asked for more information on the types of positions appropriate for the program. Positions most suited for this program are entry-level positions that require training and development to equip the employee with the competencies needed to successfully perform the job. Examples of such positions include: Accounting and auditing, engineering, human resources management, information technology, law enforcement, and scientific research.

Extensions, Section 213.3202(o)(2)

Executive Order 13162 authorizes OPM to extend career intern appointments up to 1 additional year. One agency suggested that OPM delegate to agencies the authority to extend career intern appointments up to 1 additional year. We did not adopt this suggestion. However, we chose to delegate to agencies the authority to extend an appointment up to 120 days for unforeseen or unusual circumstances. We decided to reserve to OPM the authority to grant extensions beyond 120 days, up to 1 year.

Qualification Requirements for Career Interns, Section 213.3202(o)(3)

Two agencies asked us to clarify the relationship between the qualification requirements of Part 302, Employment in the Excepted Service, and the qualification requirements of Schedule B appointments under this Part. In general, Part 302 authorizes agencies to establish qualification requirements for positions in the excepted service, but that depends on the nature of the excepted appointments. Appointments (other than appointments to student trainee positions) made under Schedule

B of Part 213 are subject to OPM's qualification standards or OPM-approved qualification standards. Therefore, career interns are subject to the OPM qualification requirements outlined in section 213.3202(o)(3) just as any other applicant for a Schedule B position would be.

Conversion to Competitive Service, Section 213.3202(o)(6)

Section 213.3202(o)(6)(i) grants civil service status to career interns who successfully complete their internships and who meet all other applicable requirements (*i.e.*, qualifications, performance, and suitability). Several agencies asked for clarification concerning the appropriate coding for these conversions. We have not revised the regulations in response to this comment, but we updated Chapter 9 of OPM's Guide to Processing Personnel Actions, Table 9–G, and established the following set of codes for career intern conversions under rules 61–64:

Appointment Type: Career; Career Conditional.

Nature of Action: 100, 500; 101, 501.

Legal Authority: Reg. 315.712.

Legal Authority Code: LYP.

Mandatory Placement Rights, Section 213.3202(o)(6)

Section 213.3202(o)(6)(ii) grants mandatory placement rights to employees who accept a Career Intern appointment in the same agency and who fail to complete the Program for reasons unrelated to misconduct or suitability. Executive Order 13162 requires that the employee shall be placed in a career or career-conditional position in the current agency at no lower grade or pay than the one the employee left to accept the position under the FCIP.

One agency asked if the position to which the employee is to be returned had to have the same promotion potential as the position the employee left. Mandatory placement rights were included in the Executive order to ensure that Federal employees could participate in this new program without having to fear losing their jobs if they could not successfully complete the internship. The Executive order ensures that agencies place those employees who did not complete the internship back into a position that does not cause the employees to lose their grades or pay. The Executive order, however, does not require the new job to have the same promotion potential as the job the employee left to accept a position under the FCIP.

In a related matter, one agency suggested that the mandatory placement rights be discretionary. We did not adopt this suggestion because the Executive order makes this provision mandatory and not left to the discretion of agencies.

One agency asked if pay retention was discretionary or mandatory for career or career-conditional employees appointed to the FCIP at a lower grade. Pay retention is mandatory. Section 536.104—coverage and applicability of pay retention—of this chapter applies to any employee whose rate of basic pay would otherwise be reduced, among other reasons, ''as a result of the placement of the employee in a formal employee developmental program generally utilized Governmentwide.'' The FCIP is listed as one of these programs.

Movement Between Career Intern Positions, New Section 213.3202(o)(8)

Several agencies asked for clarification on employees moving between career intern positions. As a result, we are including regulatory language on the movement between career intern positions at section 213.3202(o)(8). A career intern may move between career intern positions without a break in service. Service under a career intern appointment counts toward the completion of a subsequent career intern appointment. Although the career intern is not required to begin a new 2-year internship, the career intern is subject to other terms and conditions of the new appointment, including an agency's request for an extension. However, the total time spent under a career intern appointment may not exceed 3 years.

Federal Career Intern Program Agency Plans, Section 213.3202(o)(10)

Several agencies asked that OPM clarify what was required in an agency's plan for using the FCIP. Section 213.3202(o)(10) establishes the requirement for agencies to develop FCIP plans within their agencies. An agency must decide what type of program it will develop and the specifics of that program must be in writing, including the covered positions and the procedures used to fill these positions in the excepted service. We have included language in that section to clarify agency responsibilities.

Other

One agency commented that the FCIP does not provide sufficient flexibility because it requires agencies which use it to follow the provisions of part 302. OPM disagrees noting that by law, the application of veterans' preference is a requirement when filling positions in the excepted service. OPM promulgated part 302 for the sole purpose of ensuring that eligible veterans receive their preference when being considered for appointments in the excepted service. In addition to this assurance to our nation's veterans, FCIP contains several flexibilities such as: It does not require public notice, competitive service placement assistance programs do not apply (*e.g.*, the Interagency Career Transition Assistance Plan), and individuals appointed as Career Interns are not subject to time-in-grade restrictions while in the Program.

Regulatory Flexibility Act

I certify that these regulations will not have a significant impact on a substantial number of small entities (including small businesses, small organizational units and small governmental jurisdictions) because the regulations apply only to appointment procedures for certain employees in Federal agencies.

List of Subjects in 5 CFR Parts 213 and 315

Government employees, Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM is adopting the interim regulations amending 5 CFR parts 213 and 315 which were published on December 14, 2000, at 65 FR 78078 as final regulations with the following changes:

PART 213—EXCEPTED SERVICE

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

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; Sec. 213.101 also issued under 5 U.S.C. 2103; Sec. 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364; 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38 U.S.C. 4301 *et seq.*; Pub. L. 05–339, 112 Stat. 3182–83; and E.O. 13162.

■ 2. In § 213.3202, paragraph (o) is revised to read as follows:

§ 213.3202 Entire executive civil service.

* * * * *

(o) *The Federal Career Intern Program.* (1) *Appointments.* Appointments under the Federal Career Intern Program (FCIP) may not exceed 2 years, except as described in paragraph (o)(2) of this section. Initial appointments are made to a position at the grade GS–5, 7, or 9 (and equivalent) or other trainee levels appropriate for the Program, unless otherwise approved by OPM. Agencies will use part 302 of

this chapter when making appointments under this Program.

(2) *Extensions.* (i) Agencies must request, in writing, OPM approval to establish or extend internships for up to 1 additional year beyond the authorized 2 years for additional training and/or developmental activities.

(ii) Agencies may extend, without prior OPM approval, 2-year internships for up to an additional 120 days to cover rare or unusual circumstances, or situations where agencies have established criteria for approving extensions.

(3) *Qualifications.* Candidates will be evaluated using OPM qualification standards or OPM-approved, agency-specific qualification standards.

(4) *Tenure Group.* Career interns are in the excepted service Tenure Group II for purposes of § 351.502 of this chapter. Expiration of the internship is not subject to part 351 of this chapter.

(5) *Promotions.* During the internship period, career interns may receive promotions as determined by an agency's plan. This provision does not confer entitlement to promotion.

(6) *Conversion to Competitive Service.* Except as provided in paragraph (o)(6)(ii) of this section, service as a career intern confers no rights to further Federal employment in either the competitive or excepted service upon the expiration of the internship period.

(i) Competitive civil service status may be granted to career interns who successfully complete their internships and meet all qualification, suitability, and performance requirements. These noncompetitive conversions will be effective on the date the 2-year service requirement is met, or at the end of an agency or OPM-approved extension.

(ii) An employee who held a career or career-conditional appointment in an agency immediately before entering the FCIP in the same agency, and who fails to complete the FCIP for reasons unrelated to misconduct or suitability, shall be placed in a career or career-conditional position in the current agency at no lower grade or pay than the one the employee left to accept the position in the FCIP. For purposes of this paragraph, ''agency'' means an Executive agency as defined in 5 U.S.C. 105. An Executive department may treat each of its bureaus or components (first major subdivision that is separately organized and clearly distinguished from other bureaus or components in work function and operation) as a separate agency or as part of one agency, but must do so by agency directive in establishing the Program.

(iii) Service under the FCIP counts toward career tenure in the competitive service, if the career intern is converted to a career-conditional appointment under § 315.712 of this chapter.

(7) *Terminations.* As a condition of employment, the appointment of a career intern expires at the end of the 2-year internship period, plus any extension. The employing agency may, with no break in service, convert the intern to a career or career-conditional appointment in accordance with § 315.712 of this chapter. If an employee is not converted to a career or career-conditional appointment, the career intern appointment terminates, unless the employee is specifically eligible for placement under paragraph (o)(6)(ii) of this section.

(8) *Movement between career intern positions.* A career intern may move from one career intern position to another career intern position without a break in service. If the move involves different agencies, the career intern must separate from the current agency and be reappointed under a career intern appointment by the new employing agency. The career intern does not begin a new 2-year internship period; however, the career intern is subject to any other employment condition the new agency requires, including a possible extension of the internship period up to a maximum period of 1 year. The time previously served under a career intern appointment counts toward the completion of the 2-year period required for conversion.

(9) *Career Development.* Agencies will provide the career interns with formal training and developmental opportunities to acquire the appropriate agency-identified competencies needed for conversion. These activities may include, but are not limited to, formal training classes, rotational or other job assignments, attendance at conferences and seminars, interagency assignments, or other activities approved by the agency.

(10) *Agency Responsibilities.* Each agency will determine the appropriate use of the FCIP relating to recruitment needs in geographical areas, specific occupational series, and grades, pay bands or other pay levels, ensuring that programs are developed and implemented in accordance with the merit system principles. Each agency must describe in writing how it will use the FCIP, including, but not limited to, such aspects as:

(i) Delegating the authority to develop FCIPs (*e.g.*, department-wide versus bureaus and agency components);

(ii) Defining the roles and responsibilities of supervisors and other key officials in FCIP administration, such as human resources staff, budget and finance staff, career counselors, or mentors;

(iii) Identifying the positions or occupations that will be covered under the FCIP;

(iv) Developing procedures for accepting applications, and evaluating and selecting candidates according to part 302 of this chapter on employment in the excepted service and any other applicable requirements;

(v) Designing, implementing, and documenting formal program(s) for the training and development of employees selected under the provisions of this Program, including the type and duration of assignments;

(vi) Deciding how to inform the career interns of what will be expected during the internship, including developmental assignments and performance requirements; and

(vii) Planning, coordinating, implementing, and monitoring program activities.

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

■ 3. The authority citation for part 315 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218, unless otherwise noted; and E.O. 13162; secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652; secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104; sec. 315.603 also issued under 5 U.S.C. 8151; sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp., p. 111; sec. 315.606 also issued under E.O. 1219, 3 CFR, 1964–1965 Comp., p. 303; sec. 315.607 also issued under 22 U.S.C. 2506; sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp., p. 293; sec. 315.610 also issued under 5 U.S.C. 3304(d); sec. 315.611 also issued under Section 511, Pub. L. 106–117, 113 STAT. 1575–76; sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987, Comp., p. 229; subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

■ 4. In § 315.201, paragraph (b)(1)(xix) is revised to read as follows:

§ 315.201 Service requirement for career tenure.

* * * * *

(b) * * *

(1) * * *

(xix) Appointment as a career intern under Schedule B, § 213.3202(o) of this chapter, provided the employee's appointment is converted to career or career-conditional appointment under § 315.712.

* * * * *

■ 5. Section 315.712 is revised to read as follows:

* * * * *

§ 315.712 Conversion based on service as a Federal Career Intern.

(a) *Agency authority.* An agency may convert noncompetitively to career or career-conditional employment, a career intern who:

(1) Has successfully completed a Federal Career Intern Program, under § 213.3202(o) of this chapter, at the time of conversion; and

(2) Meets all citizenship, suitability, and qualification requirements.

(b) *Tenure on conversion.* An employee whose appointment is converted to career or career-conditional employment under paragraph (a) of this section becomes:

(1) A career-conditional employee except as provided in paragraph (b)(2) of this section;

(2) A career employee when he or she has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* An employee whose employment is converted to career or career-conditional employment under this section acquires competitive status on conversion.

[FR Doc. 05–15173 Filed 8–1–05; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 04–118–2]

Karnal Bunt; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations by adding certain areas in La Paz, Maricopa, and Pinal Counties, AZ, and Riverside County, CA, to the list of regulated areas and by removing certain areas or fields in Maricopa and Pinal Counties, AZ, and Imperial County, CA, from the list of regulated areas. Those actions were necessary to prevent the spread of Karnal bunt to noninfected areas of the United States and to relieve restrictions on certain areas that are no longer necessary

EFFECTIVE DATE: The interim rule became effective on March 28, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal Malik, Agriculturalist, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–6774.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the fungus *Tilletia indica* (Mitra) Mundkur and is spread primarily through the planting of infected seed. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine; therefore, without measures taken by the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, to prevent its spread, the presence of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–16 (referred to below as the regulations).

In an interim rule effective and published in the **Federal Register** on March 28, 2005 (70 FR 15553–15557, Docket No. 04–118–1), we amended the regulations by adding certain areas in La Paz, Maricopa, and Pinal Counties, AZ, and Riverside County, CA, to the list of regulated areas either because they were found during surveys to contain a bunted wheat kernel, or because they are within the 3-mile-wide buffer zone around fields or areas affected with Karnal bunt. In the same interim rule, we also amended the regulations by removing certain areas or fields in Maricopa and Pinal Counties, AZ, and Imperial County, CA, from the list of regulated areas based on our determination that those fields or areas had met our criteria for release from regulation.

Comments on the interim rule were required to be received on or before May 27, 2005. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 70 FR 15553–15557 on March 28, 2005.

Done in Washington, DC, this 27th day of July 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–15166 Filed 8–1–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

RIN 0563–AB84

General Administrative Regulations, Submission of Policies, Provisions of Policies, Rates of Premium, and Premium Reduction Plans

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Administrative Regulations, which implement the statutory mandates of the Agricultural Risk Protection Act of 2000 (ARPA) related to the submission of policies for approval for reinsurance and the reimbursement of research and development costs and maintenance costs.

DATES: Effective September 1, 2005.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the Cost-Benefit Analysis, contact Louise Narber, Risk Management Specialist, Research and Development, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, it

has not been reviewed by the Office of Management and Budget (OMB).

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the Kansas City address listed above. In summary, the analysis finds that the guidelines contained in the regulation are administrative in nature and in most cases, dictated by statutory requirement. They are intended to facilitate the submission and review of policy terms and conditions, endorsements, actuarial documents, underwriting rules, administrative procedures, and rates of premium of new insurance products submitted to FCIC under section 508(h) of the Federal Crop Insurance Act (Act) for approval or disapproval by the FCIC Board of Directors (Board), as well as reimbursement of research and development costs, maintenance costs, and setting of user fees. This regulation also requires approved insurance providers, reinsured by FCIC, who develop and market non-reinsured supplemental (NRS) policies to submit them to FCIC for review to be in compliance with the Standard Reinsurance Agreement (SRA). These provisions provide uniform guidance for FCIC's review and approval of NRS policies to assure the orderly business transaction and vitality of the crop insurance market place.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0064 through August 31, 2007.

Government Paperwork Elimination Act (GPEA) Compliance

In its efforts to comply with GPEA, FCIC requires all approved insurance providers delivering the crop insurance program to make all insurance documents available electronically and to permit producers to transact business electronically. Further, to the maximum extent practicable, FCIC transacts its business with approved insurance providers electronically.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This action does not increase the burden on any entity because it merely clarifies the process to submit policies, plans of insurance or rates of premium to the FCIC Board of Directors for approval for reinsurance and subsidy and the process to obtain reimbursement of research and development costs and maintenance costs. The effect on small and large entities would be the same because all entities must provide the same information. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the approved insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 and 7 CFR part 400, subpart J for the informal administrative review process of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On Monday, July 16, 2001, FCIC published a proposed rule in the **Federal Register** at 66 FR 36951–36960 to revise 7 CFR part 400, subpart V, General Administrative Regulations; Submission of Policies, Provisions of Policies, and Rates of Premium. On July 24, 2001, Congress enacted section 2103 of the Supplemental Appropriations Act, 2001, which exempted the implementation of section 522(b) of the Act, involving the reimbursement for products submitted under section 508(h) of the Act, from the rulemaking process. In response, on Monday, September 17, 2001, FCIC published an interim rule in the **Federal Register** at 66 FR 47949–47959 to revise 7 CFR part 400, subpart V, General Administrative Regulations; Submission of Policies, Provisions of Policies, and Rates of Premium. The interim rule was effective on September 17, 2001.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. Following publication of the interim rule, the public was afforded 60 days to submit written comments and opinions. A total of 79 comments were received from a university, legal counsels, insurance companies, an agricultural association, and an insurance service organization for both rules. The comments received and FCIC's responses are as follows:

Section 400.701

Comment: A legal counsel stated the definition of ''actuarially appropriate'' should be amended to reflect the fact that 508(h) proposals often cover new and innovative concepts, or previously uncovered crops or risks for which underlying actuarial data might be scarce. The commenter stated Congress chose the lesser standard of ''actuarially appropriate'' for submissions submitted

under section 508(h) of the Act as opposed to the requirement that rates for established crop insurance policies be ''actuarially sound.'' The commenter also stated the following clause should be added, ''recognizing the potential relative scarcity of data for new or innovative coverages.''

Response: While ''actuarially appropriate'' may not be as strict a requirement as ''actuarially sound,'' there must still be at least a reasonable certainty that the premiums charged will cover the anticipated losses. FCIC has clarified the definition of ''actuarially appropriate'' and added provisions regarding the possible scarcity of data for new products.

Comment: An insurance service organization asked if there were any guidelines for determining a ''reasonable reserve'' in the definitions of ''actuarially appropriate'' and ''rate of premium'' such as from an actuarial society.

Response: It would be impossible to list any specific amount for a ''reasonable reserve'' for any submission submitted under this rule. The reasonable reserve is intended to cover unanticipated losses. The reliability of the data used to determine the expected losses is a factor that must be considered when setting the reserve. The less reliable the data, the higher the reasonable reserve must be. Since it is impossible to determine the type or reliability of data applicants will use, it is impossible to set one amount that would be appropriate to all submissions.

Comment: An insurance service organization stated ''maintenance'' refers to the support and improvement of the policy or plan of insurance, including terms and conditions, rates, expansion, and other measures necessary to assure financial viability and actuarial soundness or to respond to statutory or regulatory changes. The commenter stated that by comparing other defined terms, this appears to include underwriting and loss adjustment procedures (the definition of ''policy'' includes ''related materials,'' which in turn includes the actuarial documents, special provisions, and any underwriting or loss adjustment manuals, handbooks, forms or other materials), and this could be better clarified and the use of these terms be more consistent. The commenter stated the definitions for ''policy'' and ''related materials'' include references to ''actuarial documents'' and as a result, the ''policy'' definition is redundant in referring to the actuarial documents for the insured commodity, and related materials. The inclusion of underwriting and loss adjustment materials is not clear or consistent in all of the references to the ''policy.''

Response: FCIC agrees with the commenter and has revised the definitions of ''actuarial documents,'' ''policy,'' and ''related materials'' to ensure consistency among those provisions. FCIC has also revised the definitions of ''development,'' ''maintenance,'' ''research,'' and ''research and development costs'' to eliminate the conflicts between those provisions and better reflect the activities associated with these processes.

Comment: An insurance company stated the definition of ''maintenance period'' states the period begins on the date the Board approves the submission and ends on the date that is not later than four reinsurance years after the date of Board approval. They suggested the regulation should address what will happen to the product and maintenance thereof if the submitting company that received approval of a product is no longer in business or is otherwise not able to fulfill the maintenance responsibilities before the expiration of the maintenance period.

Response: The maintenance period begins the date the Board approves the submission for maintenance, not approval of the submission for reinsurance. Section 400.712(m) has been added to specify that once the applicant no longer performs the maintenance responsibilities as determined by FCIC, or gives FCIC notice they no longer wish to maintain the submission, maintenance of the approved submission may be assumed by FCIC or reinsurance by FCIC may be withdrawn.

Section 400.702

Comment: An insurance company stated any reference to a competitor's product, including the Board meeting notices that announce the name of the submission, indicates key characteristics of the product and violates the principle of confidentiality and this regulation should prohibit the disclosure of such information.

Response: FCIC agrees the name of a plan of insurance may indicate key characteristics of the product and may give competitors an idea of the product being considered by the Board. In the past, FCIC asked submitters if they wanted the name of their product used. A new paragraph (d) has been added to § 400.702 to specify that the submission must state whether the name of the submission may be used. If the submission does not state the name may be used, it must remain confidential.

Section 400.703

Comment: An insurance company stated the requirement for the submission to be received a minimum of 180 days prior to the earliest proposed sales closing date translates to a March 30 deadline for winter crops and a September 15 deadline for spring crops. The commenter stated that while this may appear reasonable for a new complex plan of insurance, it appears arbitrarily lengthy for submissions categorized as non-significant.

Response: In accordance with section 508(h)(4)(D) of the Act, the Board has 90 days to determine whether it will approve or disapprove a submission from the time it is accepted by the Board as a complete submission, unless additional time is negotiated with the applicant. While a single submission may be simple in design, the Board and Risk Management Agency (RMA) are frequently reviewing several submissions simultaneously. Given the workload issues, the Board may require all 90 days to make its decision. If intent to disapprove is provided, the applicant can submit modifications, which must be reviewed by the Board within 30 days. In addition, there must be time to make any revisions to the policy or plan of insurance after its approval and prior to its release, train agents, and offer the product for sale. Based on these timelines, FCIC has determined that even 180 days does not provide sufficient time to review, approve and sell the product. Section 400.703(c) has been revised to specify that a submission must be received at least 240 days prior to the earliest proposed sales closing date to be considered for sale in the requested crop year to allow the outside reviewers and FCIC a reasonable time to review and implement the submission. A new section (d) has been added to specify the Board, or RMA if authorized by the Board will determine when sales can begin for a submission approved by the Board.

Section 400.705

Comment: An insurance company stated the requirement to furnish FCIC with seven identical copies of a submission should be eliminated because submissions that are major new plans of insurance or significant changes to an existing program, require a large amount of documentation, not all of the internal RMA reviewers will have need for a complete version of the submission, and shipping costs dramatically outweigh the costs of RMA preparing its own working copies. The commenter also stated limiting the

number of copies required will reduce development costs for new submissions and will also reduce the reimbursement for research and development costs, therefore, a larger amount of money will remain in the fund to reimburse other submissions that are approved.

Response: FCIC agrees there is a cost for persons to supply RMA with seven identical copies of a submission. However, the seven copies are necessary. Five of the copies go to the five external reviewers, one copy goes to the RMA Deputy Administrator, in Kansas City, Missouri, and one copy goes to the FCIC Administrator in Washington DC. All of these people must receive the full copy of the submission. RMA makes working copies for RMA internal reviewers, Board members, and legal counsel. Receiving seven copies expedites the review of submissions, assures necessary and appropriate personnel of RMA and the Board receive all of the applicable materials. However, §§ 400.703(a), 400.705, and 400.713 have been revised to allow submissions to be sent in an electronic format in accordance with the Freedom to E-File Act (Pub. L. 106–222). They must contain all the information required of hard copy documents and be in the same order. However, this should substantially reduce the costs of transmitting such submissions.

Comment: An insurance company stated the word ''or'' in § 400.705(a)(3)(iii), redesignated as § 400.705(b)(3)(ii), of the proposed rule should be deleted because it indicates an applicant must select either reimbursement for research and development or reimbursement for maintenance, but not both, and this is inconsistent with the Act and other relevant sections of the proposed rule.

Response: Since requests for reinsurance, reimbursement for research and development, and reimbursement for maintenance is at the discretion of the applicant, the use of the term ''and'' would not be appropriate. Therefore, the word ''or'' is correct. However, nothing precludes the applicant from requesting reimbursement for both research and development and maintenance in the first year, just as nothing precludes the applicant from requesting reinsurance and reimbursement for research and development. The term ''or'' implies the term ''and'' unless its usage indicates otherwise, which is not the case with these provisions.

Comment: An insurance company stated § 400.705(a)(8), redesignated as § 400.705(b)(8), should be clarified to indicate any required marketing plan be limited solely to the intentions of the applicant, if the applicant is an approved insurance provider or an entity representing or affiliated with an approved insurance provider. The commenter also stated there does not appear to be a requirement in the Act for an applicant to demonstrate any capacity to market the new insurance product.

Response: To be approved for reinsurance, there is no need for the applicant to demonstrate the policy or plan of insurance is marketable. However, in accordance with section 522(b)(3) of the Act, if the applicant wants to be reimbursed for research and development or maintenance costs, the applicant must demonstrate the policy or plan of insurance is marketable. The applicant is responsible for developing the marketing plan. If the applicant is not an approved insurance provider, the applicant must show that it has a commitment from an approved insurance provider to deliver the policy or plan of insurance. The definitions of ''marketable'' and ''marketing plan'' and redesignated § 400.705(e) have been revised to add to and clarify the information to be included in the marketing plan and the standards used in evaluating whether a product or plan of insurance is marketable.

Comment: An insurance service organization stated § 400.705(a)(10)(i), redesignated as § 400.705(b)(10)(i), requires contact information for those who can answer questions regarding the policy, underwriting rules and procedures, rate and price methodologies, data processing and record keeping requirements, and any other questions. The commenter states that if the underwriting rules and procedures are listed separately from the policy, it seems loss adjustment procedures should be listed as well.

Response: FCIC agrees and has added the phrase ''loss adjustment'' before the word ''procedures'' in redesignated § 400.705(b)(10)(i).

Comment: An insurance company stated language in § 400.705(b)(2), redesignated as § 400.705(c)(2) should specify in detail what constitutes ''verifiable evidence of demand'' because costs for market research will increase submission costs considerably if more than simple requests from producers, producer groups, or agents are mandated. The commenter also stated credentialed marketing studies should be discouraged, as their increased costs will inevitably lead to higher reimbursement appropriations.

Response: When developing a product that will be accepted and bought by producers, market research must be completed to determine what is needed or what is desired. If the producers do not see a benefit, they will not purchase the policy. Provisions have been added to the definition of ''marketing plan'' and redesignated § 400.705(e) to specify that focus group results, market research studies, qualitative market estimates, correspondence from producers expressing the need for such policy or plan of insurance, responses from a reasonable representative cross-section of producers to be affected by the product or plan of insurance and commitments from approved insurance providers to sell and support the policy or plan of insurance must be included in the submission. While market research studies may increase the costs and reimbursements, at a time when resources are scarce and the systems are straining to handle the existing product load, the information obtained will be invaluable to ensuring that only marketable products are offered.

Comment: An insurance service organization stated §§ 400.705(c)(1)(i) and (ii), redesignated as §§ 400.705(d)(1)(i) and (ii), indicates what needs to be provided as part of the ''policy'' but makes no mention of the underwriting and loss adjustment procedures that are considered part of the policy according to the ''policy'' definition. Section 400.705(e), redesignated as § 400.705(f), mentions ''underwriting'' information but only touches briefly on loss adjustment examples in § 400.705(e)(5), redesignated as § 400.705(f)(5). The commenters state that this raises concerns relating to past problems with new products that are issued before their loss adjustment procedures are developed and issued. To be more consistent with the ''policy'' definition, the commenter suggests it might help to clarify that paragraph (c) deals only with the policy provisions and endorsements, and that paragraph (e) addresses both underwriting and loss adjustment information.

Response: FCIC agrees and has revised the provisions to clarify that paragraph (c) involves the policy provisions related to the terms of insurance and paragraph (e) involves the underwriting and loss adjustment information.

Comment: An insurance company stated language in § 400.705(c)(2), redesignated as § 400.705(d)(2), should be clarified by defining ''impact'' of changes to cut down on procedural delay since assumptions made by the applicant may not be sufficient for RMA reviewers.

Response: It is impossible to define the impact of the change because it will be dependent on the type of change.

However, the applicant must consider all possible impacts, including on the policy, participants and the crop insurance program. If all impacts are considered and addressed, there should not be any procedural delays. However, if reviewers question some important aspect of the change that has not been identified, the applicant will be required to respond or take the chance of the submission being disapproved. Therefore, no change has been made.

Comment: An insurance company stated language in § 400.705(d)(3), redesignated as § 400.705(e)(3), should be amended to include regions or other geographic areas that may apply to a particular plan of insurance.

Response: Since the premiums are generally calculated on a county basis, FCIC usually requires the expected liability and premium for each county and state be listed rather than by large areas such as multi-state regions or geographic areas. If the information is desired by region or geographical area it would be simple to derive from county and state data. Therefore, no change has been made.

Comment: An insurance company stated language in § 400.705(d)(5), redesignated as § 400.705(e)(5) of the proposed rule is redundant with paragraphs (e) and (f), redesignated as paragraphs (f) and (g) respectively, and should be eliminated.

Response: The language in the proposed rule was changed in the interim rule so the request was not redundant. Redesignated paragraph (e) contains information related to the marketing of the policy or plan of insurance, redesignated paragraph (f) contains information related to underwriting and loss adjustment, and redesignated paragraph (g) contains information related to prices and rates of premium. To clarify the information required, FCIC removed § 400.705(d)(5) of the interim rule and added paragraph (g)(6) to the final rule, which will require a simulation of expected losses capturing both a probable loss and a total loss.

Comment: An insurance company stated language in § 400.705(e)(1) in the interim rule is unnecessary for the purpose of reviewing the submission and impractical for the applicant because it would necessitate additional cost on the part of the applicant to produce marketing materials that may become obsolete before the submission is approved. Providing a sample of each document that will be used raises the prospect that FCIC must approve all marketing materials. The commenter also asked what the implications are of developing and using additional marketing materials after approval of the submission.

Response: FCIC agrees advertising material and brochures do not need to be included in the submission. Therefore, § 400.705(e)(1) of the interim rule has been removed.

Comment: An insurance company stated language in § 400.705(e)(5) in the interim rule is overreaching as it is impossible to anticipate every unique situation. It would be much more reasonable to require an acceptable and reasonable number of examples to most probable situations.

An insurance service organization also asked how many unique situations occur and if FCIC considers all possible unique situations now.

Response: FCIC agrees with the comment. The applicant should determine all the probable situations there may be. The language in § 400.705(e)(5) of the interim rule, redesignated as (f)(4) in the final rule has been revised accordingly.

Comment: An insurance company stated language in § 400.705(f)(4), redesignated as 400.705(g)(4), is impractical for applicant response because anticipating the questions of internal RMA and external contract reviewers is unlikely and will be unnecessarily burdensome. The commenter stated most applicants are expected to have a high degree of faith in the reliability of the data used.

Response: Redesignated section 400.705(g)(4) does not require the applicant to anticipate questions of the reviewers. As stated above, there will be situations where the data will be scarce or related data will be used. This section requires the applicant to objectively evaluate the quality, quantity and applicability of the data relied upon in the submission to assess its reliability and provide that assessment in its submission. Since the amounts and types of data can differ widely between submissions, the submitter is in the best position to make this assessment. Further, this provides the applicant an opportunity to explain why they have a high degree of faith in the reliability of the data used. The provision has been revised to clarify that an objective assessment of the data is required.

Comment: An insurance company stated language in § 400.705(f)(5)(i), redesignated as § 400.705(g)(5)(i), raises questions regarding whether coverage of the same crop constitutes ''similar or comparable'' insurance plans and what would be the necessity in conducting calculations comparing a new submission with every product available for a crop. The commenter stated the review process is meant to ensure the interests of producers are protected, the interests of the public are protected, the submission is compliant with the Act, is actuarially appropriate and complies with industry standards and practices. Comparison outside this realm of review may be inappropriate or unnecessary.

Response: Redesignated § 400.705(g)(5)(i) requests a recalculation of total premium and losses compared to a similar or comparable insurance plan offered under the authority of the Act. It does not ask for a comparison with every product available for a crop. Further, the applicant is not required to conduct this analysis. Redesignated § 400.705(g)(5) only requires that one or more of the three analyses be performed. If the analysis in redesignated § 400.705(g)(5)(i) is chosen, the applicant must determine which insurance plan offered under the Act is the most similar or comparable to the applicant's submission so an analysis can be made on the proposed premium rates and commodity prices, as applicable. Such analysis is necessary for FCIC in its evaluation of whether the interests of producers are protected, the interests of the public are protected, the submission is compliant with the Act, is actuarially appropriate, and does not introduce any program vulnerabilities. Therefore, no change has been made.

Comment: An insurance company and an insurance service organization suggested FCIC require detailed loss adjustment procedures/forms be included with the initial submission and subject to the same approval scrutiny as the policy provisions, rates, etc. The commenter stated major problems have been incurred in the past because claims-handling procedures were not finalized until after a product had been sold.

Response: FCIC agrees loss adjustment procedure should be included with the initial submission. FCIC has revised redesignated § 400.705(f) accordingly and has also added a new § 400.705(l) so approved insurance providers will have the information available to immediately train personnel, including loss adjusters, on loss adjustment procedures.

Comment: An insurance company stated language in § 400.705(i)(4), redesignated as § 400.705(j)(4), which requires the applicant's legal counsel to certify compliance with the Act, applicable regulations, and the SRA, is not necessary because the Board relies solely on the Office of General Counsel (OGC) for legal recommendations and it is difficult to see any value to the applicant, FCIC, or the public. The

commenter also asked what the implications are of a conflict between the certification and the opinions of OGC.

Response: The goal is for the submission to be as accurate, comprehensible, and complete as possible. Requiring the applicant's legal counsel to review the submission allows the applicant to revise the submission if necessary before it is submitted to FCIC. This requirement should improve the quality of the product and expedite the review process by identifying and resolving issues prior to submitting the product. OGC provides advice to the Board; it does not make decisions for the Board. Regardless of whether there is a conflict between the opinions of counsel, OGC will continue to provide its advice and the Board will make its decision based on all the information it receives. Therefore, no change has been made.

Comment: An insurance company and an insurance service organization stated it is imperative that the submission fit into the existing Data Acceptance System, so accurate programming may be accomplished by other approved insurance providers with minimal time and expense.

Response: Redesignated § 400.705(k) requires the submission to comply in all respects with the standards established for processing and acceptance of data as specified in the FCIC Data Acceptance System Handbook (Appendix III), unless otherwise authorized by FCIC. New provisions have also been added to require applicants to provide the system or software necessary to allow FCIC to implement the product as part of the research and development of such product. If the applicant has the ability to deliver the policy or plan of insurance and has developed a new system for processing and data acceptance that is functional with FCIC, FCIC cannot limit the availability of innovative products that may be advantageous to producers solely on the basis of the time required for other approved insurance providers to program data automation systems in order to sell and service the product. However, the key is that any new system is functional and this will be taken into consideration by FCIC and the Board when determining reasonable timeframes for program implementation. Therefore, no change has been made.

Comment: An insurance company stated this regulation does nothing to minimize the burden of preparing a submission on the part of the applicant, it will lengthen the time required to develop a submission which will drive up costs significantly, the complexity required will prove a hindrance to anyone desiring to casually submit a plan of insurance and it will limit the opportunity to respond to last minute market indications with any degree of flexibility.

Response: This regulation was designed to specify the information necessary to properly evaluate a submission to ensure the interests of producers are protected, the interests of the public are protected, the submission is compliant with the Act, is actuarially appropriate, and does not introduce any program vulnerabilities. While this may appear burdensome and complex, the information requested should already have been developed and considered by the applicant in the development of the policy or plan of insurance. The costs associated with providing such information are much less than the costs the program could incur if a flawed policy or plan of insurance were offered to the marketplace. Therefore, no change has been made.

Section 400.706

Comment: An insurance company stated it is not appropriate for the requirement in § 400.706(a)(2) to be implemented without a deadline for action by RMA. The commenter suggested the requirement be within 10 business days of receipt. The commenter stated the questions of quality of documentation may be subjective and asked what standard of measure is to be applied and under whose responsibility will it fall. The commenter stated the quality of documentation is best addressed during the review process (not before) and includes the prospect that a submission review be delayed or that it be disapproved. The commenter also stated § 400.706(a)(3) and (a)(4) should be amended to reflect comments and revisions to paragraph (a)(2).

Response: The time frames for providing submissions are limited and any number of submissions may be submitted each time frame. Further, the submissions have varying levels of complexities from changes to existing policies to introducing new and innovative plans of insurance. Therefore, it is not possible for FCIC to set a time frame to review the quality of the submissions. RMA agrees that the review of the quality of the submission may be subjective but such a review is necessary to ensure that the resources of the agency and expert reviewers are not wasted on products that have not been sufficiently developed. Such review is only intended to determine if there is sufficient information to allow a meaningful review. This initial review process is the responsibility of the Deputy Administrator of RMA's Office of Research and Development. Without the initial review process and a determination by the Board the submission is complete, approval by the Board could be delayed for months or longer if the submission goes to the experts and receives poor reviews or reviews that state it is impossible to determine whether the standards for approval have been met because there is insufficient information. An initial determination of quality could preclude the need for multiple expert reviews. A definition of ''complete submission'' has been added for clarity. Further, § 400.706(b) has been revised to clarify that the Board will determine if a submission is complete.

Comment: An insurance company questioned if the language in § 400.706(c)(3) of the interim rule requiring the Board to render a decision to approve or give notice of an intent to disapprove within 90 days after acceptance of the submission and requiring the applicant to be notified in writing at least 30 days prior to the Board taking such action would require written notification of intent to disapprove within 60 days of acceptance.

Response: Section 508(h)(4)(D) of the Act allows the Board 120 days after a complete submission is received to make a determination whether to approve or disapprove the submission. Section 508(h)(4)(C)(i) of the Act directs the Board to give notification of its intent to disapprove a submission not later than 30 days prior to making the disapproval. This means the Board must initially act not later than 90 days after determining the submission is complete, as reflected in § 400.706(c)(3) of the interim rule. Due to other revisions made to § 400.706, the 90 day notice of intent to disapprove is now contained in § 400.706(g) and the 30 day time frame for the applicant to be notified if the Board intends to disapprove the submission is now contained in § 400.706(i) of this regulation.

Comment: A legal counsel stated § 400.706(f)(3) which states, ''The submission does not conform to sound insurance and underwriting principles;'' should be deleted because many coverages explicitly mandated by Congress extend beyond traditional insurance concepts and do not conform to sound insurance and underwriting principles. For instance, crop insurance production risks for drought, price risks under Crop Revenue Coverage (CRC), Group Risk Protection (GRP) allowing a producer to collect an indemnity even though the producer did not sustain a

loss, Catastrophic Risk Protection (CAT) coverage allowing a producer to obtain a coverage guarantee possibly worth millions of dollars for no premium and a token administrative fee, and the Agricultural Risk Protection Act (ARPA) mandating the use of futures and options contracts designed to provide reasonable protection from the financial risks of price for income fluctuations inherent in the production and marketing of livestock, transcend traditional insurance and underwriting principles. Federal Crop Insurance is not simply a business-based insurance system but a Federally subsidized program with a social policy element and a mandate to address the full range of agricultural risk management, not simply traditional insurance. Trying to apply traditional insurance models as a legal standard for new products under ARPA 2000 inevitably will result in selective enforcement and arbitrary judgments. FCIC has the responsibility to assure itself that any proposed new tool is technically sound and protects the interests of both the taxpayers and farmers.

Response: Section 400.706(f)(5) has been redesignated as § 400.706(h)(6). FCIC agrees ARPA encourages the development of products that may be non-traditional and innovative in design. FCIC agrees that not all traditional principles of insurance apply to these types of products. However, there is express statutory authority to offer the coverage referred to by the commenter. Absent express authority to the contrary, the sound principles of insurance and underwriting continue to apply since they are one of the underpinnings of a determination of actuarial soundness. In addition to the requirements of the Act, FCIC must protect taxpayer dollars. This means that insurance cannot provide coverage in excess of the value of the commodity and no known program vulnerabilities can be introduced as a result of the implementation of the submission. Therefore, FCIC will review the submission to determine whether it is in accordance with sound insurance and underwriting principles and if it is not, FCIC will determine whether the Act authorizes an exception. Redesignated section 400.706(h) has been revised for clarity.

Comment: An insurance company stated language in § 400.706(f)(5) should include a limitation that would prevent use of this provision to deny approval of a submission when the time constraint was created due to the action or inaction of RMA or the Board, and not the applicant.

Response: Congress has set very tight time limits on the approval process. In some quarters there may be many products submitted. This provision was specifically intended to permit denial of a submission if, even after due diligence, there is insufficient time to properly evaluate the submission. For example, expert reviewers may not be available because they are working on other projects or the submission is so complex or requires such significant changes that it is impossible to determine what changes are necessary in the available time frame. To the extent that the applicant believes that RMA or the Board is stalling on acting on a submission in order to utilize this provision, the applicant always has recourse to challenge such actions are arbitrary and capricious. Therefore, no change has been made.

Section 400.708

Comment: An insurance company suggested language be added to § 400.708 to give SRA holders the option to not offer specific products that the Board has approved. This decision by the SRA holder may be based on the approved insurance provider's assessment of the product, the reinsurance terms for the product, or any other reason.

Another insurance company and an insurance service organization asked if all approved insurance providers reinsured by FCIC will be required to offer every product that is approved or will a separate SRA addendum be optional for each such product. The commenter also asked if an insurance company reinsured by FCIC could opt out of a program if the company deems the user fees to be excessive.

Response: Section II.A.2. of the 2005 Standard Reinsurance Agreement, states in part ''* * * The Company is not required to offer such plans of insurance as may be approved by FCIC under the authority of section 508(h) of the Act. However, if the Company chooses to offer any such plan, it must offer the plan in all approved states in which it writes an eligible crop insurance contract and it must comply with all provisions of this paragraph as to such plan.'' This means that approved insurance providers can opt not to offer any policy or plan of insurance approved under section 508(h) of the Act. However, if the approved insurance provider opts to offer the policy or plan of insurance, it must offer it everywhere. Separate SRAs or addendums to the existing SRA will be used as appropriate. Therefore, no change has been made.

Comment: An insurance company and an insurance service organization stated § 400.708(a)(1) needs to be clarified because it seems to require a post approval disposition of property rights from the payment for said property rights manifested in the reimbursement for research and development costs articulated in § 400.712(a) and it appears the applicant ultimately gives up the property rights.

Response: The applicant continues to have property rights to the submission until responsibility for maintenance is relinquished to FCIC, as determined by the applicant. However, if research and development or maintenance costs have been paid by RMA, section 522(b)(5) of the Act makes it very clear that if the applicant elects not to continue to maintain the product, the research and development or maintenance costs paid by RMA are payment in full for the product and RMA has the property rights to the product. Section 400.708(a)(1) simply incorporates this provision. Section 400.708(a)(1) has been revised to clarify when property rights are transferred.

Section 400.709

Comment: An insurance company stated § 400.709(a)(1)(ii) requires the applicant to annually update and provide maintenance changes to the insurance product and they suggested the regulation should address what happens if the applicant is no longer able or willing to continue to maintain or offer the product prior to the end of the maintenance period.

Response: As previously stated, § 400.712(m) has been added to specify the maintenance period ends for an approved submission once the applicant no longer performs the maintenance responsibilities, as determined by FCIC, or the applicant gives FCIC notice they no longer wish to maintain the submission. Maintenance of the approved submission may be assumed by FCIC or the Board may withdraw reinsurance, risk subsidy and A&O subsidy.

Comment: An insurance service organization stated § 400.709(a)(2) requires any changes be submitted to FCIC no later than 180 days prior to the earliest sales closing date and asked how this compares to the current requirement.

Response: Before this regulation was effective, specific deadlines for changes were contained in a Memorandum of Understanding (MOU) between the applicant and FCIC. For example, currently the CRC and RA MOU's allow 153 days for changes to spring crop provisions and 122 days for changes to

fall crop provisions; except, in the event of unforeseen circumstances, changes may be made if they are submitted 30 days prior to the contract change date. Given that RMA will be reviewing new submissions, revising existing submissions, and maintaining its own products, the 180 day deadline is necessary to allow adequate time for the review process and Board approval and treat all products consistently. However, since some submissions may allow producers to obtain insurance coverage at various times during the year, the references to sales closing dates have been changed to contract change dates in §§ 400.709(a)(1)(ii) and (2).

Comment: An insurance company and an insurance service organization stated § 400.709(b)(1)(ii) indicates approved insurance providers should contact FCIC to obtain and execute a copy of the reinsurance agreement for approved products and they suggested this language be modified to require FCIC/RMA to contact approved providers and make them aware of products that have been approved because the responsibility for advising providers should fall to FCIC/RMA, as FCIC/RMA holds the approval authority over the products.

Response: Section 400.709(b)(1)(ii) of the interim rule has been redesignated as § 400.709(b)(1)(iii). The fact that FCIC holds the approval authority does not mean it is required to provide notice to the approved insurance providers that products have been approved. The approved insurance providers have notice throughout the process. When products are considered by the Board, they are placed on the Board meeting agenda, which is made public. Any approval of the product is made in an open Board session and all resolutions are published on RMA's public Web site at *http://www.rma.usda.gov/* as soon as new products are approved. Further, FCIC notifies all approved insurance providers via a Manager's Bulletin when the product is released. Since participation is voluntary, once RMA makes the information available, it is the approved insurance providers who are appropriately responsible for requesting and executing a copy of the reinsurance agreement for the approved product. The specified section has been redesignated as § 400.709(b)(1)(iii) for clarity, however, no other change has been made.

Comment: An insurance company and an insurance service organization suggested the language in § 400.709(b)(1)(iii) which states, ''Conducting the best review of the submission possible in the time allowed'' should be revised to state, ''Conducting a thorough review of the submission.'' Since FCIC/RMA has approval authority, and exercise of that authority does have consequences, the language should reflect the full responsibility that accompanies the authority. The commenter asked if the best review possible in the brief time allowed will always be adequate.

Response: Section 400.709(b)(1)(iii) of the interim rule has been redesignated as § 400.709(b)(1)(i). RMA has a limited time frame to conduct its review and must conduct as thorough a review as possible within that time frame. RMA acknowledges that its review may not catch all the mistakes, errors, or flaws. However, since RMA is not the developer of the product, the responsibility for such mistakes, errors, or flaws correctly lies with the applicant. This provides applicants with the incentive to thoroughly review and test their product prior to submitting it to the Board. Since applicants will be reimbursed for costs associated with such research and development, there is no financial impediment to conducting a thorough review and test of the product. Except for redesignation of the provision, no change has been made.

Comment: A legal counsel, a university, an insurance service organization, and insurance companies stated FCIC should be liable for mistakes, errors, or flaws in a submitted product and its related materials. The Board now conducts a substantial review process prior to approving 508(h) submissions, including analyses by five outside independent reviewers, OGC, and RMA's staff. It is unrealistic and inconsistent with FCIC's past practice for FCIC to not be liable. FCIC's formal approval of a product signifies that the Board has reviewed it, and that the Board has determined its reviews to be positive. The public and the applicant should be able to rely on this public action by the Board. When the Board approved Crop Revenue Coverage in the late 1990s, the memorandum of understanding between FCIC and the sponsoring company assigned liability for such policy errors to FCIC, and every legal challenge involving the policy since that time has presumed FCIC responsibility. By sharing in the liability for errors or flaws, FCIC retains an incentive for maintaining a high level of quality control over new products. The Act intended to provide a process and mechanism under which organizations can evaluate and design programs that are needed in the marketplace and have them available to producers under the FCIC/RMA umbrella. If FCIC/RMA approves a submission, then FCIC/RMA must be the regulator, manager, maintainer and administrator of that program. Section 400.709(a)(1)(iii) requires the applicant to respond to procedural issues, questions, problems, etc., in regard to a policy or plan of insurance and they suggested this is a role for FCIC/RMA as regulator of the program, not the applicant that developed the product. Section 400.705(a)(10) requires the submission to include the names of those responsible for addressing the policy and procedural issues and questions that arise in administering the approved program. Once FCIC/RMA grants approval of the product, responsibility for the product and its delivery, including responding to questions about procedural issues, policy language, etc., for the product should belong to FCIC/RMA. The program becomes an FCIC/RMA program the same as MPCI or GRP or any other RMA/FCIC approved or designed insurance program. Any other conclusion is inconsistent with the SRA, which holds SRA holders responsible for complying with FCIC policies, procedures, etc., not those of other parties. This issue again reinforces that once FCIC/RMA grants product approval, it becomes responsible for the product. Section 400.709(a)(2) indicates only the applicant may make changes to the policy, plan of insurance, or rates of premium approved by the Board. The commenter stated FCIC/RMA has the responsibility to make such changes after FCIC has approved the submission. It was also stated that § 400.709(b)(2) should be modified by removing the word ''not'' as FCIC assumes liability for submissions once they are approved.

Response: Section 400.709(b)(2) has been redesignated as § 400.709(b)(3). Applicants are liable for the insurance products they submit under 508(h) of the Act because they own the product. FCIC does not gain ownership or control over the product until such time as the applicant agrees to relinquish the product to RMA. Further, while the product is owned by the applicant, FCIC does not have the authority to modify it. All it can do is disapprove a submission or withdraw reinsurance if errors are discovered and the applicant is not willing to correct the error. Also, it is the applicant that chooses the method to use to correct the identified mistake. Therefore, FCIC cannot assume the liability of a product over which it has so little control. In addition, if FCIC were to assume the liability for mistakes, it would delay the approval process considerably. All submissions would have to be disapproved until FCIC had thoroughly completed its review and tested the product. For its

own products, this process can take years. However, the Act only provides 90 days to review the submission. This is not a sufficient time to conduct a thorough review and test of the product. When CRC was approved, the 90-day review requirement did not exist and RMA could take such time as necessary to review the product. Therefore, FCIC should not be responsible for the errors in a product that Congress has given it insufficient time to thoroughly review and test. It is the applicant that has unlimited time to develop, evaluate and test the product and has the authority to make such changes as are necessary. Therefore, the liability correctly lies with the applicant.

Comment: An insurance service organization stated the Web site is a useful tool for making information available, but approved insurance providers should be notified in writing when policies, plans of insurance, or rates of premium are timely withdrawn because they are deemed canceled and applications for insurance are not accepted as of the date that FCIC publishes the notice of withdrawal on its Web site. Section 400.709(a)(5) would require approved insurance providers to check the Web site each time an application is processed in case a cancellation notice was posted after the last check.

Response: Section 400.709(a)(5) applies to both producers and approved insurance providers and simply provides the consequences if reinsurance is withdrawn from a policy, plan of insurance, or rates of premium. The reference to the Web site simply provides the date by which cancellation is effective. FCIC agrees that if reinsurance is withdrawn or denied from a policy, plan of insurance or rate of premium, the approved insurance provider should be notified in writing and has revised the provision accordingly.

Section 400.712

Comment: An insurance company and an agricultural association stated §§ 400.712(b) and (c) of the interim rule do not address procedures for submissions sent to RMA and not yet approved by the Board prior to publication of the interim rule and such circumstances prevent compliance with paragraph (b), which states a request for reimbursement be included with the original application.

Response: Revisions were made to § 400.712 when the interim rule was completed to accommodate this situation. However, this information has been removed in the final rule since such information is now obsolete.

Comment: An insurance company stated § 400.712(d) is more appropriate to the decision to approve or disapprove an application and if an application is approved, the question of qualification for reimbursement should be moot. The commenter also asked whose marketing plan would be utilized to help render this decision.

A legal counsel stated the proposed rule requires that to be eligible for reimbursement, a product must be marketable based on a reasonable marketing plan. Marketability so defined, is a judgement that the Board can make in advance when the product is approved, and it addresses a statutory requirement. However, the proposed rule defines marketability as a measure of the acceptability of a policy as reflected by the percent of market penetration of the identified target market which is an after-the-fact judgement. It is unclear how or whether the after-the-fact judgement applies as it is not referenced in § 400.712. The commenter opposes use of the after-the-fact test as being unnecessary to legislative requirements, creating excessive uncertainty, and conflicting with the regulatory scheme. Once the Board has approved a reimbursement request at the time it approves the new product (a full marketing plan will be included in the submission), the applicant should be able to rely on the Board's decision.

Response: Section 400.712(d) has been redesignated as section 400.712(c). The definition of ''marketability'' in the proposed rule was deleted and a definition of ''marketable'' was added in the interim rule. The definition of ''marketable'' has been revised in the final rule to make it clear that the determination of marketable will be based on the marketing plan and the documentation provided to support it. FCIC has also determined that marketability should also be considered when determining whether the policy or plan of insurance protects the interest of producers because unmarketable products waste valuable resources that could be better used to provide products that producers want to purchase. Therefore, it has also included the requirement in redesignated § 400.706(h).

Comment: A legal counsel stated it should be explicitly stated the Board will approve a proposed research and development reimbursement request, conditioned only on subsequent proration as specified in § 400.712(f)(2) of the interim rule, at the same time the applicant's proposed new product is approved.

Response: FCIC cannot determine when it approves a submission that it will pay the research and development costs. Some of those costs may not have yet been incurred and certain costs may be reduced or excluded in accordance with § 400.712(h). FCIC has revised the provisions to clarify that a submission is eligible for reimbursement if the Board determines the submission is marketable.

Comment: A legal counsel suggested § 400.712(e) be modified by adding ''except as provided in paragraph (c) of this section'' after the phrase ''August 1'' because they stated that it could be read to require that such requests be received by FCIC not later than August 1 to be considered for reimbursement in the current fiscal year.

Response: The information referencing a submission approved by the Board or submitted to the Board prior to the interim rule being published on September 17, 2001, is now obsolete and has been removed in the final rule.

Comment: An insurance company asked if since limited funds exist each fiscal year for reimbursement of research and development costs, and maintenance costs, if the limit is met in any year, whether the applicant can resubmit the ''shortfall'' for possible reimbursements in a subsequent year.

A legal counsel stated that under the proposed rule in § 400.712(f)(2) if the sum of all applicants requests for reimbursement in a given year exceeds available funding, each amount is adjusted downward by a uniform factor and portions of the reimbursement that remains unpaid as a result of this reduction appear simply to expire. This could be unfair based on arbitrary timing factors if applicants adversely select against annual pools to the disadvantage of others. A fairer approach would be to permit each company to receive its full reimbursement as calculated under the rule and if the sum of all applicants claims exceed available funding in a given fiscal year and a uniform downward adjustment is applied, the unpaid portions should be rolled over and paid in the following fiscal year when funds are available.

Response: Applicants will not be allowed to receive additional funds in a subsequent year for the ''short fall'' between the amount of reimbursement they requested and the amount of reimbursement they receive. The Act only authorizes one payment for research and development costs. Therefore, these costs cannot be broken into two separate payments in separate fiscal years. Further, the payment for maintenance costs comes from a single

year's appropriations that can only be used to reimburse costs expended for that fiscal year. Therefore, costs incurred in one fiscal year cannot be rolled over to be paid in a subsequent fiscal year. Therefore, no change has been made.

Comment: An agricultural association stated they do not know of any legislative history which indicates that Congress intended for a complicated rating system to be developed as is in § 400.712(g) of the interim rule for determining the level of reimbursement.

Response: Section 400.712(g) of the interim rule has been redesignated as section 400.712(f). Section 522(b)(6) of the Act states, ''The Corporation shall determine the amount of the payment under this paragraph for an approved policy based on the complexity of the policy and the size of the area in which the policy or material is expected to be sold.'' Therefore, Congress expressly directed FCIC to develop a rating structure to determine the complexity of the product and how much it will be reimbursed.

Comment: An insurance company stated § 400.712(g)(1) of the interim rule indicates a high degree of subjective judgement as to what degree a policy, plan of insurance, or various components thereof, may be based on, or similar to, existing policies. The commenter stated that given the requirement for adherence to industry standards and practices it is likely that a complex, original plan may score highly but be less likely to be approved, while proposals utilizing well-known concepts might not score well but stand a better chance for approval.

Response: The scoring methodology in redesignated § 400.712(f) is not used for approving new insurance products. It is used for computing an equitable amount of reimbursement for research and development costs. The research and development expenses associated with using well known concepts should be less because the development and testing of such concepts has already been done by someone else. The research and development expenses associated with complex, innovative concepts would likely be higher because of their originality. The scoring system assures that applicants with complex, innovative designs have a better likelihood of having their research and development expenses approved. Except for redesignation, no other change has been made.

Comment: A university and an insurance company suggested emphasis should be placed on accuracy, not necessarily on novelty. The commenters also stated innovation is essential, but consistency and accuracy may need more emphasis. Just being new or different does not guarantee accuracy, program success, or fair and equitable programs for policyholders or taxpayers. Section 400.712(g)(2) of the interim rule states new methodologies will be eligible for higher reimbursement than existing price methodologies.

Response: Section 400.712(g)(2) has been redesignated as § 400.712(f)(2). The applicant should always place emphasis on accuracy since the applicant is solely liable for any mistakes, errors, or flaws in the submitted policy, plan of insurance, related material, or the rates of premium that have been approved by the Board. It is also in the best interests of the applicant to present to the Board the most accurate information in order to be considered for approval since such information and methodologies will be reviewed by expert reviewers and any inaccuracies will result in delays in approval of the product. An agreement to pay the research and development expenses associated with complex products provides a greater incentive to applicants to ensure that there are no errors, mistakes or flaws in the product. Except for the redesignation, no other change has been made.

Comment: An insurance company stated § 400.712(g)(5)(i) of the interim rule should have descriptions of or definitions for what degree of originality or modification qualifies a submission for each scoring point.

Response: Section 400.712(g)(5)(i) has been redesignated as § 400.712(f)(5)(i). It would be impractical to list definitions or degree of originality that would be appropriate for every unique situation that future innovative submissions may present. It is more appropriate to use the broader based language that can be applied to the numerous potential different innovative submissions. No other change has been made.

Comment: Legal counsels and an agricultural association questioned the rules and expectations of the reimbursement procedure for submissions pending at the time of publication of the proposed rule. The commenters asked if a pending product is approved by the Board shortly after the regulation is a final rule would the applicant be given the same 60-day grace period to submit its reimbursement application as that provided for products approved prior to the rule's publication or would the applicant be required to amend its pending submission to include reimbursement material prior to final Board action. The commenter asked if it could wait until August 1 of the following year, the deadline for applications under § 400.712(e), and if the Board acts on the submission after August 1 (the deadline for 2001 fiscal year applications) but prior to October 1, 2002, would it qualify for funding in fiscal 2002. It was suggested FCIC give applicants of products that have been pending before the FCIC Board, prior to the publication of the proposed rule, a choice to either amend their submissions to include a reimbursement request in accordance with § 400.705(k) so that the Board can consider it at the time it votes on the product itself or to submit an application for reimbursement within 60 days of the rule's publication, which would be the same grace period applicable to products approved prior to the proposed rule. The regulation is unclear as to whether an applicant must request a projected or estimated level of maintenance costs in advance, when the product is approved, at the beginning of each fiscal year, or alternately whether an applicant may wait until the end of each fiscal year and account for the actual costs accrued, and then request reimbursement for such actual costs.

Response: Revisions were made to § 400.712 when the interim rule was completed to accommodate this situation. Submissions submitted to the Board prior to publication of the interim rule followed the same procedure as submissions approved by the Board prior to publication of the interim rule. This obsolete information has been removed in the final rule.

Comment: A legal counsel questioned why costs will be examined for reasonableness and may be adjusted at the sole discretion of the Board because this appears to undermine the very objectivity achieved by the detailed criteria specified. If the Board, at its sole discretion, can replace the application of objective standards by its own subjective view of reasonableness, then the process becomes highly judgmental, inevitably inviting questions of favoritism, bias, or unequal treatment. The commenter stated, at a minimum Board judgments must be available for review and the standard of reasonableness must be spelled out with objective benchmarks.

Response: The detailed criteria in § 400.712 will be followed. However, there may be situations where costs for similar work among the submissions may be substantially different. The Board must determine what costs are reasonable. Further, since the Board is using appropriated funds, it must take such actions as necessary to ensure the funds are properly spent. Reimbursing exorbitant costs would be a violation of this fiduciary duty. In addition, the

knowledge that only reasonable costs will be reimbursed may place limitations on applicants so they do not incur excessive charges based on the knowledge that such costs will eventually be borne by the Government. Additional criteria has been added to redesignated §§ 400.712(g)(1)(iii) and (iv) for clarification.

Comment: An insurance company stated § 400.712(i)(1) of the interim rule should include costs associated with building rents or space allocation paid for personnel directly involved in research and development.

Response: There are no special building requirements for the development of insurance policies. Therefore, the applicant can either use the space in which normal business activities are currently accommodated to do the research and development for a new product or pay for additional space out of normal business funds. FCIC cannot allow the costs of business expansion to be borne by the Government. It is a normal business judgment of the applicant whether such costs will be incurred. Section 400.712(g)(2)(xiv) has been added to specifically state, costs associated with building rents or space allocation will not be eligible for reimbursement.

Comment: An insurance company stated § 400.712(k) does not specify the consequences if an applicant does not notify FCIC, no later than six months prior to the end of the last reinsurance year in which a maintenance reimbursement will be paid, whether they will continue to maintain the policy or plan of insurance and charge approved insurance providers a user fee to cover the maintenance expenses or transfer responsibility for maintenance to FCIC.

Response: FCIC agrees and has added a new § 400.712(j)(8) to specify that if the applicant fails to provide timely notice to FCIC, the policy or plan of insurance will transfer to FCIC.

Comment: An insurance company stated they have concerns regarding the availability of future reimbursement funding for research and development costs, and maintenance costs if a significant increase in the number of approvals should develop.

Response: The amount of funds available for reimbursement of research and development costs has increased from $10,000,000 for each of fiscal years 2001 and 2002 and not more than $15,000,000 for each of the 2003 and subsequent fiscal years. However, these funding limits cannot be exceeded so if the requested amounts exceed the available funding, the reimbursements will have to be prorated.

Comment: An agricultural association stated since anyone can now submit a new product under section 508(h) of the Act there are new challenges faced by these applicants that are not addressed in the proposed rule. New policies involve traditional underwriting risk and market risk. Proper actuarial analysis, sound program rules, and reinsurance can address underwriting risk. The approved insurance provider must invest heavily in sales information, agent training, outreach, education, and management systems to address business risk. It may be argued that existing approved insurance providers should bear the market risk of offering new policies in the pilot stage. However, a new company will need a high potential rate of return in order to attract investment capital. The existing SRA and section 508(k) of the Federal Crop Insurance Act requires that approved insurance providers bear a sufficient share of a potential loss so as to ensure that they operate in a sound and prudent manner. The commenter stated the principle should not apply to the same extent to a 508(h) policy because Congress explicitly exempted 508(h) policies from such ''limitations in the Act'' in recognition of the innovative nature of these products. The commenter stated if FCIC chooses not to provide 100 percent reinsurance, FCIC should offer a choice of either including pilot insurance policies in the approved insurance provider's regular SRA risk pool because the administrative cost to them of establishing separate reinsurance systems under a separate SRA may outweigh potential gains or creating a new reinsurance fund, which would combine elements of both the current Commercial and Assigned Risk Funds (*i.e.*, ''Pilot Insurance Fund''). Approved insurance providers participating in this new ''Pilot Insurance Fund'' would retain the same percentages of ultimate net loss as are provided under the Assigned Risk Fund, which would assure confidence in the new product, make up for the lack of private reinsurance, but still require approved insurance providers to retain some minimum amount of risk to assure proper program performance. The reinsurance should be provided without regard to the limitations in the SRA on the amount of an approved insurance provider's portfolio that it can place in the Assigned Risk Fund. Participating approved insurance providers should retain the percentages of underwriting gain provided under the Commercial Fund. The current SRA provides that, under the Assigned Risk Fund, the approved insurance provider will retain 15 percent or less of underwriting gain, a reasonable approach for a mature program but not sufficient protection for a novel pilot program. The combination of risk protection and gain potential under a new fund, plus the choice of using current SRA pools for approved insurance providers so desiring, will build a strong foundation for wide participation by private insurance companies.

Response: FCIC recognizes there may be additional risks associated with submissions approved under section 508(h) of the Act. To address these risks, unlike other plans of insurance which must be offered by all approved insurance providers in all states they write business, approved insurance providers have the choice whether to offer a policy or plan of insurance reinsured under section 508(h). Therefore, approved insurance providers can evaluate the product and determine whether they want to assume the risk. Because it is optional, approved insurance providers who sell and service the new submission will have a reinsurance agreement, which may simply be an amendment to the current SRA. It would not be consistent with sound insurance principles or FCIC's fiduciary duty to the taxpayer to allow approved insurance providers to assume none or minimal risk and receive an even greater share of the gains. Part of the process of offering these new products is an evaluation of whether they are actuarially sound and do not introduce program vulnerabilities. The approved insurance provider's assessment of the risk is an integral part of this process and that assessment could be skewed if the approved insurance provider did not bear any meaningful risk. Further, it should be the market that determines whether new policies or plans of insurance are sold and approved insurance providers are part of that market. Therefore, no change has been made.

Section 400.713

Comment: A legal counsel stated FCIC does not have authority to make § 400.713 effective without complying fully with the notice and comment provisions of the Administrative Procedures Act (APA). The preamble mistakenly refers to section 2108 of the 2001 Supplemental Appropriations Act when the reference should be to section 2103(a). The commenter stated the APA recognizes only one basis, good cause, for making a substantive regulation effective upon publication. The commenter stated this regulation does not have a ''good cause'' certification

and that such certification would be inappropriate anyway, since the current SRA deals with a portion of the subject matter of § 400.713 in section V.F. of the SRA, and there are no problems with respect to compliance with or abuse of that provision in the SRA. The commenter stated that § 400.713 exceeds the contractual grounds in the SRA by adding two new grounds for denial of subsidy and reinsurance which are ''any rights of the insured with respect to the underlying reinsured policy or plan of insurance'' or if that policy causes ''disruption in the marketplace for products reinsured by FCIC.'' The commenter also stated it was misleading to describe this section as guidelines since compliance with it is mandatory and failure to comply will result in financial penalties. The commenter stated that section 2103(a) explicitly concerns expediting effectiveness of regulations implementing § 522(b) of the Act, 7 U.S.C. 1522(b), which only deals with reimbursement of research and development costs and maintenance costs with respect to 508(h) products. Section 400.713 purports to cover all non-reinsured named peril coverage, except for hail coverage, for all commodities which an approved insurance provider may insure. This assertion of regulatory authority includes products even if they have been approved by the relevant state insurance departments. The definition of ''non-reinsured supplemental policy'' (NRS) may apply even if there is no federally approved reinsurance product available for the commodity in one or more of the counties where the non-reinsured policy is offered. If FCIC has approved any product for reinsurance for any commodity, a NRS product covering the same commodity is subject to its jurisdiction. It fails to take into account the fact that availability of reinsured products is determined on a county-by-county basis for any commodity with respect to which FCIC has approved reinsurance. This means that there may be counties in which an approved insurance provider wishes to offer a NRS product for a commodity grown in that county although FCIC has not approved a reinsurance product for sale in that same county for the commodity in question. This ambiguity in the definition establishes that § 400.713 is unduly broad because it seeks to extend review and approval jurisdiction of the FCIC to non-reinsured policies even when they are issued in counties where no underlying reinsured coverage for the same commodity is available. The commenter states there is no statutory or contractual authority permitting issuance of § 400.713 of the Interim Rule. It does not identify any laws, rules, regulations, or contracts that are inconsistent and the preamble does not provide any rationale for preempting state regulations of non-reinsured policies. This section would allow FCIC to review and approve all insurance products providing any form of coverage for any commodity even though FCIC is not providing subsidy or reinsurance for that coverage. There is no relationship between §§ 400.702–400.712 and § 400.713. The commenter also stated a contractual provision cannot be utilized as authority for a federal regulation.

Response: FCIC agrees section 2108 of the 2001 Supplemental Appropriations Act as presented in the Summary of the interim rule was not correct. However, the correct section designation was in the Background section of the interim rule published on September 17, 2001. Further, FCIC acknowledges that section 2103 only applied to the implementation of section 522(b) of the Act and that § 400.713 exceeded the scope of that section. Therefore, the provisions of § 400.713 are not effective until the effective date of this final rule. However, with respect to the denial of reinsurance if the NRS shifts or increases the risk to the underlying FCIC reinsured policy, that requirement is contained in section V.F of the 2004 and previous SRAs and section IV.E of the 2005 SRA. Therefore, notwithstanding the effective date of § 400.713, FCIC can deny reinsurance under the SRA if the conditions in the SRA have been met.

The definition of a ''NRS'' specifically states that it includes products that offer coverage, except for hail, for commodities in addition to the coverage available under a policy or plan of insurance reinsured by FCIC. This means that if there is no FCIC reinsured policy for the commodity, the product is not considered a NRS. This would also apply if there is no FCIC reinsured policy for the commodity in the county. As the name implies, FCIC is seeking to examine those products that are supplemental to FCIC reinsured policies. Therefore, the provision is not overbroad. FCIC agrees that products with new coverage must be submitted even if FCIC reinsured policies do not offer the coverage. This is to ensure that the new coverage does not shift risk to the underlying FCIC reinsured policy. However, if there is not an underlying FCIC reinsured policy, § 400.713 is not applicable. FCIC has revised the definition of NRS for clarification.

Comment: An insurance company suggested § 400.713 have a 60-day time frame requiring FCIC to respond to the approved insurance provider regarding the Non-Reinsured Supplemental policy submission.

Response: FCIC agrees that a time frame should be incorporated into the regulation. FCIC is requesting that the NRS policy be submitted at least 120 days prior to the first sales closing date. FCIC will respond to the submitter not less than 60 days before the earliest sales closing date or provide notice why it is unable to respond within the time frame allotted.

Comment: A legal counsel asked if related materials submitted for a NRS policy will be reviewed under the same standards as those employed to review proposed 508(h) products or policies developed by FCIC product development contractors. The commenter stated FCIC provides no subsidy or reinsurance for a NRS policy, like it does for 508(h) products and other policies approved for reinsurance so different standards should apply.

Response: FCIC agrees different standards should apply, and do apply. The purpose for FCIC's review of a NRS policy is to determine if the NRS policy materially increases or shifts risk to the underlying policy or plan of insurance reinsured by FCIC, reduces or limits the rights of the insured with respect to the underlying reinsured policy or plan of insurance, or causes disruption in the marketplace for products reinsured by FCIC. FCIC will not be reviewing whether the NRS policy is actuarially sound or protects the interest of producers. Section 400.713 has been revised to define the basis of FCIC approval of an NRS policy and for clarification.

Comment: A legal counsel stated § 400.713 establishes no meaningful criteria or standards for the reviews or determinations to be made. It would penalize the issuer of a non-reinsured policy if it affects ''any rights of the insured with respect to the underlying reinsured policy or plan of insurance.'' It does not deal with the issues such as whether the effect on rights is adverse or beneficial or whether or not the effect is material or immaterial. The regulation purports to define the ''marketplace disruption'' test for denying subsidy and reinsurance, however they are not adequate. For instance, the commenter asked how FCIC will evaluate and then implement (1) a standard based on a test of ''adversely affecting sales'' of reinsured products; or (2) evaluate and then implement a test on ''undermining producers'' confidence'' in Federal crop insurance, relying on decreased

''willingness or ability to use Federally reinsured risk management products'' or based on harm to ''public perception of the Federal crop insurance program?''

Response: NRS policies generally attach to or are written with an underlying FCIC reinsured policy. However, NRS policies are not reinsured by FCIC. NRS policies are not standardized so each could have a unique impact on the underlying FCIC reinsured policy. It is imperative provisions of the NRS be compatible and consistent with the underlying policy in terms of coverage references, policy dates, and generally accepted policy rules of administration to avoid coverage ambiguities. The policyholder's perception of the underlying FCIC reinsured policy and the NRS are indivisible parts of the entire risk management package. The package must perform as expected to maintain consumer confidence in Federal risk management programs. With respect to whether the policy affects the rights of producers, FCIC will focus on whether the NRS policy prevents the producer from receiving coverage or changes such coverage so the producer does not receive the full benefit under the underlying FCIC reinsured policy. FCIC will also examine whether the NRS policy will result in over-insurance. With respect to marketplace disruption, FCIC will generally consider producer perceptions, comments, and market conduct. For example, if producers then state they will not purchase FCIC reinsured policies because of their performance in conjunction with the NRS policy or the volume of sales of the FCIC reinsured policy decreases suddenly after the release of a NRS policy.

Comment: A reinsurance company stated § 400.702 addresses the confidentiality of submissions submitted under section 508(h) of the Act. The commenter suggested § 400.713 should also address the confidentiality of nonreinsured supplemental policies.

Response: Submissions under section 508(h) of the Act are confidential because there is a specific requirement in section 508(h)(4)(A) of the Act. This confidentiality provision does not extend to NRS policies. However, the release of information provided with the NRS policy would be subject to the Freedom of Information Act, which offers protection against the release of certain information. Therefore, no change has been made.

In addition to the changes described above and minor editorial changes, FCIC has made the following changes:

1. Removed the definition of ''revenue insurance'' because it is not needed to clarify the provisions and the defined term is not used in the provisions;

2. Amended § 400.705 to designate it as paragraph (a) and redesignate paragraphs (a) through (m) as paragraphs (b) through (n), and amend redesignated (a) to specify that the submission must have a table of contents and page numbers, and that when the electronic format of the submission is printed it will be an exact duplicate of the information that would have been found in the 3-ring binder, with the exception of section dividers. This will ensure that the information is the same and in the same order.

3. Amended redesignated § 400.705(b)(6) to specify if a sales closing date is not applicable, the applicant must give the earliest date the applicant expects to release the product to the public to cover those situations where the policy or plan of insurance does not have a sales closing date but allows for continuous sales.

4. Amended redesignated § 400.705(h) to specify the evaluation and certification from an accredited associate or fellow of the Casualty Actuarial Society or other similarly qualified professional must be a disinterested third party to avoid any potential conflicts of interest. A definition of ''disinterested party'' has also been added.

5. Amended redesignated § 400.705(j)(1) to specify the applicant will submit a statement specifying sales will not commence for any new or revised submission until at least 60 days after all policy provisions and related material are released to the public by RMA, unless otherwise specified by RMA. This provision is necessary to protect the program by allowing other approved insurance providers the time needed to release materials to their agents and adequately train agents and loss adjusters so that producers are properly informed of the attributes and benefits of the new policy or plan of insurance and losses are adjusted correctly.

6. Amended redesignated § 400.705(k) to specify that submissions must not only be in compliance with Appendix III, it must contain any system(s) and software necessary to implement the submission and such systems or software must be compatible with RMA's systems.

7. Amended §§ 400.706(a) and (b) to better clarify the roles of RMA and the Board and to better structure the provisions to better reflect the current practices of the Board.

8. Amended redesignated § 400.706(h) to specify the Board may disapprove a submission if it determines coverage would be similar to another policy or plan of insurance and the producer would not further benefit from the submission. It does not protect the interests of producers if the new policy or plan of insurance offers the same or similar coverage to existing policies or plans of insurance. It leads to confusion in the marketplace and increases litigative risk.

9. Amended § 400.706(j) to specify the Board will send the applicant a letter stating the submission has been disapproved if the applicant does not respond within the 30 day time period after the Board provides written notice of intent to disapprove a submission, and to specify the Board will send the applicant a letter stating the submission has been disapproved if the applicant does not present a modification of the submission to the Board on the date the applicant anticipated presenting the modification or does not request an additional time delay.

10. Amended § 400.709 by adding a new paragraph (b)(2) to allow the Board to limit the availability of coverage for a submission based on the risks as authorized in sections 508(b)(8) and (c)(9) of the Act.

11. Amended redesignated § 400.712(g)(1)(i) to allow for compensation amounts to be compared to other substantiated wage information, as deemed appropriate by the Board, in addition to the Occupational Employment Statistics Survey, when computing reimbursement for research and development costs, and maintenance costs.

12. Amended redesignated § 400.712 by adding a paragraph (i) to allow the product to be withdrawn at the discretion of the Board if the applicant does not reasonably demonstrate that the submission meets the marketing plan or does not comply with the requirements in this rule and no further maintenance reimbursement will be paid.

13. Added a new § 400.712(n) to specify that applicants requesting reimbursement for research and development costs, maintenance costs or user fees may present their request in person to the Board prior to consideration for approval.

List of Subjects in 7 CFR Part 400

Administrative practice and procedure, Crop insurance.

Final Rule

■ Accordingly, as set forth in the preamble, the interim rule amending 7

CFR part 400, Subpart V, published in the **Federal Register** on September 17, 2001, at 66 FR 47949–47959 is adopted as final with the following changes:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

■ 1. The authority citation for 7 CFR part 400 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

Subpart V—Submission of Policies, Provisions of Policies, Rates of Premium, and Premium Reduction Plans

■ 2–3. Revise § 400.700(a), to read as follows:

§ 400.700 Basis, purpose, and applicability.

(a) This subpart establishes guidelines for the submission of policies, plans of insurance, and rates of premium to the Board as authorized under section 508(h) of the Act and for nonreinsured supplemental policies in accordance with the SRA, and the roles and responsibilities of FCIC and the applicant. It also specifies the procedures for requesting reimbursement for research and development costs, and maintenance costs for products and the approval process.

* * * * *

■ 4. Amend § 400.701 by adding definitions for ''complete submission'' and ''disinterested third party'', revising the definitions of ''actuarial documents'', ''actuarially appropriate'', ''applicant'', ''development'', ''endorsement'', ''maintenance'' ''marketable'', ''marketing plan'', ''multiple peril crop insurance (MPCI)'', ''non-reinsured supplemental policy (NRS),'' ''non-significant changes'', ''plan of insurance'', ''policy'', ''related materials'', ''research'', ''research and development costs,'' and ''Special Provisions'', placing the revised definition of ''policy'' in alphabetical order, and removing the definition of ''revenue insurance'' to read as follows:

§ 400.701 Definitions.

* * * * *

Actuarial documents. The material for the crop or insurance year which is available for public inspection in your agent's office and published on RMA's website at *http://www.rma.usda.gov/*, or a successor website, and which shows available coverage levels, information needed to determine premium rates, premium adjustment percentages, practices, particular types or varieties of the insurable crop or agricultural commodity, insurable acreage or commodities, and other related information regarding crop insurance or other risk management plans of insurance in the county or state.

Actuarially appropriate. Premium rates expected to cover anticipated losses and a reasonable reserve based on valid reasoning, an examination of available risk data, which for new products may be scarce but must still be of sufficient quality and quantity to reasonably determine the anticipated losses, or thorough knowledge or experience of the expected value of future costs associated with the risk to be transferred.

* * * * *

Applicant. Any person or entity that submits a policy, plan of insurance, provisions of a policy or plan of insurance, or rates of premium to the Board for approval under section 508(h) of the Act.

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Complete submission. A submission determined by the Board to contain all necessary and appropriate documentation in accordance with § 400.705 and is of sufficient quality to conduct a meaningful review.

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Development. The process of drafting rules, new policy provisions, pricing and rating methodologies, administrative and operating procedures, systems and software, supporting materials, and documentation necessary to create and implement a proposed policy or coverage.

Disinterested third party. A person who does not have any familial relationship (parents, brothers, sisters, children, spouse, grandchildren, aunts, uncles, nieces, nephews, first cousins, or grandparents, related by blood, adoption or marriage, are considered to have a familial relationship) with anyone employed or contracted by the applicant or who will not benefit financially from the approval of the submission.

Endorsement. A document that amends a policy reinsured under the Act in a manner that supplements or amends the insurance coverage provided by that policy.

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Maintenance. For the purposes of this subpart only, the process of continual support and improvement, as needed, for a policy or plan of insurance, including the periodic review of setting prices, updating premium rates or the rating methodology, updating or modifying policy terms and conditions, and any other actions necessary to provide adequate and meaningful protection for producers, ensure actuarial soundness, or to respond to statutory or regulatory changes.

* * * * *

Marketable. A determination by the Board that a sufficient number of producers will purchase the product and approved insurance providers will sell the product to make it economical, based on credible evidence provided by the applicant and any other relevant information.

Marketing plan. A detailed, written plan that identifies, at a minimum, the expected number of potential buyers, premium, liability, a prescribed insurance year cycle, the data upon which such information is based, such data may include, but is not limited to, focus group results, market research studies, qualitative market estimates, effects upon the delivery system or ancillary participants, correspondence from producers expressing the need for such policy or plan of insurance, responses from a reasonable representative cross-section of producers to be effected by the policy or plan of insurance demonstrating the number of producers likely interested in purchasing the product, and a commitment from at least one approved insurance provider to sell and support such a policy or plan of insurance.

Multiple peril crop insurance (MPCI). All insurance policies reinsured by FCIC that offers coverage for loss of production, loss of revenue, or both.

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Nonreinsured supplemental policy (NRS). A policy, endorsement or other risk management tool that is not reinsured under the Act, or has not been submitted to FCIC under section 508(h) of the Act, that offers additional coverage, other than loss related to hail, to a policy or plan of insurance that is reinsured by FCIC.

Non-significant changes. Minor changes to the policy or plan of insurance, such as technical corrections, that do not affect the rating or pricing methodologies, the amount of subsidy owed, the amount or type of coverage, the interests of producers, FCIC's reinsurance risk, or any condition that does not affect liability or the amount of loss to be paid under the policy. Statutory or regulatory requirements are included in this category regardless of impact.

Plan of insurance. A class of policies, such as MPCI or Group Risk Plan of Insurance, that offers a specific type of coverage to one or more agricultural commodities.

Policy. A contract for insurance that includes an accepted application, Basic Provisions, applicable Commodity Provisions, other applicable options and endorsements, the Special Provisions, related materials, and the applicable regulations published in 7 CFR chapter IV.

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Related material. The actuarial documents for the insured agricultural commodity and any underwriting or loss adjustment manual, handbook, form or other information needed to administer the policy.

Research. For the purposes of development, the gathering of information related to: Producer needs and interests; the marketability of the policy or plan of insurance; the appropriate policy terms, premium rates, price elections, administrative and operating procedures, supporting materials, and the documentation, systems and software necessary to implement a policy or plan of insurance. Gathering of information to determine whether it is feasible to expand a policy or plan of insurance to a new area or to cover a new commodity under the same policy terms and conditions, price, and premium rates is not considered research.

Research and development costs. Specific expenses incurred and directly related to the research and development of a submission, as initially approved by the Board.

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Special Provisions. The part of the policy that contains specific provisions of insurance for each insured commodity that may vary by geographic area.

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■ 5. Amend § 400.702 by adding a new paragraph (d) to read as follows:

§ 400.702 Confidentiality of submission and duration of confidentiality.

* * * * *

(d) In the submission, the applicant must state if the name of the submission may be used in Board documents including but not limited to the agenda, minutes, and Board memoranda. The applicant cannot use false names to mislead the public regarding the nature of the submission. If permission is not given to use the name of the submission, the submission will simply be referred to as a ''Section 508(h) submission.''

■ 6. Revise § 400.703 to read as follows:

§ 400.703 Timing of submission.

(a) A submission may only be provided to FCIC, in either a hard copy or electronic format, during the first 5 business days of January, April, July, and October.

(b) Any submission not provided within the first 5 business days of a month stated in paragraph (a) of this section, will be considered to have been provided the next month stated in paragraph (a). For example, if an applicant provides a submission on January 10, it will be considered to have been received on April 1.

(c) Any submission must be provided to the Deputy Administrator, Research and Development (or any successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133–4676, not later than 240 days prior to the earliest proposed sales closing date to be considered for sale in the requested crop year.

(d) The Board, or RMA if authorized by the Board, shall determine when sales can begin for a submission approved by the Board.

■ 7. Revise § 400.705 to read as follows:

§ 400.705 Contents required for a new submission or changes to a previously approved submission.

(a) A complete submission must contain the following material, as applicable, in the order given, in a three ring binder, with a table of contents, page numbers, and section dividers clearly labeling each section or in an electronic format that when printed will be an exact duplicate of the information that would have been found in the three-ring binder with the exception of section dividers.

(1) If a hard copy of the submission is provided, it must include six identical copies provided to the Deputy Administrator, Research and Development (or successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133–4676, and one identical copy of the submission provided to the Administrator, Risk Management Agency, 1400 Independence Ave., Stop 0801, Room 3053 South Building, Washington, DC 20250–0801.

(2) Electronic submissions must be sent to the Deputy Administrator, Research and Development (or successor) at *DeputyAdministrator@rma.usda.gov* and the Administrator at *Administrator@rma.usda.gov.*

(b) The first section will contain general information, including, as applicable:

(1) The applicant's name, address or primary business location, phone number, and e-mail address;

(2) The type of submission (see § 400.704);

(3) A statement of whether the applicant is requesting:

(i) Reinsurance, which includes risk subsidy and A&O subsidy;

(ii) Reimbursement for research and development costs, as applicable; or

(iii) Reimbursement for maintenance costs, as applicable;

(4) The proposed agricultural commodities, including types, varieties, and practices covered by the submission;

(5) The crop and reinsurance years in which the submission is proposed to be available for purchase by producers;

(6) The proposed sales closing date, if applicable, or if not applicable, the earliest date the applicant expects to release the product to the public;

(7) The proposed duration and scope of the plan of insurance;

(8) A marketing plan;

(9) Any known or anticipated future expansion plans;

(10) Identification, including names, addresses, telephone numbers, and e-mail addresses, of the persons responsible for:

(i) Addressing questions regarding the policy, underwriting rules, loss adjustment procedures, rate and price methodologies, data processing and record-keeping requirements, and any other questions that may arise in administering the program after it is approved; and

(ii) Annual reviews to ensure compliance with all requirements of the Act, this subpart, and any agreements executed between the applicant and FCIC; and

(11) A statement of whether the submission will be filed with the applicable office responsible for regulating insurance in each state proposed for insurance coverage, and if not, reasons why the submission will not be filed for review.

(c) The second section must contain the benefits of the plan, including, as applicable, a statement about the plan that demonstrates:

(1) How the submission offers coverage or other benefits not currently available from existing public and private programs;

(2) The projected demand for the submission, which must be supported by information from market research, producers or producer groups, agents, lending institutions, and other interested parties that provide verifiable evidence of demand; and

(3) How the submission meets public policy goals and objectives consistent with the Act and other laws, as well as policy goals supported by USDA and the Federal Government.

(d) Except as provided in this section, the third section must contain the policy, including, as applicable:

(1) If the submission involves a new insurance policy or plan of insurance:

(i) All applicable policy provisions; and

(ii) A list and description of any additional coverage that may be elected by the insured, including how such coverage may be obtained; and

(2) If the submission involves a change to a previously approved policy, plan of insurance, or rates of premium, the proposed revisions, rationale for each change, data and analysis supporting each change, the impact of each change, and the impact of all changes in aggregate.

(e) The fourth section must contain the information related to the marketing of the policy or plan of insurance, including, as applicable:

(1) A list of counties and states where the submission is proposed to be offered;

(2) The amount of commodity (acres, head, board feet, etc.), the amount of production, and the value of each agricultural commodity proposed to be covered in each proposed county and state;

(3) The expected liability and premium for each proposed county and state;

(4) If available, any insurance experience for each year and in each proposed county and state in which the policy has been previously offered for sale including an evaluation of the policy's performance and, if data are available, a comparison with other similar insurance policies reinsured under the Act;

(5) Focus group results;

(6) Market research studies;

(7) Qualitative market estimates;

(8) Affects upon the delivery system or ancillary participants;

(9) Correspondence from producers expressing the need for such policy or plan of insurance;

(10) Responses from a reasonable representative cross-section of producers to be affected by the policy or plan of insurance; and

(11) Commitment in writing from at least one approved insurance provider to sell and support the policy or plan of insurance.

(f) The fifth section must contain the information related to the underwriting and loss adjustment of the submission, including as applicable:

(1) Detailed rules for determining insurance eligibility, including all producer reporting requirements;

(2) Relevant dates, if not included in the proposed policy;

(3) Detailed examples of the data and calculations needed to establish the insurance guarantee, liability, and premium per acre or other unit of measure, including worksheets that provide the calculations in sufficient detail and in the same order as presented in the policy to allow verification that the premiums charged for the coverage are consistent with policy provisions;

(4) Detailed examples of calculations used to determine indemnity payments for all probable situations where a partial or total loss may occur;

(5) A detailed description of the causes of loss covered by the policy or plan of insurance and any causes of loss excluded;

(6) Any statements to be included in the actuarial documents; and

(7) The loss adjustment standards handbook for the policy or plan of insurance that includes:

(i) A table of contents and introduction;

(ii) A section containing abbreviations, acronyms, and definitions;

(iii) A section containing insurance contract information (insurability requirements; crop provisions not applicable to catastrophic risk protection; specific unit division guidelines, if applicable; notice of damage or loss provisions; quality adjustment provisions; etc);

(iv) A section that thoroughly explains appraisal methods, if applicable;

(v) Illustrative samples of all the applicable forms needed for insuring and adjusting losses in regards to the product plus detailed instructions for their use and completion;

(vi) Instructions, examples of calculations, and loss adjustment procedures that are necessary to establish the amounts of coverage and loss;

(vii) A section containing any special coverage information (i.e., replanting, tree replacement or rehabilitation, prevented planting, etc.), as applicable; and

(viii) A section containing all applicable reference material (i.e., minimum sample requirements, row width factors, etc.).

(g) The sixth section must contain information related to prices and rates of premium, including, as applicable:

(1) A list of all assumptions made in the premium rating and commodity pricing methodologies, and the basis for these assumptions;

(2) A detailed description of the pricing and rating methodologies, including supporting documentation, all mathematical formulas, equations, and data sources used in determining rates and prices and an explanation of premium components that detail how rates were determined for each component, that demonstrate the rate is appropriate;

(3) An example of both a rate calculation and a price calculation;

(4) A discussion of the applicant's objective evaluation of the reliability of the data;

(5) An analysis of the results of simulations or modeling showing the performance of proposed rates and commodity prices, as applicable, based on one or more of the following (Such simulations must use all years of experience available to the applicant);

(i) A recalculation of total premium and losses compared to a similar or comparable insurance plan offered under the authority of the Act with modifications, as needed, to represent the components of the submission;

(ii) A simulation based on the probability distributions used to develop the rates and commodity prices, as applicable, including sensitivity tests that demonstrate price or yield extremes, and the impact of inappropriate assumptions; or

(iii) Any other comparable simulation that provides results indicating both aggregate and individual performance of the submission under various scenarios depicting good and poor actuarial experience; and

(6) A simulation of expected losses capturing both a probable loss and a total loss.

(h) The seventh section must contain an evaluation and certification from a disinterested third party who is an accredited associate or fellow of the Casualty Actuarial Society, or other similarly qualified professional, who certifies the submission is actuarially appropriate and consistent with appropriate insurance principles and practices.

(i) The eighth section must contain all forms applicable to the submission, including:

(1) An application for insurance and procedures for accepting the application; and

(2) All applicable policy forms, instructions and procedures that are necessary to establish the amounts of coverage or loss.

(j) The ninth section must contain the following:

(1) A statement specifying sales will not commence for any new or revised submission until at least 60 days after all policy provisions and related material are released to the public by

RMA, unless otherwise specified by the Board;

(2) An explanation of any provision of the policy not authorized under the Act and identification of the portion of the rate of premium due to these provisions;

(3) Agent and loss adjuster training plans; and

(4) A certification from the applicant's legal counsel that the submission meets and complies with all requirements of the Act, applicable regulations, and any reinsurance agreement.

(k) The tenth section must contain a written plan, including specifications and details for the systems and software development necessary for the implementation of the submission, if applicable, and the documents that demonstrate the submitter has the capability and resources to develop systems that comply in all respects with the standards established for processing and acceptance of data by the FCIC Data Acceptance System, or successor system, unless otherwise authorized by FCIC. Unless otherwise determined by FCIC, the applicant must consult with FCIC to determine whether their submission can be implemented and administered through the current system;

(1) If FCIC approves the submission and determines that its system has the capacity to implement and administer the submission, the applicant must provide acceptable computer requirements, code and software, consistent with that used by FCIC, to facilitate the acceptance of producer applications and all related data;

(2) If FCIC approves the submission and determines that its system lacks the capacity to implement and administer the submission, the applicant must provide acceptable computer systems, requirements, code and software necessary to implement and administer the policy or plan of insurance;

(3) Any computer systems, requirements, code and software must be consistent with that used by FCIC and comply with the standards established in Appendix III, or any successor document, of the Standard Reinsurance Agreement or other reinsurance agreement as specified by FCIC; and

(4) These requirements are available from the Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO, 64133–4676 or on RMA's Web site at *http://www.rma.usda.gov/data/#m13*, or a successor website.

(l) The eleventh section must contain a training package. The training package must include a thorough discussion, explanations, written exercises, and examples covering the following topics:

(1) Basic and catastrophic risk protection policy provisions;

(2) The commodity provisions and any endorsements;

(3) Underwriting under the underwriting guide;

(4) Eligibility requirements;

(5) Guarantee, indemnity, and premium calculations;

(6) Special Provisions of Insurance;

(7) Actuarial documents;

(8) Loss adjustment under the loss adjustment standards handbook;

(9) Applicable additions to the Crop Insurance Handbook (CIH); and

(10) Applicable additions to the Loss Adjustment Manual (LAM).

(m) The twelfth section submitted on separate pages and in accordance with § 400.712 must specify:

(1) On one page, the total estimated amount that will be requested for reimbursement of research and development costs (for new products only) or the estimated amount for maintenance costs for the year for which the submission will be effective (for products that are within the maintenance period); and

(2) On another page, a comprehensive estimate of maintenance costs for each future year of the maintenance period and the basis for which such maintenance costs will be incurred, including, but not limited to:

(i) Any anticipated expansion;

(ii) The generation of rates, Special Provisions, underwriting rules, etc;

(iii) The determination of prices; and

(iv) Any other costs that the applicant anticipates will be requested for reimbursement.

(n) The thirteenth section must contain executed certification statements in accordance with the following:

(1) ''{Applicant's Name} hereby claim that the amounts set forth in this section and § 400.712 are correct and due and owing to {Applicant's Name} by FCIC under the Federal Crop Insurance Act''; and

(2) ''{Applicant's Name} understands that, in addition to criminal fines and imprisonment, the submission of false or fraudulent statements or claims may result in civil and administrative sanctions.''

8. Revise § 400.706 to read as follows:

§ 400.706 Review of submission.

(a) Prior to providing the submission to the Board to determine whether it is a complete submission, RMA will:

(1) Review the submission to determine if all necessary and appropriate documentation is included in accordance with § 400.705;

(2) Review the submission to determine whether the submission is of sufficient quality to conduct a meaningful review;

(3) Inform the applicant of the information RMA deems necessary for the submission to comply with paragraphs (a)(1) and (2) of this section; and

(4) Forward the submission and the results of RMA's initial review to the Board.

(b) Upon the Board's receipt of the submission, the Board will:

(1) Determine if the submission is a complete submission (The date the Board votes to contract with independent reviewers is the date the submission is deemed to be a complete submission for the start of the 120 day time-period for approval);

(2) Forward the complete submission to at least five independent persons with underwriting or actuarial experience to review the submission:

(i) Of the five reviewers, no more than one will be employed by the Federal Government, and none may be employed by any approved insurance provider or their representative; and

(ii) The reviewers will each provide their assessment of whether the submission protects the interest of agricultural producers and taxpayers, is actuarially appropriate, follows appropriate insurance principles, meets the requirements of the Act, does not contain excessive risks, follows sound, reasonable, and appropriate underwriting principles, as well as other items the Board may deem necessary;

(3) Return to the applicant any submission the Board determines is not a complete submission, and provide documentation to the applicant explaining such. If the submission is resubmitted at a later date, it will be considered a new submission;

(4) For all complete submissions:

(i) Request review of the submission by RMA to provide its assessment of whether:

(A) The submission protects the interests of agricultural producers and taxpayers, is actuarially appropriate, follows appropriate insurance principles, meets the requirements of the Act, does not contain excessive risks, is consistent with USDA's public policy goals, does not increase or shift risk to any other FCIC reinsured policy, offers coverage that is similar to another policy or plan of insurance and if the producer would further benefit from the submission and can be administered and delivered efficiently and effectively;

(B) The marketing plan is reasonable;

(C) RMA has the resources to consider, implement, and administer the submission; and

(D) The requested amount of government reinsurance, risk subsidy, and administrative and operating subsidies is reasonable and appropriate for the type of coverage provided by the policy submission; and

(ii) Seek review from the Office of the General Counsel (OGC) to determine if the submission conforms to the requirements of the Act and all applicable Federal regulations.

(c) All comments and evaluations will be provided to the Board by a date determined by the Board to allow the Board adequate time for review.

(d) The Board will consider all comments, evaluations, and recommendations in its review process. Prior to making a decision, the Board may request additional information from RMA, OGC, the independent reviewers, or the applicant.

(e) An applicant may request, at any time, a time delay before the Board provides a notice of intent to disapprove the submission. The Board is not required to agree to such an extension.

(1) Any requested time delay will not be limited in the length of time or the number of delays. However, delays may make implementation of the submission for the targeted crop year impractical or impossible.

(2) The time period during which the Board must make a decision to approve or disapprove shall be extended commensurately with any time delay requested by the applicant.

(3) If the Board agrees to an extension of time, the Board and the applicant must agree to a time period in which the Board must make its decision to approve or disapprove after the expiration of any requested time delay.

(f) The applicant may withdraw a submission or a portion of a submission at any time by written request to the Board. A withdrawn submission that is resubmitted will result in the submission being deemed a new submission for the purpose of determining the amount of time that the Board must act on such submission.

(g) The Board will render a decision to approve the submission with or without revision or give notice of intent to disapprove within 90 days after the date the submission is considered complete by the Board in accordance with paragraph (b)(1) of this section, unless the applicant and Board agree to a time delay in accordance with paragraph (e) of this section.

(h) The Board may disapprove a submission if it determines that:

(1) The interests of producers and taxpayers are not protected, including but not limited to:

(i) The submission does not provide adequate coverage or treats producers disparately;

(ii) The applicant has not presented sufficient documentation that the submission is marketable;

(iii) Coverage would be similar to another policy or plan of insurance and the producer would not further benefit from the submission; or

(iv) The resources of FCIC or RMA are not sufficient to support the review and implementation of the product;

(2) The premium rates are not actuarially appropriate;

(3) The submission does not conform to sound insurance and underwriting principles;

(4) The risks associated with the submission are excessive or it increases or shifts risk to any other FCIC reinsured policy;

(5) The submission does not meet the requirements of the Act or is not in accordance with USDA's public policy goals; or

(6) There is insufficient time before the submission would become effective under section 508(h) of the Act for the Board to make an informed decision with respect to whether the interests of producers are protected, the premium rates are actuarially appropriate, or the risks associated with the submission are excessive;

(i) If the Board intends to disapprove the submission, the applicant will be notified in writing at least 30 days prior to the Board taking such action. The Board will provide the applicant with a written explanation for the intent to disapprove the submission.

(j) After written notice of intent to disapprove all or part of a submission has been provided by the Board, the applicant must provide written notice to the Board not later than 30 days after the Board provided such notice, if the submission will be modified. Except as provided in paragraph (j)(3) of this section, the applicant must also include an anticipated date that the modification will be provided to the Board. If the applicant does not respond within the 30-day period, the Board will send the applicant a letter stating the submission is disapproved.

(1) If the modification is in direct response to reviewer comments, the Board may act on the modification immediately or seek further review within the 30-day time period allowed.

(2) The Board will approve or disapprove a modified submission not later than 30 days after receiving a modified submission from the applicant, unless the applicant and the Board agree to a time delay. If a time delay is agreed upon, the time period during which the Board must act on the modified submission will not be in effect during the delay.

(3) The Board will disapprove a modified submission if:

(i) All causes for disapproval stated by the Board in its notification of intent to disapprove the submission are not satisfactorily addressed;

(ii) Insufficient time is available for review of the modified submission to determine whether all causes for disapproval have been satisfactorily addressed; or

(iii) Modification is so substantial that the Board determines that additional independent review is required and a time delay can not be agreed upon to allow for such review.

(k) A submission will be disapproved if the applicant does not present a modification of the submission to the Board on the date the applicant anticipated presenting the modification or does not request an additional time delay.

(l) If the Board fails to take action on a new submission within the prescribed 90-day period in paragraph (g) of this section, or within the time period in accordance with paragraph (e)(3) of this section after receiving the revised submission, such submission will be deemed approved by the Board for the initial reinsurance year designated for the submission. The Board must approve the submission for it to be available for any subsequent reinsurance year.

§ 400.707 [Amended]

■ 9. Amend § 400.707(c) by removing the words ''§ 400.706(c)'' and adding in its place the words ''§ 400.706(b)''.

■ 10. Revise § 400.708(a)(1) to read as follows:

§ 400.708 Approved Submission.

(a) * * *

(1) If FCIC requires, an agreement between the applicant and FCIC that specifies:

(i) The responsibilities of each with respect to the implementation, delivery and oversight of the submission; and

(ii) That the property rights to the submission automatically transfers to FCIC if the applicant elects not to maintain the submission and FCIC has paid any amounts under § 400.712.

* * * * *

§ 400.708 [Amended]

■ 11. Amend § 400.708(a)(2) by removing the phrase ''Standard Reinsurance Agreement'' and adding the phrase ''available existing reinsurance agreements'' in its place;

■ 12. Revise § 400.709 to read as follows:

§ 400.709 Roles and responsibilities.

(a) With respect to the applicant:

(1) The applicant is responsible for:

(i) Preparing and ensuring that all policy documents, rates of premium, and supporting materials, including actuarial documents, are submitted to FCIC in the form approved by the Board;

(ii) Annually updating and providing maintenance changes no later than 180 days prior to the earliest contract change date for the commodity in all counties or states in which the policy or plan of insurance is sold, unless FCIC assumes maintenance of the product;

(iii) Addressing responses to procedural issues, questions, problems or clarifications in regard to a policy or plan of insurance (all such resolutions will be communicated to all approved insurance providers through FCIC's official issuance system); and

(iv) Annually reviewing the policy's performance and providing a report on the policy's performance to the Board by each anniversary date of when the product was first available to be purchased by the public;

(2) Only the applicant may make changes to the policy, plan of insurance, or rates of premium approved by the Board (Any changes, both non-significant and significant, must be submitted to FCIC no later than 180 days prior to the earliest contract change date for the commodity in all counties or states in which the policy of plan of insurance is sold. Significant changes must be submitted to the Board for review in accordance with this subpart and will be considered as a new submission);

(3) Except as provided in paragraph (a)(4) of this section, the applicant is solely liable for any mistakes, errors, or flaws in the submitted policy, plan of insurance, their related materials, or the rates of premium that have been approved by the Board unless the policy or plan of insurance is transferred to FCIC. The applicant remains liable for any mistakes, errors, or flaws that occurred prior to transfer of the policy or plan of insurance to FCIC;

(4) If the mistake, error, or flaw in the policy, plan of insurance, their related materials, or the rates of premium is discovered not less than 45 days prior to the cancellation or termination date for the policy or plan of insurance, the applicant may request in writing that FCIC withdraw the approved policy, plan of insurance, or rates of premium:

(i) Such request must state the discovered mistake, error, or flaw in the policy, plan of insurance, or rates of premium, and the expected impact on the program; and

(ii) For all timely received requests for withdrawal, no liability will attach to such policies, plans of insurance, or rates of premium that have been withdrawn and no producer, approved insurance provider or any other person will have a right of action against the applicant; and

(5) Notwithstanding the policy provisions regarding cancellation, any policy, plan of insurance, or rates of premium that have been withdrawn by the applicant in accordance with paragraph (a)(4) of this section is deemed canceled and applications deemed not accepted as of the date that FCIC publishes the notice of withdrawal on its website at *www.rma.usda.gov;* and

(i) Approved insurance providers will be notified in writing by FCIC that the policy, plan of insurance, or premium rates have been withdrawn; and

(ii) Producers will have the option of selecting any other policy or plan of insurance authorized under the Act that is available in the area by the sales closing date for such policy or plan of insurance; and

(6) Failure of the applicant to perform the applicant's responsibilities may result in the denial of reinsurance for the policy or plan of insurance.

(b) With respect to FCIC:

(1) FCIC is responsible for:

(i) Conducting the best review of the submission possible in the time allowed;

(ii) Ensuring that all approved insurance providers receive the approved policy or plan of insurance, and related material, for sale to producers in a timely manner (All such information shall be communicated to all approved insurance providers through FCIC's official issuance system);

(iii) Ensuring that all approved insurance providers receive reinsurance under the same terms and conditions as the applicant (approved insurance providers should contact FCIC to obtain and execute a copy of the reinsurance agreement) if required; and

(iv) Reviewing the activities of approved insurance providers, agents, loss adjusters, and producers to ensure that they are in accordance with the terms of the policy or plan of insurance, the reinsurance agreement, and all applicable procedures;

(2) The Board may limit the availability of coverage, for any product developed under the authority of the Act and this regulation, on any farm or in any county or area;

(3) FCIC will not be liable for any mistakes, errors, or flaws in the policy, plan of insurance, their related materials, or the rates of premium and no cause of action will exist against FCIC as a result of such mistake, error, or flaw in a submission submitted under this subpart;

(4) If at any time prior to the cancellation date, FCIC discovers there is a mistake, error, or flaw in the policy, plan of insurance, their related materials, or the rates of premium, or any other reason for denial of reinsurance contained in § 400.706(h) exists, FCIC will deny reinsurance to such policy or plan of insurance. If reinsurance is denied, a written notice of the denial of reinsurance will be provided to the approved insurance providers;

(5) If reinsurance is denied under paragraph (b)(4) of this section, the approved insurance provider will have the option of:

(i) Selling and servicing the policy or plan of insurance at its own risk and without any subsidy; or

(ii) Canceling the policy or plan of insurance in accordance with its terms; and

(6) After maintenance of the policy or plan of insurance is transferred to FCIC, FCIC will be liable for any mistakes, errors, or flaws that occur after the date the policy or plan of insurance was transferred.

■ 13. Revise § 400.711 to read as follows:

§ 400.711 Right of review, modification, and the withdrawal of reinsurance.

At any time after approval, the Board may review any policy, plan of insurance, related material, and rates of premium approved under this subpart and request additional information to determine whether the policy, plan of insurance, related material, and rates of premium comply with statutory or regulatory changes or court orders, are still actuarially appropriate, and protect program integrity and the interests of producers. The Board will notify the applicant of any problem or issue that may arise and allow the applicant an opportunity to make any needed change. The Board may deny reinsurance for the applicable policy, plan of insurance or rate of premium if the applicant:

(a) Fails to perform the responsibilities stated under § 400.709(a); or

(b) Does not satisfactorily provide materials or resolve any issue so that necessary changes can be made prior to the earliest contract change date.

■ 14. Amend § 400.712 as follows:

■ a. Revise paragraphs (a), (b), (c), (d), (e), (h), (i), (l), and (m);

■ b. Remove paragraph (f) and redesignate paragraph (g) as (f);

■ c. Remove paragraph (j) and redesignate paragraph (k) as (j);
■ d. Add new paragraphs (g), (k), and (n);
■ e. Amend redesignated paragraph (f) introductory text by removing the phrase ''and maintenance costs, as applicable'', and by removing the phrase ''paragraph (f)'' and adding the phrase ''paragraph (e)'' in its place;
■ f. Amend redesignated paragraphs (f)(5)(i)(A)(*3*), (B)(*3*), (C)(*3*), (D)(*3*), and (E)(*3*) by removing the phrase ''(g)(3)'' and adding the phrase ''(f)(3)'' in its place;
■ g. Amend redesignated paragraph (f)(5)(i)(B) by removing the word ''Crop'' and adding the word ''Commodity'' in its place;
■ h. Amend redesignated paragraph (f)(5)(ii)(B) by revising the phrase ''regional, state or county'' to read ''county, state or regional'';
■ i. Amend redesignated paragraph (f)(6) introductory text by removing the phrase ''In accordance with paragraph (e) of this section, those'';
■ j. Amend redesignated paragraphs (f)(6)(i), (ii), and (iii) by removing the phrase ''paragraphs (h), (i), or (j)'' and adding ''paragraph (g)'' in its place;
■ k. Amend the first sentence of redesignated paragraph (j)(1)(i) by removing the phrase ''a user fee, as approved by the Board, to approved insurance providers for all policies earning premium to cover maintenance expenses'' and adding in its place the phrase ''approved insurance providers a user fee to cover maintenance expenses for all policies earning premium'', and in the last sentence by revising the words ''which ever'' to read ''whichever''; and
■ l. Revise redesignated paragraph (j)(2);
■ m. Add paragraph (j)(8).

The revised and added text reads as follows:

§ 400.712 Research and development reimbursement, maintenance reimbursement, and user fees.

(a) For submissions approved by the Board for reinsurance under section 508(h) of the Act:

(1) If it is determined to be marketable by the Board, the submission may be eligible for a one-time payment of research and development costs and reimbursement of maintenance costs for up to four reinsurance years, as determined by the Board, after the date such costs have been approved by the Board.

(2) Reimbursement of research and development costs or maintenance costs will be considered as payment in full by FCIC for the submission.

(3) If the applicant elects at any time not to continue to maintain the submission, it will automatically become the property of FCIC and the applicant will no longer have any property rights to the submission.

(b) For submissions submitted to the Board for reinsurance after publication of the interim rule on September 17, 2001, an estimated amount of the total cost for reimbursement of research and development costs and maintenance costs must be included with the original submission to the Board in accordance with this section. These estimates will be used by FCIC to evaluate if the interests of producers are protected and to track potential expenditures and will not provide a basis for making any reimbursements under this section. Documentation of actual costs allowed under this section will be used to determine any reimbursement.

(c) To be eligible for any reimbursement under this section, FCIC must determine that a submission is marketable.

(d) To be considered for reimbursement of:

(1) Research and development costs, the total of the amount requested, and all supporting documentation, must be submitted to FCIC by electronic method or by hard copy and received by FCIC by August 1 immediately following the date the submission was first available to be purchased by producers;

(2) Maintenance costs, the total of the amount requested, and all supporting documentation, must be submitted to FCIC by electronic method or by hard copy and received by FCIC by August 1 of each year of the maintenance period;

(3) The procedure and time-frame in paragraphs (d)(1) or (2) of this section, as applicable, must be followed or research and development costs and maintenance costs may not be reimbursed; and

(4) Given the limitation on funds, regardless of when the request is received, no payment will be made prior to September 15 of the applicable fiscal year.

(e) There are limited funds available on an annual fiscal year basis as contained in the Act. Therefore, requests for reimbursement will not be considered in the order in which they are received. Consistent with paragraphs (f), (g), (h), and (k) of this section, if all applicants' requests for reimbursement of research and development costs and maintenance costs in any fiscal year:

(1) Do not exceed the maximum amount authorized by law, the applicants may receive the full amount of reimbursement authorized under these paragraphs; and

(2) Exceed the amount authorized by law, each applicant's reimbursement will be determined by dividing the total amount of each individual applicants' reimbursable costs authorized in paragraphs (f), (g), (h), and (k) of this section by the total amount of the aggregate of all applicants' reimbursable costs authorized in paragraphs (f), (g), (h), and (k) of this section for that year and multiplying the result by the amount of reimbursement authorized under the Act.

* * * * *

(g) For those submissions submitted to the Board for approval after September 17, 2001, research and development costs must be supported by itemized statements and supporting documentation (copies of contracts, billing statements, time sheets, travel vouchers, accounting ledgers, etc.). Actual costs submitted will be examined for reasonableness and may be adjusted at the sole discretion of the Board.

(1) Allowable research and development expense items (directly related to research and development of the submission only) may include the following:

(i) Straight-time hourly wage, exclusive of bonuses, overtime pay, or shift differentials (One line per employee, include job title, total hours, and total dollars. Compensation amounts will be compared with the Occupational Employment Statistics Survey (published each January by the U.S. Department of Labor, Bureau of Labor Statistics) or other substantial wage information as deemed appropriate by the Board);

(ii) Benefit cost per employee (Benefit costs are considered overhead and will be compared with the Employment Cost Index Annual Employer Cost Survey published each March by the U.S. Department of Labor, Bureau of Labor Statistics); and

(iii) Contracted expenses if fully disclosed, documented, and:

(A) The applicant provides a copy of the contract, billing statements, accounting records, etc;

(B) The applicant provides the relationship, if any, between the applicant and the contractor, such as parent company, subsidiary, etc. (Reimbursement may be limited or denied if the contractor is closely associated to the applicant so that they could be considered as one and the same, such as a separate entity being created by the applicant to conduct research and development);

(C) The applicant provides any and all other involvement of the contractor with the applicant, such as being a director, officer, employee, etc., or having common directors, officers, employers,

employees, etc. (Reimbursement may be reduced or denied if the contractor is paid a salary or other compensation from the applicant based on this other involvement); and

(D) The contracted expenses are broken out by line item (including all persons who make up the contracted party who had a substantive involvement in the development of the submission), such as:

(*1*) Individual names;

(*2*) Rate of pay;

(*3*) Hours allocated to the submission;

(*4*) Benefit rate; and

(*5*) Overhead;

(iv) Professional fees if fully disclosed, documented, and:

(A) The applicant provides the job title, straight-time hourly wage, total hours, and total dollars;

(B) The applicant provides the relationship, if any, between the applicant and the professional, such as parent company, subsidiary, etc. (Reimbursement may be limited or denied if the contractor is closely associated to the applicant so that they could be considered as one and the same, such as a separate entity being created by the applicant to conduct research and development);

(C) The applicant provides any other involvement of the professional with the applicant, such as being a director, officer, employee, etc., or having common directors, officers, employers, employees, etc. (Reimbursement may be reduced or denied if the contractor is paid a salary or other compensation from the applicant based on this other involvement); and

(D) The professional fees are broken out by line item (including all persons who make up the professional party who had a substantive involvement in the development of the submission), such as;

(*1*) Individual names;

(*2*) Rate of pay;

(*3*) Hours allocated to the submission;

(*4*) Benefit rate; and

(*5*) Overhead;

(v) Travel and transportation (One line per event, include the job title, destination, purpose of travel, lodging cost, mileage, air or other identified transportation costs, food and miscellaneous expenses, other costs, and the total cost);

(vi) Software and computer programming developed specifically to determine appropriate rates, prices, or coverage amounts (Identify the item, include the purpose, and provide receipts or contract or straight-time hourly wage, hours, and total cost.) Software developed to send or receive data between the producer, agent, approved insurance provider or RMA or such other similar software may not be included as an allowable cost); and

(vii) Miscellaneous expenses such as postage, telephone, express mail, and printing (Identify the item, cost per unit, number of items, and total dollars); and

(2) The following expenses are specifically not eligible for research and development and maintenance cost reimbursement:

(i) Copyright or patent fees;

(ii) Training costs;

(iii) State filing fees and expenses;

(iv) Normal ongoing administrative expenses;

(v) Paid or incurred losses;

(vi) Loss adjustment expenses;

(vii) Sales commission;

(viii) Marketing costs;

(ix) Indirect overhead costs;

(x) Lobbying costs;

(xi) Product or applicant liability resulting from the research, development, preparation or marketing of the policy;

(xii) Copyright infringement claims resulting from the research, development, preparation or marketing of the policy;

(xiii) Costs of making program changes as a result of any mistakes, errors or flaws in the policy or plan of insurance; and

(xiv) Costs associated with building rents or space allocation.

(h) Requests for reimbursement of maintenance costs for submissions approved after September 17, 2001, must be supported by itemized statements and supporting documentary evidence for each reinsurance year in the maintenance period. Actual costs submitted will be examined for reasonableness and may be adjusted at the sole discretion of the Board. Maintenance costs for the following activities may be reimbursed:

(1) Expansion of the original submission into additional counties or states;

(2) Non-significant changes to the policy and any related material;

(3) Non-significant or significant changes to the policy as necessary to protect program integrity or as required by Congress; and

(4) Any other activity that qualifies as maintenance.

(i) If the applicant does not reasonably demonstrate that the submission meets the marketing plan or does not follow the criteria set forth in this regulation, the product may be withdrawn at the discretion of the Board and no further maintenance reimbursement will be paid.

(j) * * *

(2) If the applicant elects to:

(i) Continue to maintain the policy or plan of insurance, the applicant must submit a request for approval of the user fee by the Board at the time of the election; or

(ii) Transfer the policy or plan of insurance to FCIC, FCIC may at its sole discretion, continue to maintain the policy or plan or insurance or elect to withdraw the availability of the policy or plan of insurance.

* * * * *

(8) If the applicant does not notify FCIC at least six months prior to the last day of the last reinsurance year in which a maintenance reimbursement will be paid, as approved by the Board, ownership of the policy or plan of insurance will be automatically transferred to FCIC beginning with the next reinsurance year.

(k) The Board may consider information from the Equal Access to Justice Act, 5 U.S.C. 504, the Bureau of Labor Statistic's Occupational Employment Statistics Survey, the Bureau of Labor Statistic's Employment Cost Index, and any other information determined applicable by the Board, in making a determination whether to approve a submission for reimbursement of research and development costs, or maintenance costs under this section or the amount of reimbursement.

(l) For the purposes of this section, rights to, or obligations of, research and development cost reimbursement, maintenance cost reimbursement, or user fees cannot be transferred from any individual or entity unless specifically approved in writing by the Board.

(m) Notwithstanding the definition in § 400.701, the maintenance period ends for an approved submission once the applicant no longer performs the maintenance responsibilities, as determined by FCIC, or the applicant gives FCIC notice they no longer wish to maintain the submission.

(n) Applicants requesting reimbursement for research and development costs, maintenance costs, or user fees, may present their request in person to the Board prior to consideration for approval.

■ 15. Revise § 400.713 to read as follows:

§ 400.713 Nonreinsured supplemental (NRS) policy.

(a) Unless notified by FCIC, three hard copies, or an electronic copy in a format approved by RMA, of the new or revised NRS policy and related materials must be submitted to the Deputy Administrator, Research and Development (or successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO

64133–4676, at least 120 days prior to the first sales closing date applicable to the policy.

(b) FCIC will review the NRS policy to determine that it does not materially increase or shift risk to the underlying policy or plan of insurance reinsured by FCIC, reduce or limit the rights of the insured with respect to the underlying policy or plan of insurance, or cause disruption in the marketplace for products reinsured by FCIC.

(1) An NRS policy will be considered to disrupt the marketplace if it adversely affects the sales or administration of reinsured policies, undermines producers' confidence in the Federal crop insurance program, decreases the producer's willingness or ability to use Federally reinsured risk management products, or harms public perception of the Federal crop insurance program.

(2) The applicant, at a minimum, must provide worksheets and examples that establish liability and determine indemnities that demonstrate the performance of the NRS policy under differing scenarios. When the review is complete, FCIC will forward their findings to the applicant.

(c) If the approved insurance provider sells an NRS policy that RMA determines materially increases or shifts risk to the underlying FCIC reinsured policy, reduces or limits the rights of the insured with respect to the underlying policy, or causes disruption in the marketplace for products reinsured by FCIC, reinsurance, A&O subsidy and risk subsidy will be denied on the underlying FCIC reinsured policy for which such NRS policy was sold.

(d) FCIC will respond to the submitter not less than 60 days before the first sales closing date or provide notice why FCIC is unable to respond within the time frame allotted.

Signed in Washington, DC on July 26, 2005.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 05–15102 Filed 8–1–05; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV05–916–1 FIR]

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, with changes, an interim final rule revising the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, and pack requirements for fresh shipments of these fruits, beginning with 2005 season shipments. This rule also authorizes continued shipments of ''CA Utility'' quality nectarines and peaches, and revises weight-count standards for fruit in volume-filled containers. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This rule enables handlers to continue to ship fresh nectarines and peaches in a manner that meets consumer needs, increases returns to producers and handlers, and reflects current industry practices.

EFFECTIVE DATE: September 1, 2005.

FOR FURTHER INFORMATION CONTACT: California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Under the orders, grade, size, maturity, pack and container requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC), which are responsible for local administration of the orders, met on December 7, 2004, and unanimously recommended that these handling requirements be revised for the 2005 season, which began about the first week of April. The changes will: (1) revise varietal maturity, quality, and size requirements to better reflect current industry practices; (2) authorize continued shipments of ''CA Utility'' quality fruit during the 2005 season; and (3) adjust weight-count standards for fruit packed in volume-filled containers.

The committees meet prior to and during each season to review the rules and regulations effective on a continuing basis for California nectarines and peaches under the orders. Committee meetings are open to

the public and interested persons are encouraged to express their views at these meetings. The committees held such meetings on December 7, 2004. USDA reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

No official crop estimate was available at the time of the committees' December 7, 2004, meetings because the nectarine and peach trees were dormant. The committees subsequently made crop estimates at their meetings on April 24, 2005. The 2005 nectarine crop was estimated to be approximately 20,682,000 containers, and the 2005 peach crop was estimated to be approximately 21,180,000 containers. These crop estimates are slightly larger than the 2004 crops, which totaled 19,860,000 containers of nectarines and 20,585,000 containers of peaches.

Grade and Quality Requirements

Sections 916.52 and 917.41 of the orders authorize the establishment of grade and quality requirements for nectarines and peaches, respectively. Prior to the 1996 season, § 916.356 required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S. No. 1 grade requirements, except for a slightly tighter requirement for scarring and a more liberal allowance for misshapen fruit. Prior to the 1996 season, § 917.459 required peaches to meet the requirements of a U.S. No. 1 grade, except for a more liberal allowance for open sutures that were not ''serious damage.''

This rule continues in effect the revisions of §§ 916.350, 916.356, 917.442, and 917.459 to permit shipments of nectarines and peaches meeting ''CA Utility'' quality requirements during the 2005 season. (''CA Utility'' fruit is lower in quality than that meeting the modified U.S. No. 1 grade requirements.) Shipments of nectarines and peaches meeting ''CA Utility'' quality requirements have been permitted each season since 1996.

Studies conducted by the NAC and PCC in 1996 indicated that some consumers, retailers, and foreign importers found the lower-quality fruit acceptable in some markets. When shipments of ''CA Utility'' nectarines were first permitted in 1996, they represented 1.1 percent of all nectarine shipments, or approximately 210,000 containers. Shipments of ''CA Utility'' nectarines reached a high of 6 percent (1,408,362 containers) during the 2003 season.

Shipments of ''CA Utility'' peaches totaled 1.9 percent of all peach shipments, or approximately 366,000 containers, during the 1996 season. Shipments of ''CA Utility'' peaches reached a high of 5.6 percent of all peach shipments (1,231,000 containers) during the 2002 season.

Handlers have commented that the availability of the ''CA Utility'' quality option lends flexibility to their packing operations. They have noted that they now have the opportunity to remove marginal nectarines and peaches from their U.S. No. 1 containers and place this fruit in containers of ''CA Utility.'' This flexibility, the handlers note, results in better quality U.S. No. 1 packs without sacrificing fruit.

The Tree Fruit Quality Subcommittee met on November 30, 2004, and recommended unanimously to the NAC and PCC to continue shipments of ''CA Utility'' quality nectarines and peaches. Subsequently, the NAC and PCC voted unanimously at their December 7, 2004, meetings to authorize continued shipments of ''CA Utility'' quality fruit during the 2005 season.

Accordingly, based upon the recommendations, the revisions to paragraph (d) of §§ 916.350 and 917.442, and paragraph (a)(1) of §§ 916.356 and 917.459 continue in effect to permit shipments of nectarines and peaches meeting ''CA Utility'' quality requirements during the 2005 season, on the same basis as shipments since the 2000 season.

Maturity Requirements

In §§ 916.52 and 917.41, authority is provided to establish maturity requirements for nectarines and peaches, respectively. The minimum maturity level currently specified for nectarines and peaches is ''mature'' as defined in the standards. For most varieties, ''well-matured'' determinations for nectarines and peaches are made using maturity guides (*e.g.*, color chips, along with other maturity tests as applied by the inspection service). These maturity guides are reviewed each year by the Shipping Point Inspection Service (SPI) to determine whether they need to be changed, based upon the most-recent information available on the individual characteristics of each nectarine and peach variety.

These maturity guides established under the handling regulations of the California tree fruit marketing orders have been codified in the Code of Federal Regulations as Table 1 in §§ 916.356 and 917.459, for nectarines and peaches, respectively.

The requirements in the 2005 handling regulations are the same as those that appeared in the 2004 handling regulations with a few exceptions. Those exceptions are explained in this rule and continue in effect.

Nectarines: Requirements for ''well-matured'' nectarines are specified in § 916.356 of the order's rules and regulations. This rule continues in effect the revision of Table 1 of paragraph (a)(1)(iv) of § 916.356 to add maturity guides for eleven varieties of nectarines. Specifically, SPI recommended adding maturity guides for the Crimson Baby variety to be regulated at the G maturity guide; for the Alta Red, Grand Candy, Kay Glo, Kay Sweet, Red Roy and Shay Sweet varieties at the J maturity guide; and for the August Fire, Candy Gold, Prince Jim I and Sugar Queen varieties to be regulated at the L maturity guide.

The NAC recommended these maturity guide requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the ''well-matured'' level of maturity for nectarine varieties in production.

Peaches: Requirements for ''well-matured'' peaches are specified in § 917.459 of the order's rules and regulations. This rule continues in effect revisions to Table 1 of paragraph (a)(1)(iv) of § 917.459 to add maturity guides for six peach varieties. Specifically, SPI recommended adding maturity guides for the Island Princess variety to be regulated at the H maturity guide; the Bev's Red variety to be regulated at the I maturity guide; and the Prima Peach IV, Spring Gem, Sweet Amber, and Zee Diamond varieties to be regulated at the J maturity guide.

The PCC also recommended adding the Burpeachtwo (Henry II®) variety to the table for regulation at the J maturity guide, but that variety had already been added to the table for regulation at the J maturity guide in 2004 (7 July 2004, 69 FR 41120). Thus, the revision of Table 1 of paragraph (a)(1)(iv) of § 917.459 continues in effect to reflect the recommended addition of only six varieties.

The NAC and PCC recommended these maturity guide requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the ''well-matured'' level of maturity for nectarine and peach varieties in production.

Size Requirements

Both orders provide authority (in §§ 916.52 and 917.41) to establish size requirements. Size regulations encourage producers to leave fruit on the tree longer, which improves both size and maturity of the fruit. Acceptable fruit size provides greater consumer satisfaction and promotes repeat purchases, and, therefore, increases returns to producers and handlers. In addition, increased fruit size results in increased numbers of packed containers of nectarines and peaches per acre, also a benefit to producers and handlers.

Varieties recommended for specific size regulations have been reviewed and such recommendations are based on the specific characteristics of each variety. The NAC and PCC conduct studies each season on the range of sizes attained by the regulated varieties and those varieties with the potential to become regulated, and determine whether revisions to the size requirements are appropriate.

Nectarines: Section 916.356 of the order's rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule continues in effect the revision of § 916.356 to establish variety-specific minimum size requirements for nine varieties of nectarines that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2004 season. This rule also continues in effect the removal of the variety-specific minimum size requirements for fifteen varieties of nectarines whose shipments fell below 5,000 containers during the 2004 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the La Pinta variety of nectarines, recommended for regulation at a minimum size 80. Studies of the size ranges attained by the La Pinta variety revealed that 100 percent of the containers met the minimum size of 80 during the 2001, 2002, and 2003 seasons. Sizes ranged from size 30 to size 80, with 4.9 percent of the fruit in the 30 sizes, 34.3 percent of the packages in the 40 sizes, 41.1 percent in the 50 sizes, 19.5 percent in the 60 sizes, 0.2 percent in the 70 sizes and 0 percent in the size 80, for the 2003 season. However, the fruit sized down to the 80 sizes during the two previous seasons, and setting the minimum size at size 70 would not be appropriate at this time.

A review of other varieties with the same harvesting period indicated that the La Pinta variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to handle the variety confirm this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the La Pinta variety in the variety-specific minimum size regulation at a minimum size 80 is appropriate. This recommendation results from size studies conducted over a three-year period.

Historical data such as this provides the NAC with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both NAC and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, the revision to the introductory text of paragraph(a)(3) of § 916.356 continues in effect to include the Red Jewel and Zee Fire varieties; the revision of the introductory text of paragraph (a)(4) of § 916.356 continues in effect to include the Diamond Pearl and Kay Fire varieties; and the revision to the introductory text of paragraph (a)(6) of § 916.356 continues in effect to include the Burnectfour (Summer Flare® 35), Burnectseven (Summer Flare® 28), Honey Dew, La Pinta and Mike's Red nectarine varieties.

This rule also continues in effect the revision of the introductory text of paragraphs (a)(3), (a)(4), (a)(5) and (a)(6) of § 916.356 to remove fifteen varieties from the variety-specific minimum size requirements specified in these paragraphs because less than 5,000 containers of each of these varieties were produced during the 2004 season. Specifically, the revision of the introductory text of paragraph (a)(3) of § 916.356 continues in effect to remove the May Kist nectarine variety; the revision of the introductory text of paragraph (a)(4) of § 916.356 continues in effect to remove the Sparkling May and White Sun nectarine varieties; the revision of the introductory text of paragraph (a)(5) continues in effect to remove the Red May nectarine variety; and the revision of the introductory text of paragraph (a)(6) of § 916.356 continues in effect to remove the Candy Sweet, Flame Glo, Grand Diamond, June Lion, King Jim, Ruby Bright, Scarlet Red, Summer Jewel, Sunny Red, Sweet White and White September nectarine varieties.

Nectarine varieties removed from the nectarine variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

Peaches: Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule continues in effect the revision of § 917.459 to establish variety-specific minimum size requirements for thirteen peach varieties that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2004 season. This rule also continues in effect the removal of the variety-specific minimum size requirements for ten varieties of peaches whose shipments fell below 5,000 containers during the 2004 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Ivory Queen variety of peaches, which was recommended for regulation at a minimum size 80. Studies of the size ranges attained by the Ivory Queen variety revealed that 100 percent of the containers met the minimum size of 80 during the 2002 and 2003 seasons. The sizes ranged from size 30 to size 80, with 0.3 percent of the containers meeting the size 30, 36.1 percent meeting the size 40, 47.7 percent meeting the size 50, 13.1 percent meeting the size 60, 2.2 percent meeting the size 70 and 0.5 percent meeting the size 80 in the 2003 season.

A review of other varieties with the same harvesting period indicated that the Ivory Queen variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to pack the variety confirm this information regarding minimum size and the harvesting period, as well. Thus, the recommendation to place the Ivory Queen variety in the variety-specific minimum size regulation at a minimum size 80 is appropriate. Although most other size recommendations for peaches result from size studies conducted over a three-year period, data on the Ivory Queen variety for earlier years is not available because the plantings of this variety did not bear fruit before 2002. Unusually large plantings of the Ivory Queen variety led to the rapid production of over 10,000 containers in just two years, and indicated inclusion in the variety-specific minimum size requirements.

Historical data such as this provides the PCC with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both PCC and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, the revision of the introductory text of paragraph (a)(2) of § 917.459 continues in effect to include the April Snow and Sugar Snow peach varieties; the revision of the introductory text of § (a)(5) of § 917.459 continues in effect to include the Ivory Queen peach variety; and the revision of the introductory text of paragraph (a)(6) of § 917.459 continues in effect to include the Autumn Rich, Cherry Red, Crimson Queen, Early O'Henry, Henry III, Henry IV, Last Tango, Ruby Queen, Sierra Rich and 244LE379 peach varieties.

This rule also continues in effect the revision of the introductory text of paragraph (a)(5) of § 917.459 to remove the Redtop, Sugar May and 172LE White Peach (Crimson Snow/Sunny Snow) peach varieties; and continues in effect the revision of the introductory paragraph (a)(6) of § 917.459 to remove the Autumn Fire, Fairtime, June Pride, Late September Snow, Queen Lady, Ruby Gold and Sugar Red peach varieties from the variety-specific minimum size requirements specified in the section because less than 5,000 containers of each of these varieties was produced during the 2004 season.

Peach varieties removed from the peach variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

The NAC and PCC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine and peach varieties, and the consumer acceptance levels for various fruit sizes. This rule continues in effect the establishment of minimum size requirements for fresh nectarines and peaches consistent with expected crop and market conditions.

Weight-Count Standards

Under the provisions of §§ 916.52 and 917.41 of the orders, the NAC and PCC, respectively, are also authorized to establish weight-count standards for packed containers of fruit. These standards define a maximum number of peaches in a 16-pound sample when such fruit, which may be packed in tray-packed containers, is converted to volume-filled containers. In §§ 916.350 and 917.442 of the orders' rules and regulations, weight-count standards are established for all varieties of nectarines and peaches (except the Peento type peaches), in Tables 1 and 2 of paragraph (a)(5)(iv).

Weight-count standards differ for fruit packed early in the season and that packed later. Earlier fruit tends to be less dense than later fruit. While the earlier fruit sizes are adequate to fill the tray cavities in tray-packed containers, more pieces of fruit are required to meet the 16-pound sample standard for volume-filled fruit. The NAC and PCC routinely conduct tests to determine the optimum weight-count standards for early, mid-season and late-season fruit. Occasionally, adjustments are made to the weight-count standards to ensure equivalence between the pack styles and permit handlers to more easily convert tray-packed fruit to volume-filled containers.

Weight-count standards have also differed between nectarine and peaches historically because of the difference in shape between the two commodities. However, continued breeding of the two fruits has resulted in more uniformity of shape and size between the two. In response to consumer needs, handlers have sought a more generic sizing system to apply to both nectarines and peaches.

Finally, the industry has recently adopted a new packing container with dimensions different from those previously used. Conforming changes to the trays used to pack the fruit into the new containers resulted in reductions in cavity sizes in some cases to accommodate the same fruit counts as in the old containers. This led to a wider discrepancy between the sizes of fruit packed in both pack styles throughout the season.

In an effort to provide a more generic sizing of the two commodities, to smooth the transition from early-season to mid-season and late-season fruit sizes, and to standardize the conversion from tray-packing to volume-filling fruit, the committees' staff conducted weight-count surveys during the 2004 packing season. With the data collected, they were able to determine the most optimum weight-counts for containers of volume-filled nectarines and peaches of various fruit sizes throughout the season, given the new containers and trays. The committees' staff prepared new weight-count tables, which were reviewed by the Size Nomenclature Review Group at their meetings on September 3 and September 21, 2004, and by the Tree Fruit Quality Subcommittee at their meetings on September 13, November 9, and November 30, 2004. At their meetings on December 7, 2004, both the NAC and PCC unanimously recommended revision of the weight-count standards tables in the orders' rules and regulations to reflect the staff's findings.

Nectarines: This rule continues in effect the revision of Tables 1 and 2 of paragraph (a)(5)(iv) of § 916.350. Such revisions require continuation of the conforming modifications to the text of § 916.356, paragraphs (a)(4)(ii), (a)(6)(ii), (a)(8)(ii), and (a)(9)(ii) that increase the maximum number of nectarines in a 16-pound sample for the sizes regulated in those paragraphs.

Peaches: Similarly, this rule continues in effect the revision of Tables 1 and 2 of paragraph (a)(5)(iv) of § 917.442 to reflect the staff's study findings. Additionally, two new weight-count standards for peaches continue to be added to the tables. These two new standards are for large sizes previously without weight-count assignments, and were determined from the data collected.

Such revisions require continuation of the conforming modifications to the text of § 917.459, paragraph (a)(5)(iii) that increase the maximum number of peaches in a 16-pound sample for the size regulated in that paragraph.

This rule reflects the committees' and USDA's appraisal of the need to revise the handling requirements for California nectarines and peaches, as specified. USDA believes that continuing this rule in effect will have a beneficial impact on producers, handlers, and consumers of fresh California nectarines and peaches.

This rule continues in effect the establishment of handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits made each season will meet acceptable handling requirements established under each of these orders. This rule will also help the California nectarine and peach industries to provide fruit desired by consumers. This rule continues in effect the establishment and maintenance of orderly marketing conditions for these fruits in the interests of producers, handlers, and consumers.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the

Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

Industry Information

There are approximately 207 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,500 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration [13 CFR 121.201] as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff has estimated that there are fewer than 26 handlers in the industry who could be defined as other than small entities. For the 2004 season, the committees' staff estimated that the average handler price received was $8.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 625,000 containers to have annual receipts of $5,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2004 season, the committees' staff estimates that small handlers represent approximately 87 percent of all the handlers within the industry.

The committees' staff has also estimated that fewer than 20 percent of the producers in the industry could be defined as other than small entities. For the 2004 season, the committees' staff estimated the average producer price received was $5.00 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 150,000 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2004 season, the committees' staff estimates that small producers represent more than 80 percent of the producers within the industry.

With an average producer price of $5.00 per container or container equivalent, and a combined packout of nectarines and peaches of approximately 40,422,900 containers, the value of the 2004 packout is estimated to be $202,114,500. Dividing this total estimated grower revenue figure by the estimated number of producers (1,500) yields an estimate of average revenue per producer of about $134,743 from the sales of peaches and nectarines.

Regulatory Revisions

Under §§ 916.52 and 917.41 of the orders, grade, size, maturity, container and pack requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. The NAC and PCC met on December 7, 2004, and unanimously recommended that these handling requirements be revised for the 2005 season. These recommendations had been presented to the committees by various subcommittees, each charged with review and discussion of the changes. The changes: (1) authorize shipments of ''CA Utility'' quality fruit to continue during the 2005 season; (2) adjust weight-count standards for fruit in volume filled containers; and (3) revise varietal maturity, quality, and size requirements to reflect changes in production and marketing practices.

Grade and Quality Requirements—Discussions and Alternatives

In 1996, §§ 916.350 and 917.442 were revised to permit shipments of ''CA Utility'' quality nectarines and peaches as an experiment during the 1996 season only. Such shipments have subsequently been permitted each season. Since 1996, shipments of ''CA Utility'' have ranged from 1 to 5 percent of total nectarine and peach shipments. This rule continues in effect the authority to continue shipments of ''CA Utility'' quality nectarines and peaches during the 2005 season.

The Tree Fruit Quality Subcommittee met on November 30, 2004, and unanimously agreed that the ''CA Utility'' quality requirements that are currently in place should be continued. Also, not authorizing such shipments would be an abrupt departure from their current practices. The NAC and PCC also unanimously recommended such continuation at their meetings on December 7, 2004, and have done so continuously since such shipments were first authorized in 1996.

Minimum Maturity and Size Levels—Discussions and Alternatives

Sections 916.356 and 917.459 establish minimum maturity levels. This rule continues in effect the annual adjustments to the maturity requirements for several varieties of nectarines and peaches. Maturity requirements are based on maturity measurements generally using maturity guides (*e.g.*, color chips), as recommended by Shipping Point Inspection. Such maturity guides are reviewed annually by SPI to determine the appropriate guide for each nectarine and peach variety. These annual adjustments reflect refinements in measurements of the maturity characteristics of nectarines and peaches as experienced over previous seasons' inspections. Adjustments in the guides utilized ensure that fruit has met an acceptable level of maturity, ensuring consumer satisfaction while benefiting nectarine and peach producers and handlers.

Currently, in § 916.356 of the nectarine order's rules and regulations, and in § 917.459 of the peach order's rules and regulations, minimum sizes for various varieties of nectarines and peaches, respectively, are established. This rule continues in effect the adjustments to the minimum sizes authorized for various varieties of nectarines and peaches for the 2005 season. Minimum size regulations are put in place to encourage producers to leave fruit on the trees for a longer period of time. This increased growing time not only improves maturity, but also increases fruit size. Increased fruit size increases the number of packed containers per acre, and coupled with heightened maturity levels, also provides greater consumer satisfaction, fostering repeat purchases. Such improved consumer satisfaction and repeat purchases benefit both producers and handlers alike.

Annual adjustments to minimum sizes of nectarines and peaches, such as these, are recommended by the NAC and PCC based upon historical data, producer and handler information regarding sizes attained by different varieties, and trends in consumer purchases.

An alternative to such action would include not establishing minimum size regulations for these new varieties. Such an action would ultimately increase the amount of less acceptable fruit being marketed to consumers, and would be contrary to the long-term interests of producers, handlers, and consumers. For these reasons, this alternative was not recommended.

Weight-Count Standards—Discussions and Alternatives

Sections 916.350 and 917.442 also establish weight-count standards for fruit packed in volume-filled containers. These standards define a maximum number of peaches in a 16-pound sample when such fruit, which may be packed in tray-packed containers, is converted to volume-filled containers.

Industry-wide adoption of a new container led to the reconfiguration of the trays commonly used in packing tray-packed containers. Some of the tray cavity sizes were modified to conform to the dimensions of the new container. These modifications resulted in slightly smaller fruit being packed into some sizes, which led to an unacceptable discrepancy between the sizes of fruit packed in volume-filled containers and that in tray-packed containers.

Additionally, the difference in density between early-season and mid-season to late-season fruit causes an abrupt change in sizes during the seasonal transition. Handlers have reported that marketing through that period is difficult because of the discrepancy between sizes of earlier fruit and later fruit, and have sought a modified sizing method that would smooth that transition.

Finally, continuous breeding has led to an increasing similarity of fruit shapes between nectarines and peaches. The committees desire to develop a more uniform sizing system.

The Size Nomenclature Review Group met several times during 2003 and 2004 to discuss revision of the weight-count standards. Although the group considered the transition to a per pound sizing system similar to that used by the plum industry, they felt that the nectarine and peach industries would be better served by adjusting the weight-count standards already in place. The Size Nomenclature Review Group also believed that they could recommend modifications to the standards that would smooth the marketing transition between varieties packed in the early season and those packed in the mid-season to late-season.

The committee staff was directed to collect data during the 2004 season from which revision recommendations could be made. Extensive sampling of both nectarines and peaches of various sizes provided the information needed for the committee to make recommendations regarding revisions to the weight-count standards. The Tree Fruit Quality Subcommittee voted unanimously to recommend the adjustments to the NAC and PCC at their meeting on November 9, 2004. The NAC and PCC unanimously recommended the changes to the regulations at their meeting on December 7, 2004.

The committees discussed various alternatives to this action, including leaving the weight-count standards unchanged or adopting a per-pound fruit sizing system similar to that used in the plum industry. However, the committees believe that failure to make changes would not take into account differences between the various pack styles. Also, the data collected did not support adoption of a per-pound fruit sizing system at this time. The committees believe that the recommended changes to the weight-count standards will provide for better uniformity of sizes between fruit packed in volume-filled containers and fruit packed in tray-packed containers, will smooth the transition from early-season to mid-season and late-season fruit for marketers, and will more closely align fruit sizes between nectarines and peaches.

The committees make recommendations regarding the revisions in handling requirements after considering all available information, including recommendations by various subcommittees, comments of persons at subcommittee meetings, and comments received by committee staff. Such subcommittees include the Tree Fruit Quality Subcommittee, the Size Nomenclature Review Group, the Marketing Order Amendment Task Force, and the Executive Committee.

At the meetings, the impact of and alternatives to these recommendations are deliberated. These subcommittees, like the committees themselves, frequently consist of individual producers and handlers with many years of experience in the industry who are familiar with industry practices and trends. Like all committee meetings, subcommittee meetings are open to the public and comments are widely solicited. In the case of the Tree Fruit Quality Subcommittee, many growers and handlers who are affected by the issues discussed by the subcommittee attend and actively participate in the public deliberations, or call and/or write in their concerns and comments to the staff for presentation at the meetings. In addition, minutes of all subcommittee meetings are distributed to committee members and others who have requested them, and are also available on the committees' website, thereby increasing the availability of information within the industry.

An interim final rule concerning this action was published in the **Federal Register** on March 31, 2005. Copies of the rule were posted on the committees' Web site and were also made available through the Internet by USDA and the Office of the Federal Register. That rule provided a 60-day comment period, which ended on May 31, 2005. One comment was submitted on the rule.

First, the commenter noted that the Spring Ray nectarine variety name should be changed to include the patented name, ''Burnectone.'' This rule removes the name ''Spring Ray'' from Table 1 of paragraph (a)(1)(iv) in § 916.356 and from the introductory text of paragraph (a)(4) of § 916.356, and replaces it with ''Burnectone (Spring Ray).''

The commenter also noted that the 012–094 peach variety name should be changed to include the patented name, ''Supeacheight.'' This rule removes the name ''012–094'' in paragraph (a)(5) of § 917.459, and replaces it with ''Supeacheight (012–094).''

Each of the recommended handling requirement changes for the 2005 season is expected to benefit producers and handlers through increased fruit sales, compared to the situation that would exist if the changes were not adopted. Both large and small entities are expected to benefit from the changes, and the costs of compliance are not expected to be substantially different between large and small entities.

This rule does not impose any additional reporting and recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, nectarines and peaches under the orders have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 CFR 1621 *et seq.*). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

In addition, the committees' meetings are widely publicized throughout the nectarine and peach industry and all interested parties are encouraged to attend and participate in committee deliberations on all issues. These meetings are held annually in the fall, winter and spring. Like all committee meetings, the December 7, 2004, meetings were public meetings, and all entities, large and small, were encouraged to express views on these issues. These regulations were also reviewed and thoroughly discussed at subcommittee meetings held on August

26, September 13, November 9 and November 30, 2004. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, the comment received, and other information, it is found that finalizing the interim final rule, with changes, as published in the **Federal Register**, (70 FR 16383, March 31, 2005) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

■ Accordingly, the interim final rule amending 7 CFR parts 916 and 917, which was published at 70 FR 16383 on March 31, 2005, is adopted as a final rule with the following changes:

■ 1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

§ 916.356 [Amended]

■ 2. Section 916.356 is amended by:

■ A. Removing the words ''Spring Ray'' from column A and the entry ''L'' from column B and adding in alphabetical order the words ''Burnectone (Spring Ray)'' in column A and an entry ''L'' in column B of Table 1 in paragraph(a)(1)(iv);

■ B. Removing the words ''Spring Ray'' and adding the words ''Burnectone (Spring Ray)'' in alphabetical order in the introductory text of paragraph (a)(4).

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

§ 917.459 [Amended]

■ 3. Section 917.459 is amended by removing the word ''012–094'' and adding the words ''Supeacheight (012–094)'' in alphabetical order in the introductory text of paragraph (a)(5).

* * * * *

Dated: July 27, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–15168 Filed 8–1–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket Nos. AO–F&V–923–3; FV03–923–01 FR]

Sweet Cherries Grown in Designated Counties in Washington; Order Amending Marketing Order No. 923

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the marketing order (order) for sweet cherries grown in Washington. Sweet cherry growers, voting in a mail referendum held March 1 through March 21, 2005, voted on four amendments proposed by the Washington Cherry Marketing Committee (Committee), which is responsible for local administration of the order, and two amendments proposed by the Agricultural Marketing Service of USDA. Of the six amendments proposed, three were favored, including: Adding authority for the Committee to accept voluntary contributions for research and promotion; establishing tenure limitations for Committee members; and requiring that continuance referenda be conducted every 6 years. The three amendments that failed include: adding authority for promotion, including paid advertising, and production research projects; adding authority for supplemental rates of assessment for individual varieties of cherries; and, adding a public member to the Committee. These amendments will not be implemented.

EFFECTIVE DATE: This rule is effective August 3, 2005.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Post Office Box 1035, Moab, UT 84532, telephone: (435) 259–7988, fax: (435) 259–4945; or Robert J. Curry, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 SW., Third Avenue, Room 385, Portland, OR 97204; telephone (503) 326–2724 or Fax (503) 326–7440.

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

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding include: Notice of Hearing issued on October 6, 2003, and published in the October 10, 2003, issue of the **Federal Register** (68 FR 58636); Recommended Decision issued on September 29, 2004 and published in the October 5, 2004 issue of the **Federal Register** (69 FR 59551); and a Secretary's Decision and Referendum Order issued January 11, 2005 and published in the **Federal Register** on January 14, 2005 (70 FR 2573).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

This final rule was formulated on the record of a public hearing held November 18, 2003, in Yakima, Washington. Notice of the public hearing was issued on October 6, 2003, and published in the October 10, 2003, issue of the **Federal Register** (68 FR 58636). The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 923, regulating the handling of sweet cherries grown in the State of Washington, hereinafter referred to as the ''order''. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained six proposals: four proposals submitted by the Committee and two proposals by the

Agricultural Marketing Committee (AMS).

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on September 29, 2004, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by November 4, 2004. No comments or exceptions were filed.

A Secretary's Decision and Referendum Order was issued on January 11, 2005, directing that a referendum be conducted during the period March 1 through March 25, 2005, among growers of sweet cherries to determine whether they favored the proposed amendments to the order. Voters voting in the referendum favored three out of the six amendments proposed by the Committee and USDA.

The amendments favored by the voters and included in this order will:

1. Add authority for the Committee to accept voluntary contributions for production research, marketing research and promotion. Any voluntary contributions received under this new authority may be used to support marketing research and development projects designed to assist, improve or promote the marketing, distribution, and consumption of sweet cherries. Voluntary contributions may not, however, be used for production research or paid advertising, as the authority to conduct such activities under the order was not approved in the referendum.

2. Impose term limitations on Committee members. Upon implementation, Committee members will be limited to serving no more than three consecutive two-year terms in one position without a break in service.

3. Require that continuance referenda be held every 6 years among Washington sweet cherry producers to determine their support for continuation of their marketing order program.

The proposals to add authority for production research and paid advertising, additional rates of assessments for individual varieties of cherries and a public member to the committee, failed to obtain the requisite number of votes needed, in number or in volume, to pass.

To become effective, the amendments had to be approved by at least two-thirds of those producers voting or by voters representing at least two-thirds of the volume of sweet cherries represented by voters voting in the referendum.

AMS also proposed to allow such changes as may be necessary to the order so that all of the order's provisions conform to the effectuated amendments. None were deemed necessary.

Small Business Considerations

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural growers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms are defined as those with annual receipts of less than $6,000,000.

The record shows that there are approximately 1,500 growers of sweet cherries in the production area and approximately 62 handlers subject to regulation under the order. The average production of sweet cherries in Washington State for the last three years is 64,676 tons with an average grower price of $1,943 per ton. Using this number, the average annual grower revenue is calculated to be approximately $83,777, thus indicating that the average Washington sweet cherry grower would qualify as a small entity according to the SBA definition.

Using Committee data regarding each individual handler's total shipments during the 2002 marketing year, and an estimated average FOB price of $24 per 20-pound container, 79 percent of the Washington sweet cherry handlers shipped under $5 million worth of sweet cherries, and 21 percent shipped over $5 million worth of sweet cherries. Therefore, the majority of Washington sweet cherry handlers may be classified as small entities.

At a May 22, 2003, full Committee meeting, all industry representatives present could present their views concerning the recommended amendments. Both large and small businesses were represented. The Committee believes that small and large entities will benefit equally from the amendments.

This final rule amends § 923.43 of the order to authorize acceptance of voluntary contributions. The proposal to add authority for the Committee to accept voluntary contributions will not result in any increased costs or burdens to the industry. In fact, witnesses stated that this authority will benefit the industry greatly as it could provide for additional funding sources for research activities. Safeguards against donor control over the use of voluntary contributions will ensure that these funds will be used in the best interest of the industry. The Committee will decide how to use those funds, and the decision-making process will be open to industry input and feedback.

This final rule amends § 923.21 of the order to authorize term limits. The amendment to add tenure requirements for Committee members will allow more persons the opportunity to serve as members of the Committee. It will provide for more diverse membership, provide the Committee with new perspectives and ideas, and increase the number of individuals in the industry with Committee experience.

This final rule amends § 923.64 of the order to authorize continuance referenda. The amendment to require continuance referenda on a periodic basis to ascertain grower support for the order will allow growers to vote on whether to continue the operation of the program. The referenda will be conducted by USDA.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impacts of the proposed amendments to the order on small entities. The record evidence is that while some minimal costs may occur, those costs are expected to be outweighed by the benefits expected to accrue to the sweet cherry industry in designated counties of Washington.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), any reporting and recordkeeping provision changes that would be generated by these amendments would be submitted to the Office of Management and Budget (OMB). Current information collection requirements for Part 923 are approved by OMB under the generic Fruit Crops package OMB number 0581–0189.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Committee meetings regarding these proposals as well as the hearing dates were widely publicized throughout the

Washington sweet cherry industry, and all interested persons were invited to attend the meetings and the hearing and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues.

Civil Justice Reform

The amendments contained in this rule have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. These amendments will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

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

Order Amending the Order Regulating Sweet Cherries Grown in Washington

Findings and Determinations

The findings and determinations set forth hereinafter are supplementary and in addition to the findings and determination previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to Marketing Order No. 923 (7 CFR part 923), regulating the handling of sweet cherries grown in Washington.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The marketing order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby further amended, regulates the handling of sweet cherries grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing order, as amended, and as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivision of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of sweet cherries grown in the production area; and

(5) All handling of sweet cherries grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make the amendments to this order effective not later than one day after publication in the **Federal Register**. A later effective date would unnecessarily delay implementation of the approved changes, which are expected to benefit the Washington sweet cherry industry. Immediate implementation of the amendments is necessary in order to make the amendments effective as specified.

In view of the foregoing, it is hereby found and determined that good cause exists for making these amendments effective one day after publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping sweet cherries covered by the order as hereby amended) who, during the period April 1, 2004, through February 28, 2005, handled 50 percent or more of the volume of such sweet cherries covered by said order, as hereby amended, have not signed an amended marketing agreement;

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period of April 1, 2004, through February 28, 2005 (which has been deemed to be a representative period), have been engaged within the production area in the production of such sweet cherries, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum; and

(3) In the absence of a signed marketing agreement, the issuance of this amendatory order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers of sweet cherries in the production area.

Order Relative To Handling of Sweet Cherries Grown in Washington

It is therefore ordered, that on and after the effective date hereof, all handling of sweet cherries grown in Washington shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of proposals 3, 5 and 6 of the proposed order amending the order contained in the Recommended Decision issued by the Administrator on September 29, 2004, and published in the **Federal Register** on October 5, 2004, shall be and are the terms and provisions of this order amending the order and set forth in full herein.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set out it the preamble, 7 CFR part 923 is amended as follows:

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 923 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 923.21 is revised to read as follows:

§ 923.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years beginning April 1 and ending March 31. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. Committee members shall not serve more than three consecutive terms. Members who have served for three consecutive terms must leave the committee for at least one year before becoming eligible to serve again.

■ 3. A new § 923.43 is added to read as follows:

§ 923.43 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 923.45. Furthermore, such contributions shall be free from any encumbrances by the donor and the committee shall retain complete control of their use.

■ 4. Section 923.64 is amended by:
■ A. Revising paragraph (c).
■ B. Redesignating paragraph (d) as paragraph (e).
■ C. Adding a new paragraph (d).
The revisions read as follows:

§ 923.64 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this part whenever it is found that such termination is favored by a majority of growers who, during a representative period, have been engaged in the production of cherries: *Provided,* that such majority has, during such representative period, produced for market more than 50 percent of the volume of such cherries produced for market.

(d) The Secretary shall conduct a referendum six years after the effective date of this section and every sixth year thereafter, to ascertain whether continuance of this subpart is favored by growers. The Secretary may terminate the provisions of this subpart at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by growers who, during a representative period determined by the Secretary, have been engaged in the production of cherries in the production area.

* * * * *

Dated: July 27, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–15169 Filed 8–1–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. FV05–946–2 FR]

Irish Potatoes Grown in Washington; Modification of Special Purpose Shipment Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule modifies the special purpose shipment regulations currently prescribed under the Washington potato marketing order. The marketing order regulates the handling of Irish potatoes grown in Washington, and is administered locally by the State of Washington Potato Committee (Committee). This rule modifies the reporting requirements, procedures, and safeguard provisions for making certain special purpose potato shipments. Under the marketing order, such special purpose shipments may be exempted from the quality, assessment, or inspection requirements. The changes include removal of the special purpose exemption for exported potatoes, clarification of the reporting procedures for potatoes diverted to processing, and addition of safeguard provisions for shipments of seed potatoes and shipments to charitable organizations. These changes will help facilitate special purpose shipments, while enhancing the Committee's compliance program.

DATES: This final rule becomes effective August 3, 2005.

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

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

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 113 and Marketing Order No. 946, both as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This final rule modifies the special purpose shipment regulations prescribed under the order. This rule modifies the reporting requirements, procedures, and safeguard provisions for making certain special purpose potato shipments. Under the marketing order, such special purpose shipments may be exempt from the quality, assessment, or inspection requirements. The modifications were recommended unanimously by the Committee at a meeting on February 3, 2005.

Section 946.52 of the order authorizes the establishment of grade, size, quality, maturity, and pack regulations for any variety or varieties of potatoes grown in the production area. Section 946.51 further authorizes the modification, suspension, or termination of regulations issued under § 946.52. Section 946.60 provides that whenever potatoes are regulated pursuant to § 946.52 such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations. Section 946.54 authorizes the modification, suspension, or termination of any or all regulations to facilitate shipments of potatoes for specified purposes. Section 946.55 authorizes safeguard requirements for shipments authorized pursuant to § 946.54.

Section 946.120 of the order's administrative rules specifies the application process required when potatoes are shipped for special purposes pursuant to § 946.54. Section 946.336 of the order's administrative rules prescribes the quality, maturity, cleanness, pack, special purpose shipments, safeguards, minimum quantity exemption, and inspection requirements for all fresh market Washington potatoes, except for blue or purple flesh varieties of potatoes. Section 946.336(d) lists the types of special purpose shipments and the minimum grade, size, cleanness, maturity, pack, assessment, and inspection requirements from which such shipments are exempted. Finally, § 946.336(e) prescribes the safeguard requirements that handlers must meet to make the special purpose shipments specified under § 946.336(d).

At its meeting on June 17, 2004, the Committee appointed a subcommittee to review the order's handling regulations. The subcommittee subsequently met on November 22, 2004, and while reviewing the regulations, identified several potential changes to the special purpose shipment procedures, safeguard requirements, and reporting requirements. These changes were further discussed and ratified at an Executive Committee meeting on January 20, 2005, and subsequently recommended to the full Committee at its February 3, 2005, meeting in Moses Lake, Washington.

At this meeting, the Committee unanimously adopted the subcommittee recommendations which entailed modifications to § 946.120 *Application*, § 946.336(d) *Special Purpose Shipments*, and § 946.336(e) *Safeguards*. To conform to the regulatory modifications, as well as to ensure consistency in the administration of the special purpose procedures, the Committee also recommended that the ''Shippers Application for Special Purpose Certificate'' (Application) and ''Special Purpose Certificate Report'' (Report) forms be updated.

Procedures in effect prior to this final rule required that each handler apply annually to the Committee for a Special Purpose Shipment Certificate if planning to make certain specified special purpose shipments. In addition, based on the safeguard provisions under each of the special purpose shipment requirements, each handler and receiver of special purpose potatoes may or may not have been required to submit a report to the Committee for each such shipment depending upon the specific provision. This rule not only clarifies these procedures by making them consistent throughout the rules and regulations, but also changes certain provisions in order to be consistent with the Committee's current operating preferences.

For example, under the procedures in effect prior to this action, any handler desiring to divert potatoes for livestock feed was required to apply for a Special Purpose Shipment Certificate, but was not required to follow up with a report to the Committee indicating the actual quantity diverted. To bring the regulations in line with the Committee's recommendation, this rule changes the procedures so that neither an Application nor a Report are required when diverting potatoes to livestock feed.

Although it varies from one special purpose shipment to another, in most cases handlers of special purpose potatoes are the producers of the potatoes and most receivers are the processors.

Currently, about 85 percent of the Washington potato crop is produced for the processing market. Further, the majority of these processing potatoes are produced specifically for the frozen French fry market, with most of the processing taking place locally within the state. This has been a steadily increasing trend ever since the fast-food restaurant business began requiring an ever increasing portion of the potato crop. Because a majority of the Washington potato crop is diverted to a special purpose category, the Committee believes that the paperwork burden on handlers and receivers can be reduced by obtaining the information needed to ensure compliance with the order from alternative sources.

The Committee contracts with the Washington State Potato Commission (Commission) for its administrative services. Each processor within the State of Washington provides reports to the Commission indicating the quantity of potatoes received and processed, per producer. By entering into an agreement with the Commission, the Committee will be able to obtain all of the information it needs from this processor-generated report and neither Washington processors nor grower/handlers of processed potatoes will have to complete and return the Report to the Committee. This action will significantly reduce the paperwork burden on any person or entity previously required to submit reports on the volume of processing potatoes shipped, received, and processed. Processors outside of Washington, however, will generally continue to complete and submit the Report form to the Committee unless specific alternative reporting procedures can also be implemented as authorized by this action.

To reduce the paperwork burden and more efficiently utilize procedures already in place, the Committee's recommendation changes the safeguard procedures for shipments of canning, freezing, or ''other processing'' potatoes so that handlers may provide shipment information in a format other than through the conventional Committee Report form. To accomplish this, language in § 946.336(e)(3)(iii) is changed from ''Upon request by the Committee, furnish reports of each shipment pursuant to the applicable Special Purpose Certificate'', to ''Upon request by the Committee, furnish reports, or cause reports to be furnished, of each shipment pursuant to the applicable Special Purpose Certificate''. The Committee believes that the language change will streamline the reporting procedures while clarifying its ability to obtain information from alternative sources to verify compliance and proper potato disposition.

The Committee also recommended changing § 946.336(d)(vi) and § 946.336(e)(iii), which detail the procedures and reporting requirements for potatoes shipped to locations other than the immediate area of production for grading or temporary storage prior to marketing. The regulations in effect prior to the finalization of this rule required that handlers shipping potatoes for the purposes of grading or storing to Morrow or Umatilla Counties in Oregon, or to District No. 5 or to Spokane County in District No. 1 (part of the regulated production area), submit an annual Application form and to subsequently report each shipment that is diverted to one of the other special purposes (or to cause an inspection

certificate to be issued if shipped into the fresh market). Potatoes shipped under this provision are exempt from the quality and inspection requirements until such potatoes are subsequently sold in the fresh market or diverted for any special purpose shipment.

Section 946.7 of the order authorizes, free of regulation, the transportation of ungraded potatoes within the production area for the purpose of having such potatoes prepared for market or stored. Since § 946.7 already provides the necessary authority for transporting potatoes within the production area free from regulation, the Committee recommended that the reference to ''District No. 5'' and to ''Spokane County in District No. 1'' be removed from §§ 946.336(d)(1)(vi) and 946.336(e)(2). Reference to these two districts was already absent from the language that refers to this special purpose in § 946.120. The specific authority for shipping potatoes to Umatilla and Morrow Counties in Oregon for special purposes is in § 946.54.

The Committee also reviewed the special purpose procedures for handling potatoes for export. The regulations in effect prior to this rule exempted potatoes for export from the quality and inspection requirements of the order, with the exception that potatoes packed in cartons grade at U.S. No. 1 or better. However, since most importing countries require a quality product, it has been common industry practice to have potatoes for export inspected for quality regardless of this exemption. The Committee believes that all Washington potatoes entering the export market should meet the minimum quality, cleanness, maturity, pack, and inspection requirements of the order, and that the regulations conform with industry practice. Therefore, the Committee recommended that potatoes for export no longer be included as a special purpose shipment exemption.

This change requires removal of §§ 946.120(a)(2), 946.336(d)(1)(vii), and 946.336(e)(5) from the order's rules and regulations. With export removed as a special purpose exemption, paragraphs (a)(3), (a)(4), and (a)(5) in § 946.120 are redesignated as paragraphs (a)(2), (a)(3), and (a)(4), respectively. Similarly, paragraphs (d)(1)(viii) and (e)(6) in § 946.336 are redesignated as §§ 946.336(d)(1)(vii) and 946.336(e)(5), respectively. Finally, § 946.336(d)(2) is revised to reflect these modifications and to correct an existing typographical error.

Sections 946.336(d)(1)(i) and 946.336 (d)(2) of the handling regulations exempt potatoes shipped for livestock feed from the quality, assessment, and inspection requirements of the order. However, there were no corresponding reporting requirements or safeguard provisions specified under §§ 946.120 or 946.336(e) for such shipments, although the Application form contained a check box for livestock feed. Because potatoes that are diverted to livestock feed are generally culls and thus unfit for any other market, the Committee believes such shipments should remain exempt from the quality, inspection, and assessment requirements of the order and that handlers should not be required to submit the Application or Report forms for such shipments.

The Committee thus recommended adding a new paragraph (e)(6) to § 946.336 (*Safeguards*) to clarify that handlers diverting potatoes to livestock feed are not required to submit the Application and Report forms. This change also potentially reduces the reporting burden on handlers and receivers of such potatoes.

The Committee recommendation also included changes to the procedures used for tracking potatoes shipped for charity. Potatoes shipped for charity are exempt from the quality, assessment, and inspection requirements. However, there were no safeguard or reporting requirements delineated in § 946.336. The Committee believes it is important to have reporting requirements to safeguard such shipments, and thus recommended adding a new paragraph (e)(7) to § 946.336 (*Safeguards*) to require that handlers shipping potatoes for charity submit both the Application and Report forms. Because the Committee believes that small gifts to charity should be encouraged, the safeguard and reporting requirements are changed to also specify that charitable contributions of 1,000 pounds or less are exempt from the application and reporting requirements. This will make diverting potatoes a less burdensome process for handlers. A conforming change noting the 1,000 pound provision is also being made to § 946.120(a)(1).

The additions to the special purpose shipment procedures for charitable contributions further specify that any handler of potatoes being diverted to charity also informs the recipient that the gift cannot be resold or otherwise placed into commercial market channels.

The Committee also recommended modifications to the special purpose shipment exemption for seed potato shipments. Section 946.336(d)(1)(iii) provides for an exemption from the quality, assessment, and inspection requirements of the order for potatoes handled for seed. Although there were not any safeguard provisions or reporting requirements outlined in either § 946.120 or § 946.336, the previous version of the Application form contained a check box for handlers to mark when applying for a Special Purpose Shipment Certificate. However, after discussing the seed potato issue, the subcommittee's recommendation to the full Committee was to add authorization to require a Report from handlers, but not to require an Application form. The actual recommendation will add a new paragraph (e)(8) to § 946.336 (*Safeguards*) stating that handlers shipping potatoes for seed must furnish, at the request of the Committee, a report from handlers on the total volume of seed potatoes handled.

Seed potato handlers are almost always the producer of such potatoes, and generally only produce potatoes for seed. As such, the Committee does not want to require seed potato handlers to apply for a Special Purpose Certificate, but for statistical purposes, wanted to have a procedure in place for the submission of periodic reports. Although potatoes produced for seed are traditionally segregated from potatoes produced for other markets by the very nature of the cultural practices used by farmers and by the various state and federal seed regulations in place, the Committee believes this change will add clarity to the special purpose regulations.

The final change recommended by the Committee relates to § 946.336(g) *Inspection.* Language in this paragraph had referenced a form which is no longer issued by the Federal-State Inspection Service. This form had at one time been issued by the inspection service for accompaniment with any bulk-load potato shipments not relieved by any of the special purpose or minimum quantity exemptions of the order. Since such potato shipments require inspection under the order's provisions and thus should be accompanied by a valid inspection certificate, the Committee recommended removing the sentence from § 946.336(g) that refers to the ''Shipping Clearance Report'' form.

To ensure conformity with § 946.336, § 946.120 is updated by removing reference to the special purpose use ''export'', and adding reference to the special purpose use ''canning, freezing, and other processing''. Furthermore, as previously noted, a proviso is added to paragraph (1) of § 946.120 stating that charitable shipments of 1,000 pounds or less are exempt from the application process. Also, as noted earlier, minor

conforming changes have been made to the Committee's Application and Report forms.

Final Regulatory Flexibility Analysis

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

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

There are approximately 51 handlers of Washington potatoes who are subject to regulation under the marketing order and approximately 272 potato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

During the 2003–2004 marketing year 10,652,495 hundredweight of Washington potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of $7.45 per hundredweight, the Committee estimates that 48 handlers, or about 94 percent, had annual receipts of less than $6,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Washington potatoes for the 2003 marketing year (the most recent period that final statistics are available) was $5.25 per hundredweight. The average annual producer revenue for each of the 272 Washington potato producers is therefore calculated to be approximately $205,609. In view of the foregoing, the majority of the Washington potato producers and handlers may be classified as small entities.

This rule modifies the reporting requirements, procedures, and safeguard provisions for making certain special purpose potato shipments as prescribed under §§ 946.120, 946.336(d) and 946.336(e) of the order. The Committee recommended several changes to the order's special purpose regulations, and conforming changes to the Application and Report forms. These changes will help facilitate the marketing of certain types of potato shipments, while also enhancing the Committee's compliance efforts. The authority for the special purpose shipments and safeguard requirements is provided in §§ 946.54 and 946.55, respectively, of the order.

The Committee believes that these changes will minimally impact handlers and producers in terms of cost. While there are some changes that could require a few handlers of exported potatoes to undergo inspections when they may not have previously, most of the changes will actually lessen the regulatory and reporting burden on the industry while clarifying the special purpose shipment reporting and safeguard requirements.

During its review of the handling regulations, the subcommittee discussed alternatives to these changes, and felt that the recommended changes adequately met the Committee's originally stated goals of reviewing and, if necessary, fine tuning the special purpose regulations. The Committee reviewed the subcommittee's recommendation carefully and unanimously concurred that, to facilitate the handling of special purpose shipments and to enhance its compliance program specific to such shipments, the changes would effectively improve its administration of the special purpose shipment exemptions.

This rule modifies the reporting requirements, procedures, and safeguard provisions for making certain special purpose potato shipments. Under the order, such special purpose shipments may be exempt from the quality, assessment, or inspection requirements. The modified regulations clarify and update the procedures handlers must follow to qualify for the special purpose exemptions. As previously noted, minor conforming changes have subsequently been made to two of the Committee's forms, the ''Shippers Application for Special Purpose Certificate'', and the ''Special Purpose Shipment Report''. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. This information collection burden has been previously approved by the Office of Management and Budget (OMB) under OMB No. 0581–0178, Vegetable and Specialty Crops Marketing Orders. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

In addition, the Committee's meeting was widely publicized throughout the Washington potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 3, 2005, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on May 16, 2005 (70 FR 25790). Copies of the rule were mailed or sent via facsimile transmission to all Committee members and handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending June 15, 2005, was provided to allow interested persons to respond to the proposal. One response was received during that period. However, that response did not address the substance of this rule.

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

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) The Committee and Washington potato industry handlers want to take advantage of these regulatory improvements as soon as possible; (2) the Committee unanimously recommended these changes at a public meeting and all interested parties had an opportunity to provide input; and (3) handlers are aware of this action and are ready to operate under the changed procedures. Also, a 30-day comment period was provided for in the proposed rule and a response not relevant to the proposed rule was received.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

■ 1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 946.120, paragraph (a) is revised to read as follows:

§ 946.120 Application.

(a) Whenever shipments for special purposes pursuant to § 946.54 are relieved in whole or in part from regulations issued under § 946.52, each handler desiring to make shipments of potatoes for the following purposes shall submit an application to the committee, prior to initiating such shipments, for a special purpose certificate permitting such shipments:

(1) Charity: *Provided*, That handlers making shipments for charity of 1,000 pounds or less are exempt from these application requirements;

(2) Prepeeling;

(3) Canning, freezing, and ''other processing'';

(4) Grading or storing at any specified location in Morrow or Umatilla Counties in the State of Oregon; and

(5) Experimentation.

* * * * *

■ 3. Section 946.336 is amended by:

■ A. Revising paragraph (d)(1)(vi);

■ B. Removing paragraph (d)(1)(vii);

■ C. Redesignating paragraph (d)(1)(viii) as paragraph (d)(1)(vii);

■ D. Revising paragraph (d)(2);

■ E. Revising the introductory text of paragraph (e)(2);

■ F. Revising paragraph (e)(3)(iii);

■ G. Removing paragraph (e)(5);

■ H. Redesignating paragraph (e)(6) as paragraph (e)(5);

■ I. Adding a new paragraph (e)(6), (e)(7), and (e)(8); and

■ J. Revising paragraph (g)(1) to read as follows:

§ 946.336 Handling regulation.

* * * * *

(d) * * *

(1) * * *

(vi) Grading or storing at any specified location in Morrow or Umatilla Counties in the State of Oregon;

* * * * *

(2) Shipments of potatoes for the purposes specified in paragraphs (d)(1)(i) through (vii) of this section shall be exempt from the inspection requirements specified in paragraph (g) of this section, except that shipments pursuant to paragraph (d)(1)(vi) of this section shall comply with the inspection requirements of paragraph (e)(2) of this section. Shipments specified in paragraphs (d)(1)(i), (ii), (iii), (v) and (vii) of this section shall be exempt from assessment requirements as specified in § 946.248 and established pursuant to § 946.41

(e) * * *

(2) Handlers desiring to ship potatoes for grading or storing to any specified location in Morrow or Umatilla Counties in the State of Oregon shall:

* * * * *

(3) * * *

(iii) Upon request by the committee, furnish reports, or cause reports to be furnished, for each shipment pursuant to the applicable Special Purpose Certificate;

* * * * *

(6) Handlers diverting potatoes to livestock feed are not required to apply for a Special Purpose Certificate nor report such shipments to the committee.

(7) Each handler desiring to make shipments of potatoes for charity shall:

(i) First apply to the committee for, and obtain, a Special Purpose Certificate for the purpose of making shipments for charity: *Provided,* That shipments for charity of 1,000 pounds or less are exempt from the application and reporting requirements: *And provided further*, That potatoes previously graded, assessed, and inspected in preparation for shipment to the fresh market are exempt from the application and reporting requirements.

(ii) Each handler shipping potatoes to charity must inform the recipient that the potatoes cannot be resold or otherwise placed in commercial market channels.

(8) Each handler making shipments of seed potatoes shall furnish, at the request of the committee, reports on the total volume of seed potatoes handled.

* * * * *

(g) * * *

(1) Except when relieved by paragraphs (d) or (f) of this section, no person may handle any potatoes unless a Federal-State Inspection Notesheet or certificate covering them has been issued by an authorized representative of the Federal-State Inspection Service and the document is valid at the time of shipment.

* * * * *

Dated: July 27, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–15170 Filed 8–1–05; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 05–11]

RIN 1557–AB98

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1225]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AC89

Community Reinvestment Act Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint final rule.

SUMMARY: The OCC, Board, and FDIC (collectively, ''federal banking agencies'' or ''the agencies'') are issuing this joint final rule that revises certain provisions of our rules implementing the Community Reinvestment Act (CRA). The agencies are taking this action after carefully considering public comments received in response to the joint notice of proposed rulemaking published on March 11, 2005 (the ''March proposal''). The joint final rule addresses regulatory burden imposed on small banks with an asset size between $250 million and $1 billion by exempting them from CRA loan data collection and reporting obligations. It also exempts such banks from the large bank lending, investment, and service tests, and makes them eligible for evaluation under the small bank lending test and a flexible new community development test. Holding company affiliation is no longer a factor in determining which CRA evaluation standards apply to a bank. In addition, the joint final rule revises the term ''community development'' to include activities to revitalize and stabilize distressed or underserved rural areas

and designated disaster areas. Finally, it adopts without change the amendments to the regulations to address the impact on a bank's CRA rating of evidence of discrimination or other credit practices that violate an applicable law, rule, or regulation.

EFFECTIVE DATE: This joint final rule is effective September 1, 2005.

FOR FURTHER INFORMATION CONTACT:

OCC: Michael Bylsma, Director, or Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750; Karen Tucker, National Bank Examiner, Compliance Division, (202) 874–4428; or Patrick T. Tierney, Senior Attorney, Legislative and Regulatory Activities (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Anjanette M. Kichline, Oversight Senior Review Examiner, (202) 785–6054; Catherine M.J. Gates, Oversight Team Leader, (202) 452–3946; Kathleen C. Ryan, Counsel, (202) 452–3667; or Dan S. Sokolov, Senior Attorney, (202) 452–2412, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424; Susan van den Toorn, Counsel, Legal Division, (202) 898–8707; or Robert W. Mooney, Chief, CRA and Fair Lending Policy Section, Division of Supervision and Consumer Protection, (202) 898–3911; Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

The CRA requires the federal banking and thrift agencies to assess the record of each insured depository institution of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institution, and to take that record into account when the agency evaluates an application by the institution for a deposit facility.[1]

Rulemaking History

In 1995, when the OCC, the Board, the FDIC, and the Office of Thrift Supervision (OTS) (collectively, ''federal banking and thrift agencies'' or ''the four agencies'') adopted major amendments to regulations implementing the Community Reinvestment Act, they committed to reviewing the amended regulations in 2002 for their effectiveness in placing performance over process, promoting consistency in evaluations, and eliminating unnecessary burden. (60 FR 22156, 22177 (May 4, 1995)). The federal banking and thrift agencies indicated that they would determine whether and, if so, how the regulations should be amended to better evaluate financial institutions' performance under the CRA, consistent with the Act's authority, mandate, and intent.

The four agencies' review was initiated in July 2001 with publication in the **Federal Register** of an advance notice of proposed rulemaking requesting comment on whether the regulations were effective in meeting the stated goals of the 1995 rulemaking and whether any changes should be made to the rules (66 FR 37602 (July 19, 2001)). The approximately 400 comments reflected a consensus that certain fundamental elements of the regulations are sound, but demonstrated a disagreement over the need and reasons for change.

In February 2004, the four agencies published a notice of proposed rulemaking (69 FR 5729 (Feb. 6, 2004)). Among other things, the proposal would have increased the small bank asset size threshold to $500 million, without regard to holding company affiliation. Commenters were deeply split on this proposal, with financial institutions and their trade associations urging additional burden relief for more institutions and community organizations opposed to allowing any additional financial institutions to be evaluated as ''small'' institutions. On July 16, 2004, the OCC and the Board announced that they would not proceed with their respective February 2004 proposals. The OCC did not formally withdraw the proposal, but did not adopt it. The Board formally withdrew its proposal.

On August 18, 2004, the OTS published a final rule that expanded the category of ''small savings associations'' under the OTS'' CRA regulations to those with under $1 billion in assets, regardless of holding company affiliation (69 FR 51155 (Aug. 18, 2004)). Following its publication of a notice of proposed rulemaking in November 2004, the OTS also adopted a final rule that allows a thrift that is evaluated as a large retail institution to determine the weight that will be assigned to lending, investments, and services in its CRA evaluation. (70 FR 10023 (Mar. 2, 2005)).

On August 20, 2004, the FDIC issued a proposal on the CRA evaluation of banks defined as ''small'' (69 FR 51611 (Aug. 20, 2004)). The FDIC proposal would have expanded the category of ''small banks'' to those under $1 billion, regardless of any holding-company size or affiliation. For small banks with assets between $250 million and $1 billion, the FDIC proposal would have added to the five performance criteria of the current streamlined small bank test a new sixth criterion taking into account a bank's record of community development lending, investments, *or* services, but also asked for comment on whether those community development activities should be evaluated in a separate test. The FDIC received over 11,000 comments in response to its proposal. Banks and their trade associations supported a change in the small bank dollar threshold, primarily as a way to reduce administrative burden, but expressed mixed views on whether community development activities should be evaluated as a sixth criterion in the small bank evaluation or as a separate test. Community organizations almost universally opposed any increase in the small bank threshold. However, these commenters generally supported the proposal to require such banks to be evaluated under a separately rated community development test in addition to the small bank lending test, if the small bank threshold were to be increased.[2]

The Proposed Rule

The OCC, the Board, and the FDIC jointly issued the proposed amendments to their CRA regulations, which were published in the **Federal Register** on March 11, 2005. The proposal was developed after thorough consideration of all the comments that the agencies had received in response to their previous proposals. The March proposal responded to community banks concerned about regulatory burden by extending eligibility for streamlined lending evaluations and the exemption from data reporting to banks under $1 billion, without regard to holding company assets. The new proposal also provided an adjustment of this threshold for inflation, based on changes to the Consumer Price Index.

The proposal addressed the concerns of community organizations that had urged the federal banking and thrift agencies to continue to evaluate community development participation by providing that the community

[1] 12 U.S.C. 2903.

[2] For a more detailed history of CRA rulemaking activities by the banking agencies since 2001, please refer to the supplementary information published in the **Federal Register** with the joint notice of proposed rulemaking (70 FR 12148, 12149 (Mar. 11, 2005)).

development records of banks between $250 million and $1 billion, termed ''intermediate small banks,'' would be separately evaluated and rated, but provided a new, more streamlined basis than the current rule for doing so. Under the proposal, an intermediate small bank would not be eligible for an overall rating of ''satisfactory'' unless it received ratings of ''satisfactory'' on both the lending and community development tests.

The proposal also responded to suggestions from both community banks and community organizations that the current definition of ''community development'' was too narrow by proposing to expand the definition of community development activities to include certain activities in underserved rural areas and designated disaster areas. Finally, the proposal provided that evidence of discrimination, or evidence of credit practices that violate an applicable law, rule, or regulation, could adversely affect an agency's evaluation of a bank's CRA performance and included an illustrative list of such practices.

Together, the agencies received over 10,000 public comments, including identical comments sent to each agency, from consumer and community organizations, banks and bank trade associations, academics, Federal and State Government representatives, and individuals. In general, commenters recognized that the proposal had the potential to strike an appropriate balance between the need to provide meaningful regulatory relief to small banks and the need to preserve and encourage meaningful community development activities by those banks.

The Final Rule

Increase in Size Threshold for Small Banks From $250 Million to $1 Billion

Comments on Proposed Rule

The agencies proposed to reduce undue regulatory burden by extending eligibility for streamlined lending evaluations and the exemption from data reporting to banks under $1 billion without regard to holding company affiliation. In addition, the agencies proposed to define small banks with assets between $250 million and $1 billion as ''intermediate small banks.'' The proposal also would annually adjust the asset size for small and intermediate small banks based on changes to the Consumer Price Index.

Most community organizations opposed the proposal to raise the small bank threshold to $1 billion while most banks supported the increase. Community organizations expressed a concern that an increase in the threshold would cause banks to reduce their investments and services in low- and moderate-income areas. Although they preferred that the agencies not increase the threshold, a number of community organization commenters noted that the proposed evaluation of intermediate small banks under a community development test and the streamlined lending test was a notable improvement over the previous proposals to raise the small bank threshold.

Community organizations also expressed concern that an increase in the small bank threshold would reduce public data on small business, small farm, and community development loans. Community organizations objected to this result on the basis that communities would lack the means to evaluate the small business and small farm lending of intermediate small banks. A few community organizations offered specific examples of how they or others have used information about such lending, including, for example, a series of studies examining impediments to capital formation by business owners in low- and moderate-income areas. Some community organizations asserted that intermediate small banks make more small business, small farm and community development loans, as a percentage of bank assets, than larger banks. Thus, they believe that the loss of the intermediate small bank lending data will significantly affect the relevance of the remaining data, particularly in markets that include numbers of intermediate small banks. Some commenters also noted that the proposal would affect the Home Mortgage Disclosure Act (HMDA) requirements to report certain loans outside of a Metropolitan Statistical Area (MSA) for intermediate small banks.

The vast majority of bank and bank trade association commenters noted that increasing the small bank threshold would provide substantial and needed regulatory burden reduction because intermediate small banks would be relieved of the obligation to collect and report information about small business, small farm, and community development loans. They also noted that, given the inclusion of the community development test for intermediate small banks, elimination of the data collection and reporting requirements was the principal regulatory relief component of the proposed amendments. However, a few banks stated that this relief would not be realized fully if banks continue to collect information about community development loans, investments, and services, and provide it to examiners for use in evaluating the bank's performance under the proposed community development test.

A number of banks and their trade associations commented that the small bank size threshold should be raised to $1 billion without creating a tier of intermediate small banks that would be subject to the proposed community development test. A few bank commenters suggested defining an intermediate small bank subject to the new community development test as a bank with assets between $500 million and $1 billion, and to permit institutions with less than $500 million in assets to be evaluated solely under the streamlined small bank lending test.

Some community organization commenters criticized the proposal to adjust the asset threshold annually for small and intermediate small banks based on changes to the Consumer Price Index (CPI) because it could increase the number of banks that are exempt from the large bank evaluation standards and further decrease the availability of small business, small farm, and community development loan data. Most banks that commented on the issue supported tying the small and intermediate small bank thresholds to changes in the CPI.

Provisions of Final Rule

The joint final rule retains the proposed asset size threshold for small banks of less than $1 billion and the annual adjustment to the threshold based on changes to the Consumer Price Index. The text of the ''small bank'' definition describing the ''intermediate small bank'' category has been revised for clarity. The federal banking agencies believe that raising the asset size threshold provides important regulatory relief for community banks. As discussed below, the final rule also will preserve and encourage meaningful CRA activities by intermediate small banks by means of a new community development test.

As a result of the rule change, data on the distribution of small business loans and small farm loans extended by intermediate small banks will no longer be publicly available. In revising the rule, the agencies have considered the adequacy of substitute sources of information. Call Report data, although lacking the loan-location and business-size information in the CRA data, provide the public with annual outstanding amounts of small business and small farm loans. Moreover, an intermediate small bank's CRA performance evaluation includes, as appropriate, a description of its small

business and small farm lending performance, as well as a description of any community development loans the bank has made. These sources will give the public information on intermediate small banks' records of extending small business, small farm, and community development loans. On balance, the agencies believe the costs of the mandatory data collection and reporting by intermediate small banks, including the fixed costs that weigh more heavily on smaller banks, outweigh the benefits.

Further, under the CRA and HMDA regulations, large banks generally must collect and report information about the location of property securing home loans located outside of MSAs and metropolitan divisions in which the institution has a home or branch office, or outside any MSA (12 CFR 203.4(e)). But for small banks, collecting and reporting this location information is optional. Thus, under this joint final rule, intermediate small banks will no longer be required to collect and report information on the location of mortgage loans outside MSAs and metropolitan divisions in which the banks have home or branch offices.

Summary information about where such mortgage loans were made, and detailed information about the applicants or borrowers, will nevertheless continue to be available. Mortgage loan location information is summarized in the CRA performance evaluation as part of the evaluation of the geographic distribution of a bank's loans, as appropriate. Moreover, some newly designated intermediate small banks may opt to report loan location information as some small banks have done in the past. Furthermore, intermediate small banks covered by HMDA will continue to report borrower or applicant race, ethnicity, gender, and income even when property location need not be reported. The agencies believe that the additional value of requiring intermediate small banks to report loan location information on all of their mortgage loans does not justify the cost of reporting such information.[3] Although an intermediate small bank will no longer be required to collect and report data on small business or small farm loans or on the location of certain nonmetropolitan mortgage loans, the agencies will continue to evaluate such lending under the streamlined lending test if it constitutes a major product line of the bank.

[3] Even were the proposal not adopted, intermediate small banks would continue to be exempt from reporting loan location information on mortgage loans made in counties with populations of less than 30,000.

Community Development Test for Intermediate Small Banks

Comments on Proposed Rule

The March proposal would have added a new community development test that would be separately rated in CRA examinations for intermediate small banks. The new community development test would evaluate an intermediate small bank's community development loans, qualified investments, and community development services, resulting in a single rating for community development performance. Overall CRA ratings for intermediate small banks would be based on ratings for this community development test and the streamlined small bank lending test.

Most community organization commenters generally favored the retention of the large bank lending, investment, and service tests for evaluation of all banks with assets of $250 million or more. On the other hand, many of these commenters noted that the proposed intermediate small bank examination standards—the streamlined small bank lending test plus the proposed community development test—were significantly preferable to permitting additional banks to be evaluated under only the streamlined small bank lending test. In this regard, community organizations strongly supported the provision in the proposed rule to require an intermediate small bank to receive a ''satisfactory'' rating on both the community development and the small bank lending tests in order to receive an overall ''satisfactory'' rating.

Many bank commenters opposed the creation of separate new standards for intermediate small banks. For example, many community bankers commented that all banks under $1 billion should be examined solely under the streamlined lending test. Some bank and bank trade associations urged the agencies to adopt final rules that assign greater weight to retail lending than to community development in the overall evaluation of an intermediate small bank's CRA performance. A few commenters stated that, under the proposal, community development would receive greater weight in an intermediate small bank's overall rating than it does under the large bank lending, investment, and service tests that currently apply to such banks. They urged the agencies to clarify that intermediate small banks, at their option, could continue to choose to be evaluated under the large bank lending, investment, and service tests.

Regarding the activities evaluated under the proposed community development test, most community organizations stated that an institution should be required to engage in all three activities—community development loans, qualified investments, and community development services—in order to earn a ''satisfactory'' rating on the community development test. Although community organizations believed that an institution's rating on the community development test should take account of bank capacity and community opportunities for community development, they asserted that the primary consideration should be the institution's responsiveness to community needs. Moreover, many community organizations requested that the community development test also evaluate an intermediate small bank's provision of community development services through branches located in low- and moderate-income areas.

Many banks and bank trade associations commented favorably on the flexibility that the community development test offered. Some large banks requested that the proposed community development test be made available to banks with assets of $1 billion or more as a substitute for the existing investment and service tests.

Provisions of Final Rule

The final rule adopts the proposed community development test for intermediate small banks without change. The number and amount of community development loans, the number and amount of qualified investments, and the provision of community development services, by an intermediate small bank, and the bank's responsiveness through such activities to community development lending, investment, and services needs, will be evaluated in the context of the bank's capacities, business strategy, the needs of the relevant community, and the number and types of opportunities for community development activities. The agencies believe that, given these performance context factors, the community development test will provide a better framework for assessing community development performance by intermediate small banks than the separate lending, investment, and service tests. As noted in the preamble to the proposed rule, the community development test will be applied flexibly to permit a bank to apply its resources strategically to the types of community development activities (loans, investments, and services) that are most responsive to helping to meet community needs, even when those activities are not necessarily innovative, complex, or new. (''Innovativeness'' and

''complexity,'' factors examiners consider when evaluating a large bank under the lending, investment, and service tests, are not factors in the intermediate small banks' community development test.) The agencies will incorporate these considerations as appropriate into examination guidance and procedures to ensure flexible application of the standards.

In providing this flexibility for intermediate small banks, the federal banking agencies do not intend to suggest that a bank may simply ignore one or more categories of community development or arbitrarily decrease the level of such activities. Nor does the joint final rule prescribe any required threshold level or allocation of community development loans, qualified investments, and community development services for these banks. Instead, the OCC, the FDIC, and the Board expect that a bank will appropriately assess the needs in its community, engage in different types of community development activities based on those needs and the bank's capacities, and that it will take reasonable steps to apply its community development resources strategically to meet those needs.[4] As the agencies indicated on adoption of the 1995 regulation, the agencies will expect a bank to make an assessment using information normally used to develop a business plan or identify potential markets and customers.[5] Examiners will consider the bank's assessment of community needs along with information from community, government, civic, and other sources to gain a working knowledge of community needs.[6] The flexibility inherent in the community development test will allow intermediate small banks to focus on meeting the substance of community needs through these means, without undue regulatory consequences from the form of the response.

Under the joint final rule, retail banking services provided by intermediate small banks will no longer be evaluated in a separate service test. Instead, the extent to which such banks provide community development services to low- and moderate-income people will be taken into account in the community development test. Thus, the federal banking agencies will consider not only the types of services provided to benefit low- and moderate-income people, such as low-cost bank checking accounts and low-cost remittance services, but also the provision and availability of services to low- and moderate-income people, including through branches and other facilities located in low- and moderate-income areas.

The federal banking agencies believe that providing flexibility to intermediate small banks in how they apply their community development resources to respond to community needs through the strategic use of loans, investments, and services will reduce burden on these banks while making the evaluation of their community development records more effective.[7]

The agencies are making a non-substantive change to the proposed criteria for a ''satisfactory'' rating on the community development test (in Appendix A, Ratings, paragraph (d)(2)(i)) to conform those criteria to the other ratings criteria. Under the proposal, a ''satisfactory'' rating would have required an intermediate small bank to demonstrate ''adequate responsiveness to the community development needs of its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s) through community development loans, qualified investments, and community development services.'' In the final rule, the agencies deleted the phrase ''or a broader statewide or regional area that includes the bank's assessment area(s)'' from the criteria for a ''satisfactory'' rating on the community development test in order to conform the manner in which the term ''assessment area'' is used in other parts of Appendix A. Examiners will, however, continue to evaluate a bank's community development activities in the broader statewide or regional area that includes its assessment area(s) according to existing interagency guidance.[8]

The agencies are not revising the provision in the existing regulations that permits any small bank, including an intermediate small bank, to choose to be evaluated under the large bank lending, investment, and service tests at its option. Any small bank that opts to be evaluated under the lending, investment, and service tests will be required to collect and report small business, small farm, and community development loan data.[9]

Community Development Definition

Comments on Proposed Rule

The regulations' present definition of ''community development'' covers four categories of activity. Three categories (affordable housing, community services, and economic development) are defined in terms of the activity's targeting of specific persons (low- or moderate-income people in the first two categories, small farms or businesses in the third). A fourth category (revitalization or stabilization activities) is defined in terms of the activity's targeting of specific areas, namely, low- or moderate-income census tracts.

The OCC, the FDIC, and the Board proposed to amend two of the categories—activities that revitalize or stabilize an area, and affordable housing. Under one proposed amendment, a bank's support for activities that revitalize or stabilize an area would receive consideration not only in low- or moderate-income census tracts (referred to as ''geographies'' in the regulations), but also in ''underserved rural areas.''[10] The proposal would thus expand the number and kinds of rural areas in which bank activities that revitalize or stabilize communities are eligible for community development consideration (referred to herein as ''eligible rural tracts''). The proposal responded to the scarcity of eligible rural tracts, which appeared to limit the effectiveness of the regulations in encouraging rural community development.[11] The proposed amendment would also give consideration to bank activities that

[4] As discussed in the supplementary information published with the proposed rule, the agencies anticipate that examiners will exercise their discretion, using performance context, to assign appropriate weight in a bank's current period rating to prior-period outstanding investments that reflect a substantial financial commitment or outlay by the bank designed to have a multi-year impact, in addition to investments made during the current examination cycle.

[5] 60 FR 22156, 22163 (May 4, 1995).

[6] *Id.*

[7] A few commenters requested that the community development test be available to banks with assets of more than $1 billion, for the sake of increasing flexibility for those banks, too. The agencies have not made this change. However, a large bank seeking more flexibility than it finds in the present three-part test can consider a strategic plan. *See* 12 CFR 25.27, 228.27, & 345.27.

[8] *See* Interagency Questions and Answers Regarding Community Reinvestment (''Q&A''), 66 FR 36620 *et seq.* (July 12, 2001) (Q&A__.12(i)–5 and –6).

[9] *See* 12 CFR 25.21(a)(3), 228.21(a)(3), & 345.21(a)(3).

[10] Staff interpretations of activities that ''revitalize or stabilize'' an area can be found in Q&A__.12(h)(4)–1 and .12(i)–4.

[11] The scarcity is both absolute and relative. Only 15 percent of nonmetropolitan tracts are now classified as ''low- or moderate-income,'' and 59 percent of nonmetropolitan counties lack a single low- or moderate-income tract. In comparison, 31 percent of metropolitan tracts are classified as ''low- or moderate-income'' and only 18 percent of metropolitan counties lack a single low- or moderate-income tract. *See* Robert B. Avery, Glenn B. Canner, *et al.*, ''Community Banks and Rural Development: Research Relating to Proposals to Revise the Regulations That Implement the Community Reinvestment Act,'' Federal Reserve Bulletin, Spring 2005, Table 14, pp. 224–225.

revitalize or stabilize designated disaster areas.

The agencies sought comment on three general alternatives for increasing the number and kinds of rural tracts in which bank activities are eligible for community development consideration. The first alternative was to expand the definition of ''low- or moderate-income'' tracts in rural areas. Two specific options were raised: increasing the threshold for a low- or moderate-income tract from a median income of 80 percent of the state nonmetropolitan median income to 90 percent, or changing the baseline against which a nonmetropolitan tract's median income is compared to the median income of the entire state (not just its nonmetropolitan parts). The second alternative was to retain the present definition of a tract's income status, but identify a set of rural tracts that, while not low- or moderate-income, were nonetheless shown by other relevant indicators to be ''underserved'' or otherwise in need of bank support to revitalize or stabilize. Specific indicators on which the agencies sought comment were rates of poverty, unemployment, and population loss used as ''distress'' indicators by the Community Development Financial Institutions (CDFI) Fund, United States Department of the Treasury. The third alternative was to consider as eligible any rural area that had been designated by a Federal, State, tribal, or local government as in need of revitalization or stabilization.

Under another proposed amendment, bank support for affordable housing would receive consideration in ''underserved rural areas'' or designated disaster areas even if the housing benefited individuals not defined as ''low- or moderate-income.'' [12] The agencies indicated that the proposal's premise was that *affordable* housing—in addition to other activities that revitalize and stabilize underserved rural areas—may meet a critical need of individuals in certain underserved rural areas, even if those individuals may not meet the technical requirements of the definition of ''low- or moderate-income'' in the regulation.

Banks and community organizations alike generally supported expanding the definition of ''community development'' to make bank activities eligible for community development consideration in a larger number of rural areas. Banks argued that having few or no eligible tracts in their assessment areas meant they felt pressure to make community development investments outside of their assessment areas merely for the sake of their CRA evaluations.

Bank commenters suggested that ''rural'' be defined using existing government definitions. Some commenters suggested using the Office of Management and Budget's concept of nonmetropolitan areas (areas outside Metropolitan Statistical Areas, or MSAs), though a few requested flexibility to treat certain parts of MSAs as rural, too. Others suggested the Census Bureau's definition of ''rural.'' Some suggested using several criteria, including population density.

Banks asked that any rule distinguishing ''underserved'' rural areas be simple. Some expressed concern that using the CDFI Fund distress criteria would be complicated and cause uncertainty, but some indicated the criteria were appropriate. Many banks suggested that an area be eligible regardless of its income if targeted by a government agency for redevelopment. Community banks expressed a strong preference that a bank's support for meeting community needs such as education, infrastructure, and healthcare be considered as ''community development'' in rural communities of all kinds, not just ''underserved'' or low- or moderate-income communities.

Community organizations disagreed that all rural areas should be eligible, but agreed that more rural areas should be eligible than are now. Many requested that the agencies consider both expanding the standard for classifying rural tracts as ''low- or moderate-income'' and adopting criteria such as the distress criteria of the CDFI Fund to identify additional eligible tracts.[13] At the same time, community organizations generally sought to keep the proportion of eligible rural tracts in rough parity with the proportion of eligible urban tracts.

Like bank commenters, community organizations offered a variety of suggestions for defining ''rural.'' For example, some suggested including any area with a population of less than 10,000, while others suggested using several criteria, including population, household income, the area's economic base, and distance from a metropolitan area. Some cautioned against treating exurbs of large MSAs as ''rural.''

As noted above, banks and community organizations alike generally supported expanding the ''community development'' definition to include activities that benefit underserved rural areas. Few comments distinguished between the proposal to amend the ''revitalize or stabilize'' category and the proposal to amend the ''affordable housing'' category but, among those that did comment specifically on a category, more commented specifically in favor of expanding the ''revitalize or stabilize'' category.

Banks favored revising the definition of ''community development'' to include activities in a designated disaster area. They noted that such areas are easily identified and have special redevelopment needs. Some, but not all, community organizations opposed the revision. Organizations that opposed, and those that did not oppose, the revision shared the view that the regulation should not give consideration to bank responses to disasters that do not meet the needs of affected low- or moderate-income people.

Provisions of Final Rule

The agencies are revising the definition of ''community development'' to increase the number and kinds of rural tracts in which bank activities are eligible for community development consideration. In doing so, the agencies are revising the ''revitalize or stabilize'' category of the definition of ''community development'' to provide that activities that revitalize or stabilize areas designated by the agencies as ''distressed or underserved nonmetropolitan middle-income geographies'' will qualify as community development activities.

The final rule uses the term ''nonmetropolitan,'' which means an area outside of an MSA, to refer to rural areas. The final rule also describes qualifying rural geographies as ''distressed or underserved,'' while the proposal used only the term ''underserved.'' The agencies believe that the phrase ''distressed or underserved'' better describes the eligible geographies that will be designated using the factors discussed more fully below.

Eligible rural tracts will continue to include tracts currently defined as ''low-income'' or as ''moderate-income,'' and the agencies have not revised the definitions of those terms. Eligible rural tracts will also include middle-income, nonmetropolitan tracts designated by the agencies as distressed or

[12] Staff interpretations of ''affordable housing'' can be found in Q&A __.12(h)(1)–1.

[13] On the whole, community organizations did not express a strong preference between raising the threshold income for a moderate-income tract to 90% of nonmetropolitan state median income and changing the baseline against which a tract's income is measured to the state median income. They generally opposed, however, a threshold of 100% of nonmetropolitan state median income. Some organizations that favored using the CDFI Fund distress criteria suggested that additional criteria also be considered.

underserved based on either or both of two sets of criteria: criteria indicating a community is in distress (rates of poverty, unemployment, and population loss), and criteria indicating a community may have difficulty meeting essential community needs (population size, density, and dispersion).

The agencies believe that using these criteria to identify eligible areas has advantages over simply expanding the definition of ''low- or moderate-income'' tracts for rural areas. The distress criteria permit a more careful targeting of the middle-income tracts that are most in need of revitalization or stabilization. Simply changing the definition of ''moderate-income'' to include some presently middle-income tracts would (a) fail to cover many rural middle-income tracts in distress and (b) cover many tracts not necessarily in distress, or in less distress than other rural tracts that would not be covered. In addition, some rural communities, albeit middle-income and not necessarily in distress, have such small and thinly distributed populations that they have difficulty financing the fixed costs of essential community needs such as essential infrastructure and community facilities; moreover, residents may have to travel long distances to reach certain facilities, such as hospitals. The challenges facing such communities are reflected in several comments suggesting the agencies use factors such as population size, density, and distance from a population center to identify eligible areas. Simply changing the definition of ''moderate-income'' to include some presently middle-income tracts would not effectively identify those communities either. Finally, changing the definition of ''low- or moderate-income tract'' for one purpose (evaluating community development activities) but not for other purposes (evaluating retail lending and service activities) could create confusion and the appearance of inconsistency.

To facilitate planning, the agencies will publish a list of eligible rural tracts that are distressed or underserved on the Web site of the Federal Financial Institutions Examination Council.[14] Year-to-year changes in the tracts designated based on the distress criteria are expected to be minimal; to account for such changes the agencies will specify a uniform lag period—of at least one year—for removal from the list of any tract designated based on those criteria. The lag will help promote investments that take an extended period to arrange. A qualifying loan, investment, or service in the area will count so long as the bank made, or entered into a binding commitment to make, the loan or investment or provided, or entered into a binding commitment to provide, the service while the area was designated *or* during the lag period.

The ''distressed or underserved'' designations will be based on objective criteria. A middle-income, nonmetropolitan tract will be designated if it is in a county that meets one or more of the following triggers that the CDFI Fund employs as ''distress criteria'': (1) An unemployment rate of at least 1.5 times the national average, (2) a poverty rate of 20 percent or more, or (3) a population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of 5 percent or more over the five-year period preceding the most recent census.[15] Activities qualify for ''revitalize or stabilize'' community development consideration in these tracts, like in low- or moderate-income tracts, based on the regulation and applicable interagency guidance.

A middle-income, nonmetropolitan tract will also be designated if it meets criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs. The agencies will use as the basis for the designations the ''urban influence codes'' maintained by the Economic Research Service of the United States Department of Agriculture.[16] In areas so designated, bank financing for construction, expansion, improvement, maintenance, or operation of essential infrastructure or facilities for health services, education, public safety, public services, industrial parks, or affordable housing generally will be considered to meet essential community needs, so long as the infrastructure or facility serves low- and moderate-income individuals. Other bank activities in such areas generally will not qualify for revitalization or stabilization consideration, unless the area meets the distress criteria. In these cases, the agencies will continue to decide on a case-by-case basis whether a particular activity qualifies for such consideration based on the regulation and applicable interagency guidance.

The agencies are also revising the definition of ''community development'' to make bank activities to revitalize or stabilize designated disaster areas eligible for CRA consideration. Disaster areas may be designated by Federal or State Governments. Such designations include, for example, Major Disaster Declarations administered by the Federal Emergency Management Agency. A designation will expire for purposes of CRA when it expires according to the applicable law under which it was declared. As the agencies indicated with the proposal, examiners will give significant weight to the extent to which a bank's revitalization activities in a disaster area benefit low- or moderate-income individuals.

The final rule does not incorporate the specific proposal to amend the ''affordable housing'' category of the community development definition. The proposal would have included affordable housing that benefits individuals who reside in underserved rural areas or designated disaster areas, even if the individuals are not technically ''low- or moderate-income.'' The agencies believe it is appropriate to maintain the focus of the separate ''affordable housing'' category on characteristics of the residents of the housing, and not to expand this category to consider characteristics of the residents' communities without regard to the residents' income-level characteristics.[17] Thus, under the regulation, a bank activity that has a primary purpose of providing housing affordable to low- or moderate-income individuals continues to qualify as ''community development'' regardless of the location of the housing.[18] In

[14] The Web site address is: *http://www.ffiec.gov.*

[15] 12 CFR 1805.201(b)(3). The CDFI Fund uses other criteria, as well, including an income trigger different from the definition of ''low- or moderate-income'' under the CRA regulations. The other criteria, however, will not be used in the CRA regulation's definition of ''community development.''

[16] The codes can be found at *http://www.ers.usda.gov/Briefing/Rurality/urbaninf/*. The agencies are considering designating middle-income tracts in the counties coded ''7,'' ''10,'' ''11,'' or ''12.'' The counties coded ''11'' or ''12'' have population densities under five people per square mile, are not adjacent to either a metropolitan or micropolitan area, and do not have a town with a population greater than 10,000. The counties coded ''7'' or ''10'' have population densities between five and seven people per square mile and do not have a town with a population greater than 2,500, though they border a micropolitan or small metropolitan area. These counties are concentrated in the Great Plains, but appear elsewhere, too. A map at the Web site shows where these counties are located.

[17] In contrast to the lack of census tracts in rural areas that meet the regulation's definition of ''low- or moderate-income'' geography, there is not a comparable lack of individuals residing in rural areas who meet the regulation's definition of ''low- or moderate-income'' individuals. Under the regulation's definition of a ''low- or moderate-income'' individuals, the average nonmetropolitan middle-income tract has a low- and moderate-income population of 38 percent.

[18] For guidance on application of the ''primary purpose'' standard, *see* Q&A __.12(i)–7.

addition, such an activity may receive additional weight in the evaluation if the examiner determines that the activity helps to revitalize or stabilize a low- or moderate-income census tract, a distressed or underserved rural area, or a designated disaster area. However, as described previously, a bank activity that provides affordable housing, but not necessarily for low- or moderate-income individuals, may qualify as an activity that revitalizes or stabilizes an eligible nonmetropolitan area. For example, a bank activity that provides housing for middle- or upper-income individuals in an eligible rural area qualifies as ''community development'' when part of a *bona fide* plan to revitalize or stabilize the community by attracting a major new employer that will offer significant long-term employment opportunities to low- and moderate-income members of the community.

Effect of Certain Credit Practices on CRA Evaluations

Comments on Proposed Rule

The OCC, the FDIC, and the Board proposed to revise the regulations to address the impact on a bank's CRA rating of evidence of discrimination or other illegal credit practices. The agencies proposed that evidence of discrimination, or evidence of credit practices that violate an applicable law, rule, or regulation, would adversely affect an agency's evaluation of a bank's CRA performance. The agencies also proposed to revise the regulations to include an illustrative list of such practices. This list includes evidence of discrimination against applicants on a prohibited basis in violation of, for example, the Equal Credit Opportunity (15 U.S.C. 1691 *et seq.*) or Fair Housing Acts (42 U.S.C. 3601 *et seq.*); evidence of illegal referral practices in violation of section 8 of the Real Estate Settlement Procedures Act (12 U.S.C. 2607); evidence of violations of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) concerning a consumer's right to rescind a credit transaction secured by a principal residence; evidence of violations of the Home Ownership and Equity Protection Act (15 U.S.C. 1639); and evidence of unfair or deceptive credit practices in violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)).[19]

Further, the March proposal clarified that a bank's evaluation could be adversely affected by such practices regardless of whether the practices involve loans in the bank's assessment area(s) or in any other location or geography. In addition, as proposed, a bank's CRA evaluation also could be adversely affected by evidence of such practices by any affiliate in connection with loans in the bank's assessment area(s), if any loans of that affiliate have been considered in the bank's CRA evaluation.

Most community organizations strongly supported the proposal. Many of these commenters recommended that the provision should be expanded to include evidence of discriminatory or other illegal credit practices by any affiliate of a bank, whether or not such affiliate's loans were included in the bank's CRA evaluation. Some bank and bank trade association commenters opposed the standard as unnecessary because other legal remedies are available to address discriminatory or other illegal credit practices. Many of these commenters also opposed extending the ''illegal credit practices'' standard to loans by an affiliate that are considered in a bank's lending performance. Furthermore, a few large banks were concerned that their CRA performance will be adversely affected by ''technical'' violations of law.

Provisions of Final Rule

The joint final rule adopts without change the proposed amendments to the agencies' regulations that address the impact on a bank's CRA rating of evidence of discrimination or other illegal credit practices. The final rule states that evidence of discrimination, or evidence of credit practices that violate an applicable law, rule, or regulation, adversely affects an agency's evaluation of a bank's CRA performance. The rule includes an illustrative, but not comprehensive, list of such practices. It also provides that a bank's evaluation is adversely affected by such practices by the bank regardless of whether the practices involve loans in the bank's assessment area(s) or in any other location or geography. The rule also provides that a bank's CRA evaluation is also adversely affected by evidence of discrimination or other illegal credit practices by any affiliate in connection with loans inside the bank's assessment area(s), if any loans of that affiliate have been considered in the bank's CRA evaluation. The adverse effect on the bank's CRA rating of illegal credit practices by an affiliate is limited to affiliate loans within the bank's assessment area(s) because, under the regulations, a bank may not elect to include as part of its CRA evaluation affiliate loans outside the bank's assessment area(s).

The agencies believe that providing in the CRA regulations examples of violations that give rise to adverse CRA consequences, rather than having such examples solely in interagency guidance on the regulations,[20] will improve the usefulness of the regulations and provide critical information in primary compliance source material. Further, because affiliate loans may be included by a bank in it's lending evaluation for favorable consideration, evidence of discrimination or other illegal credit practices in an affiliate's loans in an assessment area of the bank can adversely affect the bank's CRA rating, if loans by that affiliate have been considered in the bank's CRA evaluation. The agencies believe that the same CRA standards generally should apply to loans included in the bank's CRA lending record that are made by an affiliate in the bank's assessment area and those that are made by the bank in any geography.

Interagency Guidance

The agencies intend to issue interagency CRA guidance for comment in the near future. The guidance will address new provisions adopted in this joint final rule and related issues (for example, the appropriate lag period for removal of a census tract from the list of designated distressed or underserved nonmetropolitan middle-income geographies). The guidance will also conform existing interagency questions and answers to the regulatory revisions, where needed.

Effective Date

The joint final rule becomes effective September 1, 2005. The agencies will issue interim interagency examination procedures for the community development test applicable to intermediate small banks in advance of the effective date of the regulation.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), Pub. L. 103–325, authorizes a banking agency to issue a rule that contains additional reporting, disclosure, or other requirements to be effective before the first day of the calendar quarter that begins on or after the date on which the regulations are published in final form if the agency finds good cause for an earlier effective date. 12 U.S.C. 4802(b)(1). This joint final rule takes effect September 1, 2005. As discussed earlier in this ''Supplementary Information,'' the changes adopted by

[19] Evidence of credit practices that violate other laws, rules or regulations, including a federal banking agency regulation or a State law, if applicable, also may adversely affect a bank's CRA evaluation.

[20] *See* Q&A_.28(c)–1.

this joint final rule reduce regulatory burden by extending eligibility for streamlined lending evaluations and the exemption from data reporting to banks under $1 billion without regard to holding company affiliation. Because this joint final rule eliminates data collection and reporting burden for banks with assets between $250 million and $1 billion, and banks with assets below $250 million that are affiliated with a holding company with bank and thrift assets of $1 billion or above, and will provide greater flexibility in the CRA evaluations of such institutions, the agencies find good cause for the September 1, 2005, effective date.

Regulatory Flexibility Act

OCC and FDIC: Under section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. The OCC and the FDIC have reviewed the impact of this joint final rule on small banks and certify that the joint final rule will not have a significant economic impact on a substantial number of small entities.

The Small Business Administration (SBA) has defined ''small entities'' for banking purposes as a bank or savings institution with less than $150 million in assets. *See* 13 CFR 121.201. This joint final rule primarily affects banks with assets of at least $250 million and under $1 billion. The amendments decrease the regulatory burden for banks within that asset range by relieving them of certain reporting and recordkeeping requirements applicable to larger institutions.

The elimination of the $1 billion holding company threshold as a factor in determining whether banks will be subject to the streamlined CRA examination or the more in-depth CRA examination applicable to larger institutions will affect a limited number of small banks, which are affiliated with holding companies with assets over $1 billion. The FDIC estimates that only 110 of approximately 5,300 FDIC-regulated banks had assets of under $150 million and were affiliated with a holding company with over $1 billion in assets. The OCC estimates that only 36 of approximately 2,000 OCC-regulated banks met these criteria. Because so few small banks will be affected by the revisions to Parts 25 and 345, a regulatory flexibility analysis is not required. Furthermore, the OCC and the FDIC did not receive any comments regarding the March proposal's economic impact on small banks with assets of under $150 million.

Board: The Board has prepared a final regulatory flexibility analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

1. *Statement of the need for and objectives of the final rule.* As described in the **SUPPLEMENTARY INFORMATION** section, the Board, together with the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, seeks to improve the effectiveness of the CRA regulations in placing performance over process, promoting consistency in evaluations, and eliminating unnecessary burden. The final rule is intended to reduce unnecessary burden while maintaining or improving CRA's effectiveness in evaluating performance.

2. *Summary of issues raised by comments in response to the initial regulatory flexibility analysis.* The Board received several comments on matters raised in its initial regulatory flexibility analysis. As described more fully in the **SUPPLEMENTARY INFORMATION** section, a number of commenters supported expansion of the number and kinds of rural census tracts eligible for community development consideration. Several banks expressed concern that definitions of eligible rural census tracts would impose burden on them to document an activity's qualification, and urged the use of simple, objective definitions, including if possible the use of definitions from existing federal programs. In response, the final rule defines ''distressed or underserved'' rural areas with reference to objective criteria set forth by the Department of the Treasury (CDFI Fund) and the Department of Agriculture, and it defines ''rural'' with reference to objective criteria set forth by the Office of Management and Budget. The agencies also have agreed that the Federal Financial Institutions Examination Council will publish and update an annual list of eligible rural census tracts, and will allow for a lag time before a tract loses its designation.

As is also described in the **SUPPLEMENTARY INFORMATION** section, the agencies received a number of comments on provisions regarding the effect of evidence of illegal credit practices on CRA evaluations. Several commenters asserted that the proposal amounted to superimposing consumer credit laws onto CRA examinations and ratings. The Board notes that these provisions of the final rule would not subject any banks of any size to consumer credit laws to which they are not already subject; and hence, would not place new compliance, reporting, or recordkeeping requirements on small institutions.

3. *Description of small entities affected by the final rule.* The final rule applies to all state-chartered banks that are members of the Federal Reserve System; there are approximately 922 such banks. The RFA requires the Board to consider the effect of the final rule on small entities, which are defined for RFA purposes as all banks with assets of less than $150 million. There are 419 state member banks with assets of less than $150 million. All but about 12 state member banks with assets of less than $150 million are already subject to a streamlined CRA evaluation that is not affected by this final rule. The rule eliminates data reporting requirements for these 12 state member banks by eliminating holding-company affiliation as a disqualification for treatment as a ''small bank'' under the CRA regulations.

4. *Reporting, recordkeeping, and other compliance requirements.* The final rule does not impose any new reporting or recordkeeping requirements, as defined in section 603 of the RFA. As noted, the rule eliminates holding-company affiliation as a disqualification for treatment as a ''small bank'' under the CRA regulations. Accordingly, the rule eliminates data reporting requirements for about 12 state member banks with assets of less than $150 million. As noted above, all other state member banks with assets of less than $150 million are already exempt from this reporting requirement.

As is described in section 2 of this regulatory flexibility analysis, the Board believes that the revisions to the definition of ''community development'' do not place additional compliance costs or burdens on small institutions. The Board believes the same of the provisions regarding the effect of evidence of illegal credit practices on CRA evaluations.

5. *Steps taken to minimize the economic impact on small entities.* The final rule maintains the approach of the existing CRA regulations in exempting small entities from reporting requirements and providing for streamlined lending evaluations for small entities. A complete exemption of small entities from all of the CRA's requirements would be impermissible under the CRA statute. As noted, of 419 state member banks with assets of less than $150 million, all but 12 already were subject to a streamlined CRA process. The final rule minimizes the economic impact on small entities by

making these 12 state member banks eligible for the streamlined CRA process.

Executive Order 12866

The OCC has determined that this joint final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the joint final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the joint final rule is not subject to section 202 of the Unfunded Mandates Act.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number (OCC, 1557–0160; Board, 7100–0197; and FDIC, 3064–0092).

The OCC and the FDIC submitted their documentation to OMB for review and approval and the information collections have been approved. The Board has approved this revised information collection under its delegated authority from OMB.

Title of Information Collection:

OCC: Community Reinvestment Act Regulation—12 CFR 25.

Board: Recordkeeping, Reporting, and Disclosure Requirements in Connection with Regulation BB (Community Reinvestment Act).

FDIC: Community Reinvestment—12 CFR 345.

Frequency of Response: Annual.

Affected Public:

OCC: National banks.

Board: State member banks.

FDIC: State nonmember banks.

Abstract: This Paperwork Reduction Act section estimates the burden that will be associated with the regulations due to the changes to the definition of ''small bank'' to increase the asset threshold from $250 million to $1 billion and eliminate any consideration of holding-company size. Under the two changes, approximately 1,200 additional banks would be evaluated as small or intermediate small banks. That estimate is based on data for all FDIC-insured institutions that filed Call Reports for year-end 2004. The change to adopt a separate community development test in the performance standards for intermediate small banks will have no impact on paperwork burden because the evaluation is based on information prepared by examiners.

Estimated Paperwork Burden under the Proposal:

OCC:

Number of Respondents: 1,853.

Estimated Time per Response: Small business and small farm loan register, 219 hours; consumer loan data, 326 hours; other loan data, 25 hours; assessment area delineation, 2 hours; small business and small farm loan data, 8 hours; community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; data on lending by a consortium or third party, 17 hours; affiliated lending data, 38 hours; request for designation as a wholesale or limited purpose bank, 4 hours; strategic plan, 275 hours; and public file, 10 hours.

Total Estimated Annual Burden: 160,542 hours.

Board:

Number of Respondents: 914.

Estimated Time per Response: Small business and small farm loan register, 219 hours; consumer loan data, 326 hours; other loan data, 25 hours; assessment area delineation, 2 hours; small business and small farm loan data, 8 hours; community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; data on lending by a consortium or third party, 17 hours; affiliated lending data, 38 hours; request for designation as a wholesale or limited purpose bank, 4 hours; and public file, 10 hours.

Total Estimated Annual Burden: 97,017 hours.

FDIC:

Number of Respondents: 5,264.

Estimated Time per Response: Small business and small farm loan register, 219 hours; consumer loan data, 326 hours; other loan data, 25 hours; assessment area delineation, 2 hours; small business and small farm loan data, 8 hours; community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; data on lending by a consortium or third party, 17 hours; affiliated lending data, 38 hours; request for designation as a wholesale or limited purpose bank, 4 hours; and public file, 10 hours.

Total Estimated Annual Burden: 203,589 hours.

Comment Request:

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments should be addressed to:

OCC: Mary H. Gottlieb or Camille Dixon, Office of the Comptroller of the Currency, Legislative and Regulatory Activities Division, Attention: Docket No. 05–11, 250 E Street, SW., Mailstop 8–4, Washington, DC 20219. Due to delays in paper mail in the Washington area, commenters are encouraged to submit their comments by fax to (202) 874–4889 or by e-mail to *camille.dixon@occ.treas.gov.*

Board: Comments should refer to Docket No. R–1225 and may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Please consider submitting your comments through the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm,* by e-mail to *regs.comments@federalreserve.gov,* or by fax to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Rules proposed by the Board and other Federal agencies may also be viewed and commented on at *http://www.regulations.gov.* All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (C and 20th Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: Leneta G. Gregorie, Legal Division, Room MB–3082, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to the title of the proposed collection. In the alternative, comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.; submitted via the Agency Web site: *http://www.FDIC.gov/regulations/laws/federal/propose.html;* or submitted by e-mail: *comments@FDIC.gov.* Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html,* including any personal information provided. Comments may also be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

Comments should also be sent to Mark D. Menchik, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, 725 17th Street, NW., Washington, DC 20503. Comments may also be sent by e-mail to *Mark_D._Menchik@omb.eop.gov.*

Executive Order 13132

The OCC has determined that this joint final rule does not have any Federalism implications as required by Executive Order 13132.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 228

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

■ For the reasons discussed in the joint preamble, part 25 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

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

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

■ 2. In § 25.12, revise paragraphs (g)(4) and (u) to read as follows:

§ 25.12 Definitions.

* * * * *

(g) *Community development* means:

* * * * *

(4) Activities that revitalize or stabilize—

(i) Low-or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and OCC, based on—

(A) Rates of poverty, unemployment, and population loss; or

(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

* * * * *

(u) *Small bank*—(1) *Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1 billion. Intermediate small bank means a small bank with assets of at least $250 million as of December 31 of both of the prior two calendar years and less than $1 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment.* The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the OCC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

* * * * *

■ 3. Revise § 25.26 to read as follows:

§ 25.26 Small bank performance standards.

(a) *Performance criteria*—(1) *Small banks with assets of less than $250 million.* The OCC evaluates the record of a small bank that is not, or that was not during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small banks.* The OCC evaluates the record of a small bank that is, or that was during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small bank's lending performance is evaluated pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) *Community development test.* An intermediate small bank's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the bank provides community development services; and

(4) The bank's responsiveness through such activities to community development lending, investment, and services needs.

■ 4. Revise § 25.28, paragraph (c) to read as follows:

§ 25.28 Assigned ratings.

* * * * *

(c) *Effect of evidence of discriminatory or other illegal credit practices.*

(1) The OCC's evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose loans have been considered as part of the bank's lending performance. In connection with any type of lending activity described in § 25.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's assigned rating, the OCC considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

■ 5. In Appendix A to part 25, revise paragraph (d) to read as follows:

Appendix A to Part 25—Ratings

* * * * *

(d) *Banks evaluated under the small bank performance standards.* (1) *Lending test ratings.* (i) *Eligibility for a satisfactory lending test rating.* The OCC rates a small bank's lending performance ''satisfactory'' if, in general, the bank demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an ''outstanding'' lending test rating.* A small bank that meets each of the standards for a ''satisfactory'' rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of ''outstanding.''

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank may also receive a lending test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standard for a ''satisfactory'' rating.

(2) *Community development test ratings for intermediate small banks*—(i) *Eligibility for a satisfactory community development test rating.* The OCC rates an intermediate small bank's community development performance ''satisfactory'' if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The OCC rates an intermediate small bank's community development performance ''outstanding'' if the bank demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small bank may also receive a community development test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(3) *Overall rating*—(i) *Eligibility for a satisfactory overall rating.* No intermediate small bank may receive an assigned overall rating of ''satisfactory'' unless it receives a rating of at least ''satisfactory'' on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small bank that receives an ''outstanding'' rating on one test and at least ''satisfactory'' on the other test may receive an assigned overall rating of ''outstanding.''

(B) A small bank that is not an intermediate small bank that meets each of the standards for a ''satisfactory'' rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of ''outstanding.'' In assessing whether a bank's performance is ''outstanding,'' the OCC considers the extent to which the bank exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also receive a rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

* * * * *

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

■ For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System amends part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

■ 2. In § 228.12, revise paragraphs (g)(4) and (u) to read as follows:

§ 228.12 Definitions.

* * * * *

(g) *Community development* means:

* * * * *

(4) Activities that revitalize or stabilize—

(i) Low-or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency, based on—

(A) Rates of poverty, unemployment, and population loss; or

(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential

community needs, including needs of low- and moderate-income individuals.

* * * * *

(u) *Small bank*—(1) *Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1 billion. Intermediate small bank means a small bank with assets of at least $250 million as of December 31 of both of the prior two calendar years and less than $1 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment.* The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the Board, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

* * * * *

■ 3. Revise § 228.26 to read as follows:

§ 228.26 Small bank performance standards.

(a) *Performance criteria*—(1) *Small banks with assets of less than $250 million.* The Board evaluates the record of a small bank that is not, or that was not during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small banks.* The Board evaluates the record of a small bank that is, or that was during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small bank's lending performance is evaluated pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) *Community development test.* An intermediate small bank's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the bank provides community development services; and

(4) The bank's responsiveness through such activities to community development lending, investment, and services needs.

■ 4. Revise § 228.28(c) to read as follows:

§ 228.28 Assigned ratings.

* * * * *

(c) *Effect of evidence of discriminatory or other illegal credit practices.* (1) The Board's evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose loans have been considered as part of the bank's lending performance. In connection with any type of lending activity described in § 228.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's assigned rating, the Board considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

■ 5. In Appendix A to part 228, revise paragraph (d) to read as follows:

Appendix A to Part 228—Ratings

* * * * *

(d) *Banks evaluated under the small bank performance standards.* (1) *Lending test ratings.* (i) *Eligibility for a satisfactory lending test rating.* The Board rates a small bank's lending performance ''satisfactory'' if, in general, the bank demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an ''outstanding'' lending test rating.* A small bank that meets each of the standards for a ''satisfactory'' rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of ''outstanding.''

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank may also receive a lending test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standard for a ''satisfactory'' rating.

(2) *Community development test ratings for intermediate small banks*—(i) *Eligibility for a satisfactory community development test rating.* The Board rates an intermediate small bank's community development performance ''satisfactory'' if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The Board rates an intermediate small bank's community development performance ''outstanding'' if the bank demonstrates excellent responsiveness to community

development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small bank may also receive a community development test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(3) *Overall rating*—(i) *Eligibility for a satisfactory overall rating.* No intermediate small bank may receive an assigned overall rating of ''satisfactory'' unless it receives a rating of at least ''satisfactory'' on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small bank that receives an ''outstanding'' rating on one test and at least ''satisfactory'' on the other test may receive an assigned overall rating of ''outstanding.''

(B) A small bank that is not an intermediate small bank that meets each of the standards for a ''satisfactory'' rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of ''outstanding.'' In assessing whether a bank's performance is ''outstanding,'' the Board considers the extent to which the bank exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also receive a rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

■ For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

■ 1. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2907, 3103–3104, and 3108(a).

■ 2. In § 345.12, revise paragraphs (g)(4) and (u) to read as follows:

§ 345.12 Definitions.

* * * * *

(g) *Community development* means:

* * * * *

(4) Activities that revitalize or stabilize—

(i) Low-or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board of Governors of the Federal Reserve System, FDIC, and Office of the Comptroller of the Currency, based on—

(A) Rates of poverty, unemployment, and population loss; or

(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

* * * * *

(u) *Small bank*—(1) *Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1 billion. Intermediate small bank means a small bank with assets of at least $250 million as of December 31 of both of the prior two calendar years and less than $1 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment.* The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the FDIC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

* * * * *

■ 3. Revise § 345.26 to read as follows:

§ 345.26 Small bank performance standards.

(a) *Performance criteria*—(1) *Small banks with assets of less than $250 million.* The FDIC evaluates the record of a small bank that is not, or that was not during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small banks.* The FDIC evaluates the record of a small bank that is, or that was during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small bank's lending performance is evaluated pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) *Community development test.* An intermediate small bank's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the bank provides community development services; and

(4) The bank's responsiveness through such activities to community development lending, investment, and services needs.

■ 4. Revise § 345.28(c) to read as follows:

§ 345.28 Assigned ratings.

* * * * *

(c) *Effect of evidence of discriminatory or other illegal credit practices.* (1) The FDIC's evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose loans have been considered as part of the bank's lending performance. In connection with any type of lending activity described in § 345.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's assigned rating, the FDIC considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

■ 5. In Appendix A to part 345, revise paragraph (d) to read as follows:

Appendix A to Part 345—Ratings

* * * * *

(d) *Banks evaluated under the small bank performance standards*—(1) *Lending test ratings.*

(i) *Eligibility for a satisfactory lending test rating.* The FDIC rates a small bank's lending performance ''satisfactory'' if, in general, the bank demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an ''outstanding'' lending test rating.* A small bank that meets each of the standards for a ''satisfactory'' rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of ''outstanding.''

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank may also receive a lending test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standard for a ''satisfactory'' rating.

(2) *Community development test ratings for intermediate small banks*—(i) *Eligibility for a satisfactory community development test rating.* The FDIC rates an intermediate small bank's community development performance ''satisfactory'' if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The FDIC rates an intermediate small bank's community development performance ''outstanding'' if the bank demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small bank may also receive a community development test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(3) *Overall rating*—(i) *Eligibility for a satisfactory overall rating.* No intermediate small bank may receive an assigned overall rating of ''satisfactory'' unless it receives a rating of at least ''satisfactory'' on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small bank that receives an ''outstanding'' rating on one test and at least ''satisfactory'' on the other test may receive an assigned overall rating of ''outstanding.''

(B) A small bank that is not an intermediate small bank that meets each of the standards for a ''satisfactory'' rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of ''outstanding.'' In assessing whether a bank's performance is ''outstanding,'' the FDIC considers the extent to which the bank exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also receive a rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

* * * * *

Dated: July 19, 2005.

Julie L. Williams,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, July 26, 2005.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 19th day of July, 2005.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–15227 Filed 8–1–05; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 335

RIN 3064–AC88

Securities of Nonmember Insured Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule amending part 335 of its regulations with one nonsubstantive change from the interim final rule published on March 31, 2005, in the **Federal Register** (see 70 FR 16398). The final rule adopts amendments to the FDIC's securities disclosure regulations applicable to state nonmember banks with securities required to be registered under section 12 of the Securities Exchange Act of 1934 (Exchange Act). The final rule reflects amendments to the Securities Exchange Act of 1934 made by the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act), and accommodates certain operational changes within the FDIC. The rule also incorporates through cross reference changes in regulations adopted by the Securities Exchange and Commission (SEC) into the provisions of the FDIC's securities regulations. Incorporation by reference will assure that the FDIC's regulations remain substantially similar to the SEC's regulations, as required by law.

DATES: These amendments are effective on August 2, 2005.

FOR FURTHER INFORMATION CONTACT: Dennis Chapman, Senior Staff Accountant, Division of Supervision and Consumer Protection, (202) 898–8922; Mary Frank, Senior Financial Analyst, Division of Supervision and

Consumer Protection, (202) 898–8903; or Mark G. Flanigan, Counsel, Legal Division, (202) 898–7426, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Section 12(i) of the Exchange Act, as amended (15 U.S.C. 78l(i)), authorizes the FDIC to issue regulations applicable to the securities of state nonmember banks that are substantially similar to those of the SEC with respect to its powers, functions, and duties to administer and enforce sections 10A(m) (standards relating to audit committees), 12 (securities registration), 13 (periodic reporting), 14(a) (proxies and proxy solicitation), 14(c) (information statements), 14(d) (tender offers), 14(f) (arrangements for changes in directors), and 16 (beneficial ownership and reporting) of the Exchange Act, and sections 302 (corporate responsibility for financial reports), 303 (improper influence on conduct of audits), 304 (forfeiture of certain bonuses and profits), 306 (insider trades during blackout periods), 401(b) (disclosure of pro forma financial information), 404 (management assessment of internal controls), 406 (code of ethics for senior financial officers), and 407 (disclosure of audit committee financial expert) of the Sarbanes-Oxley Act (codified at 15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265), in regard to the depository institutions for which it is the primary Federal regulator. These regulations must be substantially similar to the regulations of the SEC under the listed sections of the Exchange Act and the Sarbanes-Oxley Act, unless the FDIC publishes its reasons for deviating from the SEC's rules. The amendments to this part incorporate amendments to the Exchange Act, and changes to the SEC regulations that the FDIC is required to administer and enforce with respect to registered state nonmember banks, including the adoption of Regulation FD (Fair Disclosure).

In addition, certain changes to delegations of authority in part 335 result from FDIC's internal merger of the former Division of Supervision and the former Division of Compliance and Consumer Affairs into the Division of Supervision and Consumer Protection. The reorganization also created area offices in Memphis, Tennessee, and Boston, Massachusetts, in place of regional offices in those cities, and title changes for officials in the FDIC headquarters and other offices.

II. Interim Final Rule and Request for Comments

On March 31, 2005, the FDIC published in the **Federal Register** (70 FR 16398) an interim final rule which reflected amendments to the Exchange Act made by the Sarbanes-Oxley Act, and incorporated by cross reference changes in regulations adopted by the SEC into the provisions of the FDIC's securities regulations. The interim final rule also made certain technical amendments to part 335. The FDIC requested comments on all aspects of the rule changes, with comments due by May 31, 2005, the date the interim final rule took effect. Commenters were asked to support any suggestions that the FDIC modify the requirements of the SEC rules, regulations and forms for state nonmember banks by demonstrating how such modification would satisfy the requirements of section 12(i) of the Exchange Act. The FDIC also welcomed comments on the general organization of part 335.

One comment letter was filed on the interim final rule. The commenter, a banker, raised two separate comments regarding provisions of the interim final rule. The FDIC considered each point.

The first comment is that the FDIC's cross reference in section 335.121 (Listing standards related to audit committees) incorporating the SEC's regulation under section 10(A)(m) of the Exchange Act, codified at 17 CFR 240.10A–3, is duplicative. Section 12(i) of the Exchange Act specifically gives the appropriate bank regulatory agencies the powers, functions, and duties to administer and enforce section 10A(m) of the Exchange Act with respect to the institutions under their supervision. While the FDIC has the ability under section 12(i) of the Exchange Act to issue additional or different regulations compared to those of the SEC, the FDIC generally believes that cross referencing the regulations of the SEC simplifies the administration and enforcement of the Exchange Act. It also helps promote uniformity and consistency of administration. Therefore, the FDIC is retaining the direct cross reference to 17 CFR 240.10A–3 in 12 CFR 335.121.

The second comment is that the FDIC's incorporation of SEC Regulation FD (Fair Disclosure) in section 335.221(d) under the heading ''Forms for registration of securities and similar matters'' may not be the most appropriate placement for this cross reference. The commenter suggested that the FDIC give the item its own section within part 335 to make it more prominent and easily recognizable to bankers and their counsel. The FDIC recognizes the concern for making the cross reference to Regulation FD more prominent, and is changing the heading of section 335.221 from its current title to ''Forms for registration of securities; optional forms for small business issuers; and incorporation of Regulation FD (Fair Disclosure).'' The FDIC considers this change in section heading to be a nonsubstantive technical change.

III. Section by Section Analysis

Part 335 is being amended throughout to reflect the addition of section 10A(m) of the Exchange Act and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act to those sections that the FDIC is currently required to administer and enforce under section 12(i) of the Exchange Act.

Section 335.101(b) is amended to clarify that part 335 generally incorporates through cross reference the regulations of the SEC as these regulations are routinely issued, revised, or updated from time to time by the SEC under sections 10A(m), 12, 13, 14, and 16 of the Exchange Act and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act, except as provided at section 335.801 of this part.

New section 335.121 (Listing standards relating to audit committees) specifically incorporates by reference the SEC rule 10A–3 (17 CFR 240.10A–3), adopted pursuant to section 10(A)(m) of the Exchange Act and section 301 of the Sarbanes-Oxley Act, which prohibits any national securities exchange and national securities association from listing the securities of an issuer that fails to comply with specific audit committee requirements including member independence, oversight, complaint procedures, engagement of counsel and other advisors, and funding.

Section 335.201 (Securities exempted from registration) and section 335.261 (Exemptions; terminations and definitions) add SEC Rule 12h–5 (Exemption for subsidiary issuers of guaranteed securities and subsidiary guarantors) (17 CFR 240.12h–5)

Section 335.211 (Registration and reporting) adds SEC Rule 17 CFR 240.12b–37 (Satisfaction of filing requirements).

Section 335.221 (Forms for registration of securities; optional forms for small business issuers; and incorporation of Regulation FD (Fair Disclosure)) adds new paragraph (d) to adopt the requirements of SEC Regulation FD (Fair Disclosure) (17 CFR 243.100 through 243.103), which is designed to address problems of selective disclosure of material information by reporting entities. The

section heading is also being revised to explicitly reference Regulation FD.

Section 335.331 (Acquisition statements, acquisition of securities by issuers, and other matters) is amended to add SEC Rule 13k–1 (Foreign bank exemption from the insider lending prohibition under section 13(k) of the Exchange Act) (17 CFR 240.13k–1) and to change the title.

Section 335.801 (Inapplicable SEC regulations; FDIC substituted regulations; additional information) is amended to add section 10A(m) of the Exchange Act and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act.

Section 335.901 (Delegation of authority to act on matters with respect to disclosure laws and regulations) is amended to reflect certain changes in the organizational structure of the FDIC and to shorten the section heading.

IV. Regulatory Analysis and Procedure

a. Administrative Procedure Act

Public Comment Waiver and Effective Date: Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b) (APA), the FDIC found good cause to issue the interim final rule without first seeking public comment. Section 553(b) of the APA does not apply to rules of agency organization, procedure, or practice, or when the agency for good cause finds that notice and public comment on the rules being promulgated are impractical or unnecessary. The Exchange Act requires that the FDIC issue regulations substantially similar to those of the SEC or publish its reasons for not doing so. Certain portions of 12 CFR 335 that are being amended are organizational; other portions result from amendments to section 12(i) of the Exchange Act or the adoption of regulations by the SEC that were published in proposed form by the SEC. For these reasons, the FDIC confirms its finding that providing notice and an opportunity for public comment on these rules is unnecessary. Nonetheless, the FDIC solicited public comment on the interim final rule and has fully considered the comments that were filed.

As authorized by section 553(d) of the APA, the FDIC finds that there is good cause for this final rule to take effect immediately upon publication in the **Federal Register**. With the exception of the change in the section heading of section 335.221, the final rule is identical to the interim final rule which became effective on May 31, 2005. No purpose would be served by delaying the rule's effective date.

b. Paperwork Reduction Act

This rule contains no new collections of information as defined by the Paperwork Reduction Act.

c. Regulatory Flexibility Act

A regulatory flexibility analysis is required only when the agency must publish a notice of proposed rulemaking (5 U.S.C. 603, 604). Because the revisions to part 335 were published as an interim final rule without a notice of proposed rulemaking, no regulatory flexibility analysis is required.

d. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*) (SBREFA) provides generally for agencies to report rules to Congress and for Congress to review these rules. The reporting requirement is triggered in instances where the FDIC issues a final rule as defined by the Administrative Procedure Act (APA). Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA.

List of Subjects in 12 CFR Part 335

Accounting, Banks, Banking, Confidential business information, Reporting and recordkeeping requirements, Securities.

■ The Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 335 to Title 12 of the Code of Federal Regulations as follows:

PART 335—SECURITIES OF NONMEMBER INSURED BANKS

■ 1. The authority citation for part 335 continues to read as follows:

Authority: 12 U.S.C. 1819; 15 U.S.C. 78l(i), 78m, 78n, 78p, 78w, 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265.

■ 2. Section 335.101 is amended by revising paragraph (b) to read as follows:

§ 335.101 Scope of part, authority, and OMB control number.

* * * * *

(b) Part 335 generally incorporates through cross reference the regulations of the SEC as these regulations are issued, revised, or updated from time to time under sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act), except as provided at § 335.801 of this part. References to the Commission in the regulations of the SEC are deemed to refer to the FDIC unless the context otherwise requires.

■ 3. Section 335.121 is revised to read as follows:

§ 335.121 Listing standards related to audit committees.

The provisions of the applicable SEC regulation under section 10(A)(m) of the Exchange Act shall be followed as codified at 17 CFR 240.10A–3.

■ 4. Section 335.201 is revised to read as follows:

§ 335.201 Securities exempted from registration.

Persons generally subject to registration requirements under Exchange Act section 12 and subject to this part shall follow the applicable and currently effective SEC regulations relative to exemptions from registration issued under sections 3 and 12 of the Exchange Act as codified at 17 CFR 240.3a12–1 through 240.3a12–11, 240.12a–4 through 240.12a–9, and 240.12g–1 through 240.12h–5.

■ 5. Section 335.211 is revised to read as follows:

§ 335.211 Registration and reporting.

Persons with securities subject to registration under Exchange Act sections 12(b) and 12(g), required to report under Exchange Act section 13, and subject to this part shall follow the applicable and currently effective SEC regulations issued under section 12(b) of the Exchange Act as codified at 17 CFR 240.12b–1 through 240.12b–37.

■ 6. Section 335.221 is amended by revising the section heading and by revising paragraph (d) to read as follows:

§ 335.221 Forms for registration of securities; optional forms for small business issuers; and incorporation of Regulation FD (Fair Disclosure).

* * * * *

(d) The provisions of the applicable and currently effective SEC regulation FD shall be followed as codified at 17 CFR 243.100 through 243.103.

■ 7. Section 335.261 is revised to read as follows:

§ 335.261 Exemptions; terminations; and definitions.

The provisions of the applicable and currently effective SEC regulations under sections 12(g) and 12(h) of the Exchange Act shall be followed as codified at 17 CFR 240.12g–1 through 240.12h–5.

■ 8. Section 335.331 is revised to read as follows:

§ 335.331 Acquisition statements, acquisition of securities by issuers, and other matters.

The provisions of the applicable and currently effective SEC regulations

under sections 13(d) and 13(e) of the Exchange Act shall be followed as codified at 17 CFR 240.13d–1 through 240.13e–102 and 240.13k–1.

■ 9. Section 335.801 is amended by revising paragraph (a) to read as follows:

§ 335.801 Inapplicable SEC regulations; FDIC substituted regulations; additional information.

(a) *Filing fees.* Filing fees will not be charged relative to any filings or submissions of materials made with the FDIC pursuant to the cross reference to regulations of the SEC issued under sections 10A(m), 12, 13, 14, and 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78), sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265), and this part.

* * * * *

■ 10. Section 335.901 is amended by revising the section heading and paragraph (a) as follows:

§ 335.901 Delegation of authority to act on matters with respect to disclosure laws and regulations.

(a) Except as provided in paragraph (b) of this section, authority is delegated to the Director, Division of Supervision and Consumer Protection (DSC), and where confirmed in writing by the director, to a deputy director or an associate director, or to the appropriate regional director or deputy regional director or area director, to act on disclosure matters under and pursuant to sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78), sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265), and this part.

* * * * *

Dated at Washington, DC, this 19th day of July, 2005.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–15107 Filed 8–1–05; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20111; Directorate Identifier 2004–NM–154–AD; Amendment 39–14207; AD 2005–16–02]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model HS.125 Series 700A Airplanes, Model BAe.125 Series 800A Airplanes, and Model Hawker 800 and Hawker 800XP Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Raytheon Model HS.125 series 700A airplanes, Model BAe.125 series 800A airplanes, and Model Hawker 800 and Hawker 800XP airplanes. This AD requires inspecting to determine the current rating of the circuit breakers of certain cockpit ventilation and avionics cooling system blowers; and replacing the circuit breakers and modifying the blower wiring, as applicable. This AD results from a report indicating that a blower motor seized up and gave off smoke. We are issuing this AD to prevent smoke and fumes in the cockpit in the event that a blower motor seizes and overheats due to excessive current draw.

DATES: Effective September 6, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 6, 2005.

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

Contact Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer, Electrical Systems Branch, ACE–119W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Raytheon Model HS.125 series 700A airplanes, Model BAe.125 series 800A airplanes, and Model Hawker 800 and Hawker 800XP airplanes. That supplemental NPRM was published in the **Federal Register** on May 9, 2005 (70 FR 24341). That supplemental NPRM proposed to require inspecting to determine the current rating of the circuit breakers of certain cockpit ventilation and avionics cooling system blowers; and replacing the circuit breakers and modifying the blower wiring, as applicable.

Comments

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

Conclusion

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

Costs of Compliance

There are about 350 airplanes of the affected design in the worldwide fleet. This AD will affect about 250 airplanes of U.S. registry. The required inspection will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of this AD on U.S. operators is $16,250, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–16–02 Raytheon Aircraft Company: Amendment 39–14207. Docket No. FAA–2005–20111; Directorate Identifier 2004–NM–154–AD.

Effective Date

(a) This AD becomes effective September 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Raytheon Model HS.125 series 700A airplanes, BAe.125 series 800A airplanes, and Model Hawker 800 and Hawker 800XP airplanes; certificated in any category; equipped with Brailsford TBL–2.5 blowers; as identified in Raytheon Service Bulletin SB 24–3272, Revision 1, dated October 2000.

Unsafe Condition

(d) This AD results from a report indicating that a cockpit ventilation and avionics cooling system blower motor seized up and gave off smoke. We are issuing this AD to prevent smoke and fumes in the cockpit in the event that a blower motor seizes and overheats due to excessive current draw.

Compliance

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

Inspection and Corrective Actions

(f) Within 600 flight hours or 6 months after the effective date of this AD, whichever occurs first, inspect to determine the current rating of the circuit breakers of certain cockpit ventilation and avionics cooling system blowers; and, before further flight, replace the circuit breakers and modify the blower wiring, as applicable; by doing all the actions in accordance with the Accomplishment Instructions of Raytheon Service Bulletin SB 24–3272, Revision 1, dated October 2000; except as provided by paragraphs (g) and (h) of this AD.

Contacting the Manufacturer

(g) Where the service bulletin specifies contacting the manufacturer for information if any difficulties are encountered while accomplishing the service bulletin, this AD requires you to contact the Manager, Wichita Aircraft Certification Office (ACO), FAA.

No Reporting Requirement

(h) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include this requirement.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Wichita ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(j) You must use Raytheon Service Bulletin SB 24–3272, Revision 1, dated October 2000, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085, 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 July 21, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15011 Filed 8–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20595; Directorate Identifier 2004–NM–149–AD; Amendment 39–14208; AD 2005–16–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–7–100, DHC–7–101, DHC–7–102, and DHC–7–103 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model DHC–7–100, DHC–7–101, DHC–7–102, and DHC–7–103 airplanes. This AD requires revising the Airworthiness Limitations section of the Instructions of Continued Airworthiness to include a new, lower life limit for lower wing skins. This AD results from the discovery that, during the manufacture of the lower wing skins, score marks may have been accidentally inscribed around the edge of the lower wing skin doublers. We are issuing this AD to prevent fatigue cracks from developing at the score marks in the lower wing skins, which could result in the structural failure of the wing.

DATES: Effective September 6, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 6, 2005.

ADDRESSES: You may examine the AD docket on the Internet at *http://*

dms.dot.gov or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: David Lawson, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7327; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Bombardier Model DHC–7–100, DHC–7–101, DHC–7–102, and DHC–7–103 airplanes. That NPRM was published in the **Federal Register** on March 15, 2005 (70 FR 12614). That NPRM proposed to require revising the Airworthiness Limitations section of the Instructions of Continued Airworthiness to include a new lower life limit for lower wing skins.

Comments

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

Explanation of Change to Applicability

We have revised the applicability of the NPRM to identify model designations as published in the most recent type certificate data sheet for the affected models.

Explanation of Correction to Paragraph (h)

We have revised paragraph (h) of this AD to include reference to paragraph (g). Reference to that paragraph was inadvertently omitted from the NPRM.

Conclusion

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

Costs of Compliance

This AD will affect about 3 airplanes of U.S. registry. The revision of the Airworthiness Limitations section will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $195, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–16–03 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–14208. Docket No. FAA–2005–20595; Directorate Identifier 2004–NM–149–AD.

Effective Date

(a) This AD becomes effective September 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–7–100, DHC–7–101, DHC–7–102, and DHC–7–103 airplanes, serial numbers 3 through 10 inclusive, 12 through 14 inclusive, and 16 through 27 inclusive; certificated in any category.

Note 1: This AD requires revision to a certain operator maintenance document to include a new replacement time. Compliance with this replacement time is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this replacement time, the operator may not be able to accomplish the replacement described in the revision. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (i) of this AD. The request should include a description of changes to the required replacement time that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Unsafe Condition

(d) This AD is prompted by the discovery that, during the manufacture of the lower wing skins, score marks may have been accidentally inscribed around the edge of the

lower wing skin doublers. We are issuing this AD to prevent fatigue cracks from developing at the score marks in the lower wing skins, which could result in the structural failure of the wing.

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.

Revise the Airworthiness Limitations (AWL) Section—New Life Limit

(f) Within 30 days after the effective date of this AD, revise the AWL section of the Instructions for Continued Airworthiness to incorporate new life limits for the lower wing skins by incorporating Bombardier Temporary Revision (TR) 5–103, dated March 26, 2004, to the Bombardier Dash 7 Series 100 Maintenance Manual, PSM 1–7–2, into the AWL section.

(g) When the contents of Bombardier TR 5–103, dated March 26, 2004, have been included in the general revisions of the AWL section, the general revisions may be incorporated into the AWL section, and the TR may be removed from the AWL section.

(h) After the actions specified in paragraphs (f) and (g) of this AD have been accomplished, no alternative life limits may be approved for the lower wing skins, except as provided in paragraph (i) of this AD.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(j) Canadian airworthiness directive CF–2004–12, dated June 28, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use Bombardier Temporary Revision 5–103 to Chapter 5–10–11 of the Bombardier Dash 7 Series 100 Maintenance Manual, PSM 1–7–2, dated March 26, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, 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 July 21, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15012 Filed 8–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20661; Directorate Identifier 2004–NM–261–AD; Amendment 39–14206; AD 2005–16–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200B, 747–300, 747–400, and 747–400D Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 747–200B, 747–300, 747–400, and 747–400D series airplanes. This AD requires modifying the lateral shear beam for the Door 5 crew rest and, for certain airplanes, replacing Zone E tie rods and modifying the Zone E stowbin ladder. This AD results from a report indicating that the lateral shear beam for the Door 5 crew rest does not meet the 9G forward loading requirement. We are issuing this AD to prevent the structural support for the Door 5 crew rest and Zone E stowbins from failing, which could result in the crew rest or stowbins falling during an emergency and consequent injury to crew and passengers.

DATES: This AD becomes effective September 6, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 6, 2005.

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

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

FOR FURTHER INFORMATION CONTACT: Don Wren, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6451; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section. This docket number is FAA–2005–20661; the directorate identifier for this docket is 2004–NM–261–AD.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 747–200B, 747–300, 747–400, and 747–400D series airplanes. That NPRM was published in the **Federal Register** on March 22, 2005 (70 FR 14428). That NPRM proposed to require modifying the lateral shear beam for the Door 5 crew rest and, for certain airplanes, replacing the Zone E tie rods and modifying the Zone E stowbin ladder.

Comments

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

Support for the Proposed AD

One commenter, the manufacturer, supports the proposed AD.

Request To Reduce Compliance Time

One commenter requests that the compliance time of 5 years to accomplish the actions specified in the proposed AD be shortened substantially. The commenter states that a 5-year compliance time is too long given that the affected lateral shear beam does not meet the 9G forward loading requirement.

We do not agree. The lateral shear beam has been substantiated to be structurally capable of carrying all flight, gust, and ground loads that may be encountered during normal operations by the subject Model 747–200B, 747–300, 747–400, and 747–400D series airplanes. The 9G forward loading requirement of section 25.561 (''General'') of the Federal Aviation Regulations (14 CFR 25.561) is an emergency landing load condition only

and there is a very low probability that such loads will be encountered.

In developing the compliance time to adequately address the subject unsafe condition, we considered the degree of urgency associated with unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification. In light of all of these factors, we found a compliance time of 60 months for completing the proposed modification to be warranted, in that it allows operators to schedule the modification during a routine heavy check and represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This compliance time was coordinated with the manufacturer. We have not revised the final rule in this regard.

Request To Clarify Applicability

One commenter requests that the applicability be clarified. The commenter suggests adding wording to exclude freighters and special freighters. The commenter notes that the Door 5 crew rest is only applicable to passenger airplanes.

We agree that the proposed AD is applicable only to passenger models equipped with a Door 5 crew rest.

The applicability of the proposed AD includes Model 747–200B, 747–300, 747–400, and 747–400D series airplanes as identified in specific Boeing service bulletins. All of the airplanes identified in these service bulletins are passenger models equipped with a Door 5 crew rest; none of the airplanes identified in the service bulletins are freighters or special freighters. Therefore, it is not necessary to clarify the applicability to exclude freighters and special freighters. We have not revised the final rule in this regard.

Conclusion

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

Costs of Compliance

There are about 424 airplanes of the affected design in the worldwide fleet. This AD will affect about 65 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modification	86–207	$65	$7,095–$37,770	$12,685–$51,225	65	$824,525–$3,329,625

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–16–01 Boeing: Amendment 39–14206. Docket No. FAA–2005–20661; Directorate Identifier 2004–NM–261–AD.

Effective Date

(a) This AD becomes effective September 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Boeing airplanes, certificated in any category, specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Model 747–200B and 747–300 series airplanes identified in Boeing Special Attention Service Bulletin 747–53–2497, dated November 4, 2004.

(2) Model 747–200B and 747–300 series airplanes on which Boeing Service Bulletins 747–25–2716, 747–25–2724, and 747–25–2784 have been done.

(3) Model 747–400 and 747–400D series airplanes identified in Boeing Special Attention Service Bulletin 747–53–2481, dated October 24, 2002.

Unsafe Condition

(d) This AD was prompted by a report that the lateral shear beam for the Door 5 crew rest does not meet the 9G forward loading requirement. We are issuing this AD to prevent the structural support for the Door 5 crew rest and Zone E stowbins from failing, which could result in the crew rest or stowbins falling during an emergency and consequent injury to crew and passengers.

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.

Model 747–200B and 747–300: Modification

(f) Within 60 months after the effective date of this AD, modify the lateral shear beam for the Door 5 crew rest by accomplishing all of the actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2497, dated November 4, 2004.

Model 747–400 and 747–400D: Modification and Replacement

(g) Within 60 months after the effective date of this AD, modify the lateral shear beam for the Door 5 crew rest, replace the Zone E tie rods, and modify the Zone E stowbin ladder, by accomplishing all of the actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2481, dated October 24, 2002.

Alternative Methods of Compliance (AMOCs)

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

Material Incorporated by Reference

(i) You must use Boeing Special Attention Service Bulletin 747–53–2481, dated October 24, 2002; or Boeing Special Attention Service Bulletin 747–53–2497, dated November 4, 2004; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on July 21, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15017 Filed 8–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30453; Amdt. No. 456]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective 0901 UTC, September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–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 part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment 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 95

Airspace, Navigation (air).

Issued in Washington, DC on July 26, 2005.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, January 20, 2005.

PART 95—[AMENDED]

■ 1. The authority citation for part 95 continues to read as follows:

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

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 456 effective date September 1, 2005]

From	To	MEA
§ 95.1001 Direct Routes-U.S. Color Routes		
§ 95.4 Green Federal Airway G1 Is Amended to Read in Part		
Horth, AK FIX *2500—MOCA *5000—GNSS MEA	Mordi, AK FIX	*8000
§ 95.4 Green Federal Airway G8 Is Amended to Read in Part		
Dutch Harbor, AK NDB/DME *5700—MOCA *6000—GNSS MEA	Mordi, AK FIX	*9000
Mordi, AK FIX *5300—MOCA *7000—GNSS MEA	Elfee, AK NDB	*8000

From	To	MEA	MAA
§ 95.4000 High Altitude RNAV Routes			
§ 95.4006 RNAV Route Q6 Is Added to Read			
Talkeetna, AK VOR/DME 18000—GNSS MEA	Jokap, AK FIX		45000
Jokap, AK FIX 18000–GNSS MEA.	Kutde, AK FIX		45000
Kutde, AK FIX 18000—GNSS MEA	Lacil, AK FIX		45000
Lacil, AK FIX 18000—GNSS MEA	Barrow, AK VOR/DME		45000
§ 95.4008 RNAV Route Q8 Is Added to Read			
Anchorage, AK VOR/DME *18000–GNSS MEA	Webik, AK FIX		45000
Webik, AK FIX 18000—GNSS MEA	Galena, AK VORTAC		45000
§ 95.4010 RNAV Route Q10 Is Added to Read			
Kukuliak, AK VOR/DME *18000—GNSS MEA	Emmonak, AK VOR/DME		45000
§ 95.4012 RNAV Route Q12 Is Added to Read			
Kotzebue, AK VOR/DME *18000—GNSS MEA	Deadhorse, AK VOR/DME		45000
§ 95.4014 RNAV Route Q14 Is Added to Read			
Kodiak, AK VORTAC *18000—GNSS MEA	Wuxan, AK FIX		45000
Wuxan, AK FIX 18000—GNSS MEA	Johnstone Point, AK VOR/DME		45000
§ 95.4016 RNAV Route Q16 Is Added to Read			
Kodiak, AK VORTAC 18000—GNSS MEA	Zaxum, AK FIX		45000
Zaxum, AK FIX 18000—GNSS MEA	Middleton Island, AK VOR/DME		45000
§ 95.4017 RNAV Route Q17 Is Added to Read			
Homer, AK VOR/DME 18000—GNSS MEA	Wuxan, AK FIX		45000
Wuxan, AK FIX 18000—GNSS MEA	Middleton Island, AK VOR/DME		45000
§ 95.4018 RNAV Route Q18 Is Added to Read			
Galena, AK VORTAC	Barrow, AK VOR/DME		45000

From	To	MEA	MAA
*18000—GNSS MEA			
§ 95.4104	**RNAV Route Q104 Is Added to Read**		
Cypress, FL VOR/DME *18000—GNSS MEA	Defun, FL FIX	*18000	45000
§ 95.4106	**RNAV Route Q106 Is Added to Read**		
Smelz, FL FIX *18000—GNSS MEA	Gaday, AL FIX	*18000	45000
§ 95.4108	**RNAV Route Q108 Is Added to Read**		
Gaday, AL FIX *18000—GNSS MEA	Clawz, GA FIX	*18000	45000
§ 95.4110	**RNAV Route Q110 Is Added to Read**		
Kpasa, FL FIX *18000—GNSS MEA	Feona, GA FIX	*18000	45000
§ 95.4112	**RNAV Route Q112 Is Added to Read**		
Inpin, FL FIX *18000—GNSS MEA	Defun, FL FIX	*18000	45000
§ 95.4116	**RNAV Route Q116 Is Added to Read**		
Kpasa, FL FIX *18000—GNSS MEA	Ceeya, GA FIX	*18000	45000
§ 95.4118	**RNAV Route Q118 Is Added to Read**		
Kpasa, FL FIX *18000—GNSS MEA	Lenie, GA FIX	*18000	45000
§ 95.4200	**RNAV Route T200 Is Added to Read**		
Foothills, GA VORTAC #Eastbound Expect 5000 Westbound Expect 6000	Riche, SC FIX	#4800	8000
Riche, SC FIX #Eastbound Expect 5000 Westbound Expect 6000	Florence, SC VORTAC	#2500	8000
§ 95.4201	**RNAV Route T201 Is Added to Read**		
Columbia, SC VOTRAC #Northbound Expect 5000 Southbound Expect 6000	Locas, NC FIX	#2500	7000
Locas, NC FIX #Northbound Expect 5000 Southbound Expect 6000	Jotta, NC FIX	#4400	7000
§ 95.4202	**RNAV Route T202 Is Added to Read**		
Riche, SC FIX #Northbound Expect 5000 Southbound Expect 6000	Hustn, NC FIX	#2500	8000
Hustn, NC FIX #Northbound Expect 5000 Southbound Expect 6000	Gants, NC FIX	#2600	8000
§ 95.4203	**RNAV Route T203 Is Added to Read**		
Columbia, SC VORTAC #Northbound Expect 6000 Southbound Expect 7000	Locks, SC FIX	#2500	7000
Locks, SC FIX #Northbound Expect 6000 Southbound Expect 7000	Barretts Mountain, NC VOR/DME	#4900	7000
Barretts Mountain, NC VOR/DME #Northbound Expect 6000 Southbound Expect 7000	Pulaski, VA VORTAC	#6000	7000

From	To	MEA	MAA
§ 95.4219	**RNAV Route T219 Is Added to Read**		
Kipuk, AK VOR/DME	Nanwak, AK NDB/DME	*3000	17500
*2500—MOCA			
§ 95.4222	**RNAV Route T222 Is Added to Read**		
Mount Moffett, AK NDB/DME	St. Paul Island, AK NDB/DME	6000	17500
St. Paul Island, AK NDB/DME	Kipnuk, AK VOR/DME	3000	17500
Kipnuk, AK VOR/DME	BETHEL, AK VORTAC	*3000	17500
*2400—MOCA			
Bethel, AK VORTAC	McGrath, AK VORTAC	5000	17500
McGrath, AK VORTAC	Nenana, AK VORTAC	5000	17500
Nenana, AK VORTAC	Fairbanks, AK VORTAC	*4000	17500
*3200—MOCA			
§ 95.4223	**RNAV Route T223 Is Added to Read**		
Cape Newenham, AK NDB	Dillingham, AK VOR/DME	*5000	17500
Dillingham, AK VOR/DME	Fagin, AK FIX	*5000	17500
Fagin, AK FIX	Nonda, AK FIX	*9000	17500
*8200—MOCA			
Nonda, AK FIX	Bluga, AK FIX	*12000	17500
*11500—MOCA			
*Bluga, AK FIX	Anchorage, AK VOR/DME	**2000	17500
*1400—MOCA			
*8500—MCA Bluga, AK FIX SW BND			
§ 95.4225	**RNAV Route T225 Is Added to Read**		
Hooper Bay, AK VOR/DME	Unalakleet, AK VOR/DME	4000	17500
Unalakleet, AK VOR/DME	Galena, AK VORTAX	5000	17500
Galena, AK VORTAC	Tanana, AK VOR/DME	6000	17500
Tanana, AK VOR/DME	Fairbanks, AK VORTAC	5000	17500
§ 95.4226	**RNAV Route T226 Is Added to Read**		
Johnstonepoint, AK VOR/DME	*Fidal, AK FIX	5000	17500
*7000—MCA Fidal, AK FIX N BND			
Fidal, AK FIX	*Robes, AK FIX	8000	17500
*8900—MCA Robes, AK FIX N BND			
Robes, AK FIX	Klung, AK FIX	10000	17500
*Klung, AK FIX	Gulkana, AK VOR/DME	7000	17500
*7100—MCA Klung, AK FIX S BND			
Gulkana, AK VOR/DME	Dozey, AK FIX	5000	17500
Dozey, AK FIX	*Paxon, AK FIX	**8000	17500
*9500—MCA Paxon, AK FIX N BND			
*7300—MOCA			
Paxon, AK FIX	Donel, AK FIX	*12000	17500
*11500—MOCA			
*Donel, AK FIX	Big Delta, AK VORTAC	7000	17500
*10600—MCA Donel, AK FIX S BND			
Big Delta, AK VORTAC	Hexax, AK FIX	7000	17500
Hexax, AK FIX	Fort Yukon, AK VORTAC	*4000	17500
*3100—MOCA			
§ 95.4227	**RNAV Route T227 Is Added to Read**		
Shemya, AK NDB	Jannt, AK FIX	* 3000	17500
* 2500—MOCA			
Jannt, AK FIX	Mount Moffett, AK NDB/DME	* 7000	17500
6300—MOCA			
Mount Moffett, AK NDB/DME	Dutch Harbor, AK NDB/DME	8000	17500
* Dutch Harbor, AK NDB/DME	Cipim, AK FIX	** 6000	17500
* 5400—MOCA			
* 6600—MCA Dutch Harbor, AK NDB W BND			
Cipim, AK FIX	Elfee, AK NDB	* 3000	17500
* 2500—MOCA			
§ 95.4228	**RNAV Route T228 Is Added to Read**		
Cape Newenham, AK NDB	Kipnuk, AK VOR/DME	3000	17500
Kipnuk, AK VOR/DME	Hooper Bay, AK VOR/DME	* 4000	17500
3500—MOCA			
Hooper Bay, AK VOR/DME	Nome, AK VOR/DME	* 5000	17500

From	To	MEA	MAA
*4400—MOCA			
Nome, AK VOR/DME	Hikax, AK FIX	7000	17500
Hikax, AK FIX	Shishmaref, AK NDB	4000	17500
§ 95.4229	**RNAV Route T229 Is Added to Read**		
Point Hope, AK NDB	Kotzebue, AK VOR/DME	4000	17500
Kotzebue, AK VOR/DME	Selawik, AK VOR/DME	*3000	17500
*2500—MOCA			
Selawik, AK VOR/DME	Huslia, AK VOR/DME	4000	17500
Huslia, AK VOR/DME	Tanana, AK VOR/DME	*6000	17500
*5500—MOCA			
Tanana, AK VOR/DME	Fairbanks, AK VORTAC	5000	17500
§ 95.4230	**RNAV Route T230 Is Added to Read**		
St Paul Island, AK NDB/DME	Saldo, AK NDB	*3000	17500
§ 95.4231	**RNAV Route T231 Is Added to Read**		
Kotzebue, AK VOR/DME	*Zutul, AK FIX	3000	17500
*3500—MCA Zutul, AK FIX E BND			
Zutul, AK FIX	Sigme, AK FIX	6000	17500
Sigme, AK FIX	Fairbanks, AK VORTAC	5000	17500
§ 95.4232	**RNAV Route T232 Is Added to Read**		
Olaru, AK FIX	Northway, AK VORTAC	*6000	17500
*5400—MOCA			
Northway, AK VORTAC	Big Delta, AK VORTAC	8000	17500
Big Delta, AK VORTAC	Fairbanks, AK VORTAC	*5000	17500
*4300—MOCA			
Fairbanks, AK VORTAC	Bettles, AK VOR/DME	*6000	17500
*5200—MOCA			
Bettles, AK VOR/DME	Bronx, AK FIX	9000	17500
Bronx, AK FIX	Barrow, AK VOR/DME	*4000	17500
*1200—MOCA			
§ 95.4233	**RNAV Route T233 Is Added to Read**		
Ambler, AK NDB/DME	Korky, AK FIX	5000	17500
Korky, AK FIX	Encor, AK FIX	7000	17500
Encor, AK FIX	Evansville, AK NDB	5000	17500
§ 95.4234	**RNAV Route T234 Is Added to Read**		
Fairbanks, AK VORTAC	Tollo, AK FIX	5000	17500
Tollo, AK FIX	Rampa, AK FIX	7000	17500
§ 95.4235	**RNAV Route T235 Is Added to Read**		
Atqasuk, AK NDB	Nuiqsut Village, AK NDB	*3000	17500
*1300—MOCA			
§ 95.4236	**RNAV Route T236 Is Added to Read**		
Nenana, AK VORTAC	Rampa, AK FIX	7000	17500
§ 95.4237	**RNAV Route T237 Is Added to Read**		
*Homer, AK VOR/DME	Wuxan, AK FIX	**9000	17500
*4800—MCA Homer, AK VORTAC E BND			
*8500—MOCA			
Wuxan, AK FIX	Middleton Island, AK VOR/DME	*5000	17500
*4100—MOCA			
§ 95.4238	**RNAV Route T238 Is Added to Read**		
Rampa, AK FIX	Bettles, AK VOR/DME	7000	17500
§ 95.4239	**RNAV Route T239 Is Added to Read**		
Gambell, AK NDB/DME	Kukuliak, AK VOR/DME	4000	17500

From	To	MEA	MAA
§ 95.4240	**RNAV Route T240 Is Added to Read**		
Evansville, AK NDB	Namre, AK FIX	*10000	17500
*9500—MOCA			
Namre, AK FIX	Deadhorse, AK VOR/DME	4000	17500
§ 95.4241	**RNAV Route T241 Is Added to Read**		
Latch, AK FIX	Level Island, AK VOR/DME	5000	17500
§ 95.4242	**RNAV Route T242 Is Added to Read**		
*Talkeetna, AK VOR/DME	JOKAP, AK FIX	**16000	17500
*12100—MCA Talkeetna, AK VOR/DME N BND			
*15300—MOCA			
*Jokap, AK FIX	Kutde, AK FIX	6000	17500
*11500—MCA Jokap, AK FIX S BND			
Kutde, AK FIX	Lacil, AK FIX	*15000	17500
*9400—MOCA			
Lacil, AK FIX	Barrow, AK VOR/DME	*8000	17500
*1800—MOCA			
§ 95.4244	**RNAV Route T244 Is Added to Read**		
Anchorage, AK VOR/DME	*Cakad, AK FIX	**2000	17500
*3500—MCA Cakad, AK FIX NW BND			
*1400—MOCA			
Cakad, AK FIX	*CEXIX, AK FIX	5000	17500
*7400—MCA Cexix, AK FIX NW BND			
Cexix, AK FIX	Betpe, AK FIX	10000	17500
*Betpe, AK FIX	Cheff, AK FIX	6000	17500
*7400—MCA Betpe, AK FIX SE BND			
*Cheff, AK FIX	Confi, AK FIX	5000	17500
*5300—MCA Cheff, AK FIX SE BND			
Confi, AK FIX	Nome, AK VOR/DME	3000	17500
§ 95.4246	**RNAV Route T246 Is Added to Read**		
Anchorage, AK VOR/DME	Webik, AK FIX	9000	17500
*8500—MOCA			
Webik, AK FIX	Galena, AK VORTAC	6000	17500
*5500—MOCA			
§ 95.4248	**RNAV Route T248 Is Added to Read**		
Kukuliak, AK VOR/DME	Bicap, AK FIX	4000	17500
*Bicap, AK FIX	Emmonak, AK VOR/DME	2000	17500
*3000—MCA W BND AT BICAP, AK FIX			
§ 95.4250	**RNAV Route T250 Is Added to Read**		
Bethel, AK VORTAC	Banat, AK FIX	2000	17500
BANAT, AK FIX	Kukuliak, AK VOR/DME	4000	17500
§ 95.4252	**RNAV Route T252 Is Added to Read**		
Kotzebue, AK VOR/DME	Perci, AK FIX	3000	17500
Perci, AK FIX	Warrt, AK FIX	7000	17500
Warrt, AK FIX	Deadhorse, AK VOR/DME	3000	17500
§ 95.4256	**RNAV Route T256 Is Added to Read**		
Galena, AK VORTAC	*Meese, AK FIX	3000	17500
*4800—MCA MEESE, AK FIX N BND			
Meese, AK FIX	Nitti, AK FIX	6000	17500
Nitti, AK FIX	Pannt, AK FIX	8000	17500
Pannt, AK FIX	Osson, AK FIX	5000	17500
Osson, AK FIX	Barrow, AK VOR/DME	*4000	17500
*1700—MOCA			
§ 95.4258	**RNAV Route T258 Is Added to Read**		
Shishmaref, AK NDB	Point Hope, AK NDB	2000	17500

From	To	MEA	MAA
§ 95.4260 RNAV Route T260 Is Added to Read			
Tin City, AK NDB/DME	Cognu, AK FIX	*5000	17500
*4300—MOCA			
Cognu, AK FIX	Point Hope, AK NDB	*3000	17500
*2200—MOCA			
§ 95.4262 RNAV Route T262 Is Added to Read			
Kodiak, AK VORTAC	*Wuxan, AK FIX	6000	17500
*5200—MCA WUXAN, AK FIX E BND			
*3800—MOCA			
Wuxan, AK FIX	Johnstone Point, AK VOR/DME	7000	17500
§ 95.4264 RNAV Route T264 Is Added to Read			
Kodiak, AK VORTAC	Zaxum, AK FIX	*6000	17500
*4000—MOCA			
Zaxum, AK FIX	Middleton Island, AK VOR/DME	*3000	17500
*2200—MOCA			
§ 95.4266 RNAV Route T266 Is Added to Read			
Fredericks Point, AK NDB	Coghlan Island, AK NDB	**7000	17500
*6300—MOCA			
§ 95.4268 RNAV Route T268 Is Added to Read			
Nichols, AK NDB	Fredericks Point, AK NDB	6000	17500
§ 95.4270 RNAV Route T270 Is Added to Read			
Norton Bay, AK NDB	Hexog, AK FIX	*6000	17500
*5400—MOCA			
Hexog, AK FIX	Shishmaref, AK NDB	5000	17500

From	To	MEA
§ 95.6001 VICTOR Routes—U.S.		
§ 95.6002 VOR Federal Airway V2 Is Amended to Read in Part		
Mullan Pass, ID VOR/DME	Alton, MT FIX	*9600
*9000—MOCA		
Missoula, MT VOR/DME	Helena, MT VORTAC	*13000
*10300—MOCA		
§ 95.6021 VOR Federal Airway V21 Is Amended to Read in Part		
Dubois, ID VORTAC	Dillon, MT VOR/DME	*12000
*11200—MOCA		
§ 95.6142 VOR Federal Airway V142 Is Amended to Read in Part		
Malad City, ID VOR/DME	*Orney, UT FIX	10000
*11100—MCA Orney, UT FIX, E BND		
Orney, UT FIX	Fort Bridger, WY VOR/DME	12000
§ 95.6187 VOR Federal Airway V187 Is Amended to Read in Part		
Abarn, MT FIX	Missoula, MT VOR/DME	*13000
*11400—MOCA		
§ 95.6257 VOR Federal Airway V257 Is Amended to Read in Part		
Dubois, ID VORTAC	Dillon, MT VOR/DME	*12000
*11200—MOCA		
Coppertown, MT VOR/DME	Glues, MT FIX	9200
Glues, MT FIX	Scaat, MT FIX	*16000
*9200—MOCA		
Woken, MT FIX	Great Falls, MT VORTAC	8800
§ 95.6343 VOR Federal Airway V343 Is Amended to Read in Part		
Raney, MT FIX	*Gatey, MT FIX	.....
	S BND	14000

From	To	MEA
*11500—MCA Gatey, MT FIX, S BND	N BND	10200

From	To	Changeover Points	
		Distance	From
§ 95.8003 VOR Federal Airway Changeover Points Airway Segmement Is Amended to Modify Changeover Point			
Great Falls, MT VORTAC	Missoula, MT VOR/DME	84	Great Falls

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OGC–2004–0004; FRL–7947–3]

RIN 2060–AM83

National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On October 13, 2004, the EPA issued amendments to the national emission standards for coke oven pushing, quenching, and battery stacks as a direct final rule, along with a parallel proposal to be used as a basis for final action in the event we received any adverse comments. Because an adverse comment was received on the provisions related to operation and maintenance requirements, we have previously withdrawn the corresponding part of the direct final rule. After considering the comment, EPA is promulgating the provisions that were withdrawn based on the proposed rule published on October 13, 2004.

EFFECTIVE DATE: August 2, 2005.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OGC–2004–0004. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy form at the Air and Radiation Docket, Docket ID No. OGC–2004–0004, EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Bob Schell, Emission Standards Division (C439–02), Office of Air Quality Planning and Standards, EPA, Research Triangle Park, NC 27711, telephone number (919) 541–4116, e-mail address *schell.bob@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS code [1]	Examples of regulated entities
Industry	331111, 324199	Coke plants and integrated iron and steel mills.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.7281 of the national emission standards for hazardous air pollutants (NESHAP) for coke ovens: pushing, quenching, and battery stacks. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web. In addition to being available in the docket, an electronic copy of today's final rule amendments will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the final rule amendments will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by October 3, 2005. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule amendments that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Under CAA section 307(b)(2), the requirements established by the final rule amendments may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. Background
II. Summary of the Final Rule Amendments
III. Response to Comments on the Proposed Amendments to the NESHAP for Coke Oven Pushing, Quenching, and Battery Stacks

IV. Summary of Environmental, Energy, and Economic Impacts
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Background

On April 14, 2003 (68 FR 18008), EPA issued the NESHAP for pushing, quenching, and battery stacks at new and existing coke oven batteries (40 CFR part 63, subpart CCCCC). The NESHAP implement section 112(d) of the CAA by requiring all major sources to meet emission standards for hazardous air pollutants reflecting application of the maximum achievable control technology.

After publication of the NESHAP, the American Iron and Steel Institute (AISI)/American Coke and Coal Chemicals Institute (ACCCI) Coke Oven Environmental Task Force (COETF) filed a petition for review challenging the final rule (*AISI/ACCCI Coke Oven Environmental Task Force* v. *U.S. Environmental Protection Agency*, No. 03–1167, D.C. Cir.). The petitioners raised issues concerning:

- The provisions requiring owners or operators of coke plants having a pushing emission control device to install, operate and maintain devices to monitor daily average fan motor amperes (or volumetric flow rate at the inlet of the control device and maintain daily average volumetric flow rate) at or above minimum levels established during initial performance tests. These provisions are included in 40 CFR 63.7290, 63.7323(c), 63.7326(a)(4), 63.7330(d), 63.7331(g) and (h), and 63.7333(d).
- The provisions requiring monthly inspections of pressure sensors, dampers, damper switches and other equipment important to the performance of the total emissions capture system which also require that a facility's operation and maintenance plan include requirements to repair any defect or deficiency in the capture system before the next scheduled inspection. These provisions are included in 40 CFR 63.7300(c)(1).

Amendments developed to resolve these concerns were set out in attachment A to a proposed settlement agreement between EPA and COETF. In accordance with CAA section 113(g), we published a notice of the proposed settlement agreement (69 FR 31372, June 3, 2004) and provided a 30-day comment period which ended July 6, 2004. We received no comments on the proposed settlement agreement.

On October 13, 2004, we issued a direct final rule (69 FR 60813) and a parallel proposal (69 FR 60837) to amend the NESHAP. We stated in the preamble to the direct final rule and parallel proposal that if we received significant adverse comments by November 12, 2004 (or by November 29, 2004 if a public hearing was requested), we would publish a timely withdrawal in the **Federal Register** indicating which provisions would become effective and which provisions would be withdrawn due to adverse comment. We subsequently received an adverse comment from one commenter on the provisions related to the operation and maintenance requirements and withdrew the amendments to 40 CFR 63.7300(c)(1) on January 10, 2005 (70 FR 1670). The remaining provisions, for which we did not receive any adverse comments, became effective on January 11, 2005. After full and careful consideration of the comment, we are promulgating the amendments previously withdrawn based on the parallel proposal published on October 13, 2004.

II. Summary of the Final Rule Amendments

The final rule amendments affect the requirement in 40 CFR 63.7300(c)(1) for the repair of any defect or deficiency in the capture system before the next scheduled inspection. In the event a defect or deficiency is found in the capture system (during a monthly inspection or between inspections), the final rule amendments require the plant owner or operator to complete repairs within 30 days after the date that the defect or deficiency is discovered. If the repairs cannot be completed within 30 days, the plant owner or operator must submit a written request to the permitting authority for an extension of time to complete the repairs. The permitting authority must receive the request no more than 20 days after the date that the defect or deficiency is discovered. The request must contain a description of the defect or deficiency, the steps needed and taken to correct the problem, the interim steps being taken to mitigate the emissions impact of the defect or deficiency, and a proposed schedule for completing the repairs. The request is deemed approved unless and until such time as the permitting authority notifies the plant owner or operator that it objects to the request. The permitting authority may consider all relevant factors in deciding whether to approve or deny the request (including feasibility and safety). Each approved schedule must provide for completion of repairs as expeditiously as practicable, and the permitting authority may request modifications to the proposed schedule as part of the approval process.

We are also making a minor technical clarification to the sampling procedures in 40 CFR 63.7322(b)(2). This clarification is simply that the minimum sample volume is measured as ''dry standard'' cubic feet.

III. Response to Comments on the Proposed Amendments to the NESHAP for Coke Oven Pushing, Quenching, and Battery Stacks

We received one significant adverse comment on the amendments contained in the parallel proposal published on October 13, 2004. The commenter objected to the proposed requirement that would have allowed the owner or operator an additional 30 days (a total of 60 days) to repair a defect in the capture system applied to pushing emissions. The commenter stated that EPA had many years of experience in reviewing malfunction reports and suggested that any such extension be restricted to specific defects and historical repair times.

We reviewed the proposal and discussed in detail with coke plant operators the types of defects that might require 60 days to repair and their frequency of occurrence. Such defects occur very infrequently and are usually related to structural problems that require an engineering evaluation, scheduling a contractor to make the repairs, and coordinating with the plant's production schedule to allow the repair to be made safely. It is not possible to identify in advance what defects may require more than 30 days, and the events are so infrequent, there is not much historical information on repair times. However, we agree with the commenter in that EPA or the permitting authority should decide when additional time is needed, and that this decision should not be left solely to the discretion of the owner or operator. Consequently, we have revised the operation and maintenance requirement to require the owner or operator to submit a request for approval by the permitting authority for an extension of time to complete a

repair that cannot be completed within 30 days. The request must be received by the permitting authority within 20 days after the defect is first discovered. The owner or operator must provide enough information for the permitting authority to evaluate the request, including a description of the defect, the steps needed and taken to correct the problem, the interim steps being taken to mitigate the emissions impact of the defect, and a proposed schedule for completing the repairs. The permitting authority may approve or disapprove the request or request additional information to aid in the decision.

The commenter also suggested that the owner or operator notify EPA by fax within 24 hours of finding a deficiency with confirmation in writing by mail within 7 days. We do not agree that this notification is necessary because the notification and recordkeeping requirements for startups, shutdowns, and malfunctions (SSM) in 40 CFR 63.6(e) of the General Provisions (40 CFR part 63, subpart A) are in full effect in this case. The specific requirements in these amendments for capture systems as applied to pushing emissions are in addition to the SSM requirements and do not replace them. The SSM notification requirements have been designed to provide the permitting authority with timely and relevant information in the event that all steps in the SSM plan are not implemented. These requirements attempt to strike a balance between providing relevant information and avoiding unnecessary reporting of minor events (*e.g.,* when a malfunction is promptly corrected) that would increase the burden to both the permitting authority and the owner or operator.

IV. Summary of Environmental, Energy, and Economic Impacts

The final rule amendments will have no effect on environmental, energy, or non-air health impacts because none of the changes affect the stringency of the existing emission limits. No costs or economic impacts are associated with the amendments.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12886 and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The costs of the information collection requirements associated with the amendments to the operation and maintenance requirements do not increase the existing burden estimates for the final rule. The OMB has previously approved the information collection requirements in the existing rule (40 CFR part 63, subpart CCCCC) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0521, EPA ICR number 1995.02. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule amendments. For purposes of assessing the impact of today's final rule amendments on small entities, small entity is defined as: (1) A small business, as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities'' (5 U.S.C. 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

We believe there will be a positive impact on small entities because the final rule amendments increase flexibility by providing more time for plants to make repairs that can not be completed within 30 days. These changes are voluntary and do not impose new costs. We have, therefore, concluded that today's final rule amendments will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private

sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any 1 year. No new costs are attributable to the final rule amendments. Thus, the final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the final rule amendments do not significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the final rule amendments are not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected plants are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the final rule amendments.

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

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The final rule amendments do not have tribal implications, as specified in Executive Order 13175. No tribal governments own or operate any plants subject to the NESHAP for coke oven pushing, quenching, and battery stacks. Thus, Executive Order 13175 does not apply to the final rule amendments.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule amendments are not subject to Executive Order 13045 because the final rule (and these amendments) are based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

These final amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 112(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. VCS are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule amendments in the **Federal Register**. A major rule cannot take effect until 60 days after its publication in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The final rule amendments will be effective on August 2, 2005.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous

substances, Reporting and recordkeeping requirements.

Dated: July 26, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart CCCCC—[Amended]

■ 2. Section 63.7300 is amended by removing the third (last) sentence in paragraph (c)(1) and adding in its place six new sentences to read as follows:

§ 63.7300 What are my operation and maintenance requirements?

* * * * *

(c) * * *

(1) * * * In the event a defect or deficiency is found in the capture system (during a monthly inspection or between inspections), you must complete repairs within 30 days after the date that the defect or deficiency is discovered. If you determine that the repairs cannot be completed within 30 days, you must submit a written request for an extension of time to complete the repairs that must be received by the permitting authority not more than 20 days after the date that the defect or deficiency is discovered. The request must contain a description of the defect or deficiency, the steps needed and taken to correct the problem, the interim steps being taken to mitigate the emissions impact of the defect or deficiency, and a proposed schedule for completing the repairs. The request shall be deemed approved unless and until such time as the permitting authority notifies you that it objects to the request. The permitting authority may consider all relevant factors in deciding whether to approve or deny the request (including feasibility and safety). Each approved schedule must provide for completion of repairs as expeditiously as practicable, and the permitting authority may request modifications to the proposed schedule as part of the approval process.

* * * * *

■ 3. Section 63.7322 is amended by revising paragraph (b)(2) to read as follows:

§ 63.7322 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits for particulate matter?

* * * * *

(b) * * *

(2) During each particulate matter test run, sample only during periods of actual pushing when the capture system fan and control device are engaged. Collect a minimum sample volume of 30 dry standard cubic feet of gas during each test run. Three valid test runs are needed to comprise a performance test. Each run must start at the beginning of a push and finish at the end of a push (*i.e.*, sample for an integral number of pushes).

* * * * *

[FR Doc. 05–15217 Filed 8–1–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–5204–23; I.D. 072705A]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,240 nm^2 (4,253 km^2), east of Boston, MA, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours August 4, 2005, through 2400 hours August 18, 2005.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2(1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On July 24, 2005, a commercial whale watch vessel reported a sighting of five right whales in the proximity 42° 22.2′ N. lat. and 70° 28.7′ W. long. This position lies east of Boston, MA. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule.

The DAM Zone is bound by the following coordinates:

42° 41′N., 70° 44′W. (NW Corner) and follow the

Massachusetts coastline southward then northward to

42° 41′N., 70° 39′W.

42° 41′N., 70° 37′W.

42° 41′N., 70° 02′W.

42° 03′N., 70° 02′W.

42° 03′N., 70° 04′W. and follow the Cape Cod coastline westward to

42° 03′N., 70° 13′W.

42° 03′N., 70° 38′W. and follow the coastline northward

and southward to

42° 15′N., 70° 55′W.

42° 28′N., 70° 55′W. and follow the coastline northward and eastward to

42° 41′N., 70° 44′W. (NW Corner)

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: During August, a portion of this DAM zone overlaps the Northeast multispecies year round Western Gulf of Maine Closure Area found at 50 CFR 648.81(i). Due to this closure, sink gillnet gear is prohibited from this portion of the DAM zone.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, Cape Cod Bay Restricted Area, and the Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;

2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. Fishermen are allowed to use two buoy lines per trawl; and

4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;

2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. Fishermen are allowed to use two buoy lines per trawl; and

4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters, Cape Cod Bay Restricted Area, and the Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;

2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. Fishermen are allowed to use two buoy lines per string;

4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends;

5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and

6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours August 4, 2005, through 2400 hours August 18, 2005, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a

take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as the AA approves it, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: July 27, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 05–15220 Filed 7–28–05; 2:31 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030912231–3266–02; I.D. 071905B]

Fisheries of the Northeastern United States; Scup Fishery; Adjustment to the 2005 Winter II Quota

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS adjusts the 2005 Winter II commercial scup quota and possession limit. This action complies with Framework Adjustment 3 (Framework 3) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which established a process to allow the rollover of unused commercial scup quota from the Winter I period to the Winter II period.

DATES: This rule is effective November 1, 2005 through December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279.

SUPPLEMENTARY INFORMATION: NMFS published a final rule in the **Federal Register** on November 3, 2003 (68 FR 62250), implementing a process, for years in which the full Winter I commercial scup quota is not harvested, to allow unused quota from the Winter I period to be added to the quota for the Winter II period, and to allow adjustment of the commercial possession limits for the Winter II period commensurate with the amount of quota rolled over from the Winter I period. Table 5 of the final 2005 quota specifications for summer flounder, scup, and black sea bass (70 FR 303, January 4, 2005) presented detailed information regarding Winter II possession limits, based on the amount of scup to be rolled over from Winter I to Winter II.

For 2005, the Winter II quota is 1,949,962 lb (884,487 kg), and the best available landings information indicates that 2,223,502 lb (1,008,564 kg) remain of the Winter I quota of 5,518,367 lb (2,503,089 kg). Consistent with the intent of Framework 3, the full amount of unused 2005 Winter I quota is transferred to Winter II, resulting in a revised 2005 Winter II quota of 4,173,464 lb (1,893,051 kg). In addition to the quota transfer, the 2005 Winter II

possession limit is increased, consistent with the rollover specifications established in the 2005 final rule (70 FR 303), to 3,500 lb (1,588 kg) per trip to provide an appropriate opportunity for fishing vessels to obtain the increased Winter II quota.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: July 26, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–15222 Filed 8–1–05; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 147
Tuesday, August 2, 2005

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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 363

RIN 3064–AC91

Annual Independent Audits and Reporting Requirements

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing to amend its regulations concerning annual independent audits and reporting requirements, which implement Section 36 of the Federal Deposit Insurance Act (FDI Act). Section 36 and the FDIC's implementing regulations are generally intended to facilitate early identification of problems in financial management at insured depository institutions with total assets above a certain threshold (currently $500 million) through annual independent audits, assessments of the effectiveness of internal control over financial reporting and compliance with designated laws and regulations, and related reporting requirements. Section 36 also includes requirements for audit committees at these insured depository institutions. The FDIC's amendments would raise the asset size threshold from $500 million to $1 billion for internal control assessments by management and external auditors and for the members of the audit committee, who must be outside directors, to be independent of management. As required by section 36, the FDIC has consulted with the other Federal banking agencies. These amendments are proposed to take effect December 31, 2005.

DATES: Comments must be received on or before September 16, 2005.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.
- E-mail: *Comments@FDIC.gov.* Include RIN number in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery/Courier: Guard station at the rear of the 550 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and RIN number for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Harrison E. Greene, Jr., Senior Policy Analyst (Bank Accounting), Division of Supervision and Consumer Protection, at *hgreene@fdic.gov* or (202) 898–8905; or Michelle Borzillo, Counsel, Supervision and Legislation Section, Legal Division, at *mborzillo@fdic.gov* or (202) 898–7400.

SUPPLEMENTARY INFORMATION:

A. Background

Section 112 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) added Section 36, ''Early Identification of Needed Improvements in Financial Management,'' to the FDI Act (12 U.S.C. 1831m). Section 36 is generally intended to facilitate early identification of problems in financial management at insured depository institutions above a certain asset size threshold through annual independent audits, assessments of the effectiveness of internal control over financial reporting and compliance with designated laws and regulations, and related requirements. Section 36 also includes requirements for audit committees at these insured depository institutions. Section 36 grants the FDIC discretion to set the asset size threshold for compliance with these statutory requirements, but it states that the threshold cannot be less than $150 million. Sections 36(d) and (f) also obligate the FDIC to consult with the other Federal banking agencies in implementing these sections of the FDI Act, and the FDIC has performed that consultation requirement.

In June 1993, the FDIC published 12 CFR part 363 (58 FR 31332, June 2, 1993) to implement the provisions of section 36 of the FDI Act. Under part 363, the requirements of section 36 apply to each insured depository institution with $500 million or more in total assets at the beginning of its fiscal year (covered institution). Often referred to as the ''FDICIA reporting requirements,'' part 363 requires each covered institution to submit to the FDIC and other appropriate Federal and state supervisory agencies an annual report that includes audited financial statements, a statement of management's responsibilities, assessments by management of the effectiveness of internal control over financial reporting and compliance with designated laws and regulations, and an auditor's attestation report on internal control over financial reporting. In addition, part 363 provides that each covered institution must establish an independent audit committee of its board of directors comprised of outside directors who are independent of management of the institution. Part 363 also includes Guidelines and Interpretations (Appendix A to part 363), which are intended to assist institutions and independent public accountants in understanding and complying with section 36 and part 363.

A covered institution may satisfy the audited financial statements requirement of part 363 at the holding company level. Subject to certain conditions, the other requirements of part 363 may be satisfied at the holding company level. Members of the independent audit committee of a holding company may serve as the audit committee of a subsidiary covered institution provided they are otherwise independent of the subsidiary's management and meet the other criteria set forth in part 363.

When it adopted part 363 in 1993, the FDIC stated that it was setting the asset size threshold at $500 million rather

than the $150 million specified in section 36 to mitigate the financial burden of compliance with section 36 consistent with safety and soundness. In selecting $500 million in total assets as the size threshold, the FDIC noted that approximately 1,000 of the then nearly 14,000 FDIC-insured institutions would be subject to part 363. These covered institutions held approximately 75 percent of the assets of insured institutions at that time. By imposing the audit, reporting, and audit committee requirements of part 363 on institutions with this percentage of the industry's assets, the FDIC intended to ensure that the Congress's objectives for achieving sound financial management at insured institutions when it enacted section 36 would be focused on those institutions posing the greatest risk to the insurance funds administered by the FDIC. Today, due to consolidation in the banking and thrift industry and the effects of inflation, approximately 1,150 of the 8,900 insured institutions have $500 million or more in total assets and are therefore subject to part 363. These covered institutions hold approximately 90 percent of the assets of insured institutions.

B. Increasing the Asset Size Threshold for Internal Control Assessments

An effective internal control structure is critical to the safety and soundness of each insured institution. Given its importance, internal control is evaluated as part of the supervision of individual institutions and its adequacy is a factor in the management rating assigned to an institution. Furthermore, in the audit of an institution's financial statements, the external auditor must obtain an understanding of internal control, including assessing control risk, and must report certain matters regarding internal control to the institution's audit committee.

An institution subject to part 363 has the added requirement that its management perform an assessment of the internal control structure and procedures for financial reporting and that its external auditor examine, attest to, and report on management's assertion concerning the institution's internal control over financial reporting. For purposes of these internal control provisions of part 363, the FDIC has advised covered institutions that the term ''financial reporting'' includes both financial statements prepared in accordance with generally accepted accounting principles and those prepared for regulatory reporting purposes.[1] Until year-end 2004, external auditors performed their internal control assessments in accordance with an attestation standard issued by the American Institute of Certified Public Accountants (AICPA) known as ''AT 501.''

The Sarbanes-Oxley Act was enacted into law on July 30, 2002. Section 404 of this Act imposes a requirement for internal control assessments by the management and external auditors of all public companies that is similar to the FDICIA requirement. The Securities and Exchange Commission's (SEC) rules implementing these requirements took effect at year-end 2004 for ''accelerated filers,'' i.e., generally, public companies whose common equity has an aggregate market value of at least $75 million, but they will not take effect until 2006 for ''non-accelerated filers.'' For the section 404 auditor attestations, the Public Company Accounting Oversight Board's (PCAOB) Auditing Standard No. 2 (AS 2) applies. AS 2 replaces the AICPA's AT 501 internal control attestation standard for public companies, but AS 2 does not apply to nonpublic companies. The SEC's section 404 rules for management and the provisions of AS 2 for section 404 audits of internal control establish more robust documentation and testing requirements than those that have been applied by covered institutions and their auditors to satisfy the internal control reporting requirements in part 363.

For internal control attestations of nonpublic companies, the AICPA is currently developing proposed revisions to AT 501 that are expected to bring it closer into line with the provisions of AS 2. The revisions also are likely to have the effect of requiring greater documentation and testing of internal control over financial reporting by an institution's management in order for the auditor to perform his or her attestation work.

As the environment has changed and continues to change since the enactment of the Sarbanes-Oxley Act, the FDIC has observed that compliance with the audit and reporting requirements of part 363 has and will continue to become more burdensome and costly, particularly for smaller nonpublic covered institutions. Thus, the FDIC has reviewed the current asset size threshold for compliance with part 363 in light of the discretion granted by Section 36 that permits the FDIC to determine the appropriate size threshold (at or above $150 million) at which insured institutions should be subject to the various provisions of section 36. Based on this review, the FDIC is proposing to amend part 363 to increase the asset size threshold for internal control assessments by management and external auditors from $500 million to $1 billion. Raising the threshold to $1 billion would achieve meaningful burden reduction without sacrificing safety and soundness.

In reaching this decision, the FDIC concluded that raising the $500 million asset size threshold to $1 billion and exempting all institutions below this higher size level from all of the reporting requirements of part 363 would not be consistent with the objective of the underlying statute, i.e., early identification of needed improvements in financial management. In contrast, the FDIC believes that relieving smaller covered institutions from the burden of internal control assessments, while retaining the financial statement audit and other reporting requirements for all institutions with $500 million or more in total assets, strikes an appropriate balance in accomplishing this objective. If the FDIC were to raise the size threshold for internal control assessments to $1 billion, about 600 of the largest insured institutions with approximately 86 percent of industry assets would continue to be covered by the internal control reporting requirements of part 363. At the same time, the managements of covered institutions would remain responsible for establishing and maintaining an adequate internal control structure and procedures for financial reporting, and all institutions with $500 million or more in total assets would continue to include a statement to that effect in their part 363 annual report.

Accordingly, the FDIC is seeking comments on the proposed amendment to part 363 to increase the asset size threshold for internal control assessments by management and external auditors to $1 billion. This amendment is proposed to take effect December 31, 2005. For insured institutions (both public and non-public) with calendar year fiscal years that had $500 million or more in total assets, but less than $1 billion in total assets, on January 1, 2005, this proposal would mean that the part 363 annual report for 2005 that they submit to the FDIC and other appropriate Federal and state supervisory agencies would need to include only audited financial statements, statements of management's

[1] See FDIC Financial Institution Letter (FIL) 86–94, dated December 23, 1994. FIL–86–94 indicates that financial statements prepared for regulatory reporting purposes encompass the schedules equivalent to the basic financial statements in an institution's appropriate regulatory report, e.g., the bank Reports of Conditions and Income and the Thrift Financial Report.

responsibilities, management's assessment of the institution's compliance with designated laws and regulations, and an auditor's report on the financial statements.

For insured depository institutions that are public companies or subsidiaries of public companies, regardless of size, the FDIC's proposed amendment to part 363 would not relieve public companies of their obligation to comply with the internal control assessment requirements imposed by section 404 of the Sarbanes-Oxley Act in accordance with the effective dates for compliance set forth in the SEC's implementing rules.

Nevertheless, the FDIC reminds insured institutions with $1 billion or more in total assets that are public companies or subsidiaries of public companies that they have considerable flexibility in determining how best to satisfy the internal control assessment requirements in the SEC's section 404 rules and the FDIC's part 363. As indicated in the preamble to the SEC's section 404 final rule release, the FDIC (and the other Federal banking agencies) agreed with the SEC that insured depository institutions that are subject to both part 363 (as well as holding companies permitted under the holding company exception in part 363 to file an internal control report on behalf of their insured depository institution subsidiaries) and the SEC's rules implementing section 404 can choose either of the following two options:

- They can prepare two separate reports of management on the institution's or the holding company's internal control over financial reporting to satisfy the FDIC's part 363 requirements and the SEC's section 404 requirements; or
- They can prepare a single report of management on internal control over financial reporting that satisfies both the FDIC's requirements and the SEC's requirements.[2]

For more complete information on these two options, institutions (and holding companies) should refer to Section II.H.4. of the preamble to the SEC's Section 404 final rule release (68 FR 36648, June 18, 2003).

C. Composition of the Audit Committee

Currently, part 363 requires each covered institution to establish an independent audit committee of its board of directors, comprised of outside directors who are independent of management of the institution. The duties of the audit committee include reviewing with management and the institutions' independent public accountant the basis for the reports included in the part 363 annual report submitted to the FDIC and other appropriate Federal and state supervisory agencies. The FDIC's Guidelines to part 363 provide that, at least annually, the board of directors of a covered institution should determine whether all existing and potential audit committee members are ''independent of management of the institution.'' The guidelines also describe factors to consider in making this determination.[3]

Section 36 provides that an appropriate Federal banking agency may grant a hardship exemption to a covered institution that would permit its independent audit committee to be made up of less than all, but no fewer than a majority of, outside directors who are independent of management. To grant the exemption, the agency must find that the institution has encountered hardships in retaining and recruiting a sufficient number of competent outside directors.

Notwithstanding this exemption provision of section 36, the FDIC has observed that a number of smaller covered institutions, particularly those with few shareholders that have recently exceeded $500 million in total assets and become subject to part 363, have encountered difficulty in satisfying the independent audit committee requirement. To comply with this requirement, these institutions must identify and attract qualified individuals in their communities who would be willing to become a director and audit committee member and who would be independent of management.

To relieve this burden, but also recognizing that the FDIC has long held that individuals who serve as directors of any insured depository institution should be persons of independent judgment, the FDIC is proposing to amend part 363 to increase from $500 million to $1 billion the asset size threshold for requiring audit committee members to be independent of management. Conforming changes would be made to Guidelines 27–29 of Appendix A to part 363. Each insured depository institution with total assets of $500 million or more but less than $1 billion would continue to be required to have an audit committee comprised of outside directors. Consistent with Guideline 29 of Appendix A to part 363, an outside director would be defined as an individual who is not, and within the preceding year has not been, an officer or employee of the institution or any affiliate of the institution.

This proposed amendment to the audit committee requirements for institutions with between $500 million and $1 billion in total assets would allow an outside director who is, for example, a consultant or legal counsel to the institution, a relative of an officer or employee of the institution or its affiliates, or the owner of 10 percent or more of the stock of the institution to serve as an audit committee member. Nevertheless, the FDIC would encourage each institution with between $500 million and $1 billion in assets to make a reasonable good faith effort to establish an audit committee of outside directors who are independent of management.

Accordingly, the FDIC is seeking comments on the proposed amendment to increase from $500 million to $1 billion the asset size threshold at which members of a covered institution's audit committee must be outside directors who are independent of management. This amendment is proposed to take effect December 31, 2005.

D. Technical Changes

The FDIC also proposes to make certain technical changes to part 363 to correct outdated titles, terms, and references in the regulation and its appendix.

E. Other Revisions

The FDIC has identified other aspects of part 363 that may warrant revision in light of changes in the industry and the passage of the Sarbanes-Oxley Act. However, the FDIC believes that finalizing the amendments in this proposal should take priority over other possible revisions to part 363 in order to reduce compliance burdens and expenses for affected institutions in the current year. The FDIC expects to propose further revisions to part 363 as soon as practicable.

[2] Footnote 117 in the preamble to the SEC's Section 404 final rule releases states that ''[a]n insured depository institution subject to both the FDIC's [internal control assessment] requirements and our new requirements [i.e., a public depository institution] choosing to file a single report to satisfy both sets of requirements will file the report with its primary Federal regulator under the Exchange Act and the FDIC, its primary Federal regulator (if other than the FDIC), and any appropriate state depository institution supervisor under part 363 of the FDIC's regulations. A [public] holding company choosing to prepare a single report to satisfy both sets of requirements will file the report with the [Securities and Exchange] Commission under the Exchange Act and the FDIC, the primary federal regulator of the insured depository institution subsidiary subject to the FDIC's requirements, and any appropriate state depository institution supervisor under part 363.''

[3] See Guidelines 27 through 29 of Appendix A to part 363.

Request for Comments

The FDIC welcomes comments on all aspects of this proposal.

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

Solicitation of Comments on Impact on Community Banks

The FDIC seeks comments on the impact of this proposal on community banks. The FDIC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the FDIC specifically requests comments on the impact of the proposal on community banks' current resources, including personnel, and whether the goals of the proposed rule could be achieved, for community banks, through an alternative approach.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) requires that each Federal Agency either certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis (IRFA) of the proposal and publish the analysis for comment. See 5 U.S.C. 603, 605. The Small Business Administration (SBA) defines small banks as those with less than $150 million in assets. Because this rule expressly exempts insured depository institutions having assets of less than $500 million, it is inapplicable to small entities as defined by the SBA. Therefore, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule would revise a collection of information that has been reviewed and approved by the Office of Management and Budget under control number 3064–0113, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*). The primary revisions increase the asset size threshold for compliance with sections 363.2(b), 363.3(b), and 363.5(a). It is anticipated that these changes will result in a burden reduction for affected insured institutions. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments should be addressed to Steven F. Hanft, Paperwork Clearance Officer, Room MB–3064, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, with copies to Desk Officer Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Washington, DC 20503.

The paperwork burden associated with this rule was last reviewed in 2002. At that time, the FDIC estimated the burden to be 42,639 hours for FDIC-supervised institutions. Since then, data has become available to the FDIC that indicates the 2002 estimate was too low. Taking that information (including the results of a burden study conducted by a major trade association) into account, the FDIC believes a more accurate estimate for this collection of information is 118,535 hours. If the revisions in this proposed rule are implemented, the resulting estimated reporting burden for the collection of information would be 65,612 hours, a 45 percent reduction (52,923 hours).

Number of Respondents: 5,243.
Total Annual Responses: 15,684.
Total Annual Burden Hours: 65,612.

List of Subjects in 12 CFR Part 363

Accounting, Administrative practice and procedure, Banks, banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board of Directors of the FDIC proposes to amend part 363 of title 12, chapter III, of the Code of Federal Regulations as follows:

PART 363—ANNUAL INDEPENDENT AUDITS AND REPORTING REQUIREMENTS

1. The authority citation for part 363 continues to read as follows:

Authority: 12 U.S.C 1831m.

2. Section 363.1 is amended by revising paragraph (b)(2)(ii)(B) to read as follows:

§ 363.1 Scope.

* * * * *

(b) * * *
(2) * * *
(ii) * * *
(B) Total assets of $5 billion or more and a composite CAMELS rating of 1 or 2.

* * * * *

3. Section 363.2 is amended by revising paragraph (b)(2) and adding paragraph (b)(3) to read as follows:

§ 363.2 Annual reporting requirements.

* * * * *

(b) * * *
(1) * * *
(2) An assessment by management of the institution's compliance with such laws and regulations during such fiscal year; and
(3) For an institution with total assets of $1 billion or more at the beginning of such fiscal year, an assessment by management of the effectiveness of such internal control structure and procedures as of the end of such fiscal year.

4. Section 363.3 is amended by revising paragraph (b) to read as follows:

§ 363.3 Independent public accountant.

* * * * *

(b) *Additional reports.* For each insured depository institution with total assets of $1 billion or more at the beginning of the institution's fiscal year, such independent public accountant shall examine, attest to, and report separately on, the assertion of management concerning the institution's internal control structure and procedures for financial reporting. The attestation shall be made in accordance with generally accepted standards for attestation engagements.

* * * * *

5. Section 363.5 is amended by revising paragraph (a) to read as follows:

§ 363.5 Audit committees.

(a) *Composition and duties.* Each insured depository institution shall establish an audit committee of its board of directors, the composition of which complies with paragraphs (a)(1), (2), and (3) of this section, and the duties of which shall include reviewing with management and the independent public accountant the basis for the reports issued under this part.

(1) Each insured depository institution with total assets of $1 billion or more as of the beginning of its fiscal year shall establish an independent audit committee of its board of directors, the members of which shall be outside directors who are independent of management of the institution.

(2) Each insured depository institution with total assets of $500 million or more but less than $1 billion as of the beginning of its fiscal year shall establish an audit committee of its board of directors, the members of which shall be outside directors.

(3) An outside director is a director who is not, and within the preceding fiscal year has not been, an officer or employee of the institution or any affiliate of the institution.

* * * * *

6. Appendix A to Part 363 is amended as follows:

a. Footnote 2 Guideline 10 is amended by adding ''and Consumer Protection Risk Management'' after ''FDIC's Division of Supervision'';

b. Guideline 16 is amended by removing ''Registration and Disclosure Section'' and adding in its place ''Accounting and Securities Disclosure Section'';

c. Guideline 22 is amended by revising the first sentence of paragraph (a) to read as set forth below:

d. Guideline 27 is amended by revising the second sentence to read as set forth below;

e. Guideline 28 is amended by revising paragraph (a) to read as set forth below;

f. Guideline 29 is revised to read as set forth below; and

g. The first sentence of Guideline 36 is revised to read as set forth below.

The revisions read as follows:

Appendix A to Part 363—Guidelines and Interpretations

* * * * *

Filing and Notice Requirements (§ 363.4)

22. * * *

(a) FDIC: Appropriate FDIC Regional or Area Office (Supervision and Consumer Protection), i.e., the FDIC regional or area office in the FDIC region or area that is responsible for monitoring the institution or, in the case of a subsidiary institution of a holding company, the consolidated company. * * *

* * * * *

Audit Committees (§ 363.5)

27. * * * At least annually at an institution with $1 billion or more in total assets at the beginning of its fiscal year, the board should determine whether all existing and potential audit committee members are ''independent of management of the institution.'' * * *

28. * * *

(a) Has previously been an officer of the institution or any affiliate of the institution;

29. *Lack of Independence.* An outside director should not be considered independent of management if such director owns or controls, or has owned or controlled within the preceding fiscal year, assets representing 10 percent or more of any outstanding class of voting securities of the institution.

* * * * *

Other

36. * * * The FDIC Board of Directors has delegated to the Director of the FDIC's Division of Supervision and Consumer Protection (DSC) authority to make and publish in the **Federal Register** minor technical amendments to the Guidelines in this appendix in consultation with the other appropriate Federal banking agencies, to reflect the practical experience gained from implementation of this part. * * *

* * * * *

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 19th day of July, 2005.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–15109 Filed 8–1–05; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21835; Directorate Identifier 2005–CE–35–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This proposed AD would require you to inspect the left and right main landing gear (MLG) assemblies for any part number (P/N) 532.10.12.077 bolts that do not have white primed and painted heads; and replace any bolt found with new P/N 532.10.12.077F bolts in all MLG assemblies. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. We are issuing this proposed AD to detect and correct any P/N 532.10.12.077 bolts that do not have white primed and painted heads, which could result in corrosion of the bolt and consequent failure of the bolt. This failure could lead to MLG collapse during airplane landing and take-off operations with consequent loss of airplane control.

DATES: We must receive any comments on this proposed AD by August 31, 2005.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6208; facsimile: +41 41 619 7311; e-mail: *SupportPC12@pilatus-aircraft.com* or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040.

To view the comments to this proposed AD, go to *http://dms.dot.gov*. This is docket number FAA–2005–21835; Directorate Identifier 2005–CE–35–AD.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2005–21835; Directorate Identifier 2005–CE–35–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2005–21835; Directorate Identifier 2005–CE–35–AD. 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*.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov*. The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

What events have caused this proposed AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports part number (P/N) 532.10.12.077 bolts that do not have white primed and painted heads are subject to corrosion. These bolts attach the hydraulic actuators to the left and right main landing gear (MLG) assemblies. The FOCA further reports the separation of a bolt head in an MLG assembly has occurred due to corrosion. The corrosion occurred because the bolt head was not primed and painted.

Pilatus has designed and produced a new bolt (P/N 532.10.077F) as part of Modification Kit No. 500.50.12.299 to replace the subject bolt. Pilatus recommends the replacement of bolts in pairs.

What is the potential impact if FAA took no action? Corrosion of the bolt could lead to MLG collapse during airplane landing and take-off operations with consequent loss of airplane control.

Is there service information that applies to this subject? Pilatus has issued Pilatus PC12 Service Bulletin No. 32–018, dated May 2, 2005.

What are the provisions of this service information? The service bulletin includes procedures for:

—Inspecting the MLG assemblies to find P/N 532.10.12.077 bolts that do not have white primed and painted heads; and

—Replacing any P/N 532.10.12.077 bolts that do not have primed and painted heads with new P/N 532.10.077F bolts in all MLG assemblies.

What action did the FOCA take? The FOCA classified this service bulletin as mandatory and issued Swiss AD Number HB–2005–288, dated June 29, 2005, to ensure the continued airworthiness of these airplanes in Switzerland.

Did the FOCA inform the United States under the bilateral airworthiness agreement? These Pilatus Models PC–12 and PC–12/45 airplanes are manufactured in Switzerland and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

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

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the FOCA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Pilatus Models PC–12 and PC–12/45 airplanes of the same type design that are registered in the United States, we are proposing AD action to detect and correct any P/N 532.10.12.077 bolts that do not have white primed and painted heads, which could result in corrosion of the bolt and consequent failure of the bolt. This failure could lead to MLG collapse during airplane landing and take-off operations with consequent loss of airplane control.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 350 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to do this proposed inspection:

Labor cost	Parts cost	Total cost per airplaine	Total cost on U.S. operators
1 work hour × $65 per hour = $65	Not applicable	$65	$22,750

We estimate the following costs to do any necessary single bolt replacement (using Modification Kit No. 500.50.12.299) that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need this bolt replacement:

Labor cost	Parts cost	Total cost per airplane
3 work hours × $65 per hour = $195	$1,000 estimate for each Modification Kit No. 500.50.12.299	$1,195

Pilatus will provide warranty credit for inspecting and replacing the specified bolts to the extent stated in the service information.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? 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 AD.

Regulatory Findings

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

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

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 summary of the costs to comply with this proposed AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket FAA–2005–21835; Directorate Identifier 2005–CE–35–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pilatus Aircraft Ltd.: Docket No. FAA–2005–21835; Directorate Identifier 2005–CE–35–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by August 31, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Models PC–12 and PC–12/45 airplanes, Manufacturers Serial Numbers (MSN) 101 through 620, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified in this AD are intended to detect and correct any part number (P/N) 532.10.12.077 bolts that do not have white primed and painted heads, which could result in corrosion of the bolt and consequent failure of the bolt. This failure of the bolt could lead to main landing gear (MLG) collapse during airplane landing and take-off operations with consequent loss of airplane control.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect the main landing gear (MLG) assemblies, part number (P/N) 532.10.12.049 and P/N 532.10.12.050, for any P/N 532.10.12.077 bolts that do not have white primed and painted heads.	Within the next 100 hours time-in-service (TIS) or 90 days after the effective date of this AD, whichever occurs first, unless already done.	Follow Pilatus PC12 Service Bulletin No. 32–018, dated May 2, 2005.
(2) Replace any P/N 532.10.12.077 bolts that do not have white primed and painted heads found as a result of the inspection required by paragraph (e)(1) of this AD. Replace with new bolts (new P/N 532.10.077F or FAA-approved equivalent part number) in both MLG assemblies.	Before further flight after the inspection required by paragraph (e)(1) of this AD.	Follow Pilatus PC12 Service Bulletin No. 32–018, dated May 2, 2005.

Actions	Compliance	Procedures
(3) Do not install: ..... (i) Any P/N 532.10.12.077 bolt that does not have a white primed and painted head in any MLG assembly (P/N 532.10.12.049 or P/N 532.10.12.050); and (ii) Any MLG assembly (P/N 532.10.12.049 or P/N 532.10.12.050) that does not have P/N 532.10.12.077 bolts with white primed and painted heads.	As of the effective date of this AD	Not Applicable.

Note: The FAA recommends that you return any removed bolts to Pilatus.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) Swiss AD Number HB–2005–288, dated June 29, 2005, also addresses the subject of this AD.

May I Get Copies of the Documents Referenced in This AD?

(h) To get copies of the documents referenced in this AD, contact Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6208; facsimile: +41 41 619 7311; e-mail: *SupportPC12@pilatus-aircraft.com* or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. This is docket number FAA–2005–21835; Directorate Identifier 2005–CE–35–AD.

Issued in Kansas City, Missouri, on July 25, 2005.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15181 Filed 8–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2005–21523; Airspace Docket No. 05–AWP–7]

Proposed Establishment of Class E3 Airspace; Riverside March Field, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E3 airspace at Riverside March Field, CA. Class E3 airspace is necessary to contain and protect circling maneuvers for Category E aircraft executing these maneuvers in conjunction with Standard Instrument Approach Procedures (SIAPs) at the airport. This action would establish Class E3 airspace extending upward from the surface to, but not including, the base of the overlying Class C airspace area.

DATES: Comments must be received on or before September 1, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–21523/ Airspace Docket No. 05–AWP–7, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Area Director, Terminal Operations, Western Service Area, Federal Aviation Administration, Room 2010, 15000 Aviation Boulevard, Lawndale, California, 90261.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Western Terminal Service Area, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California; telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–21523/Airspace Docket No. 05–AWP–7.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov*. or the

Superintendent of Document's Web page at *http://www/access/gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class E3 arrival extension at Riverside March Field, CA. Class E3 airspace areas are designated as arrival extensions to a Class C surface area. Class E arrival extensions are primarily designated to provide additional controlled airspace ancillary to a surface area to protect instrument operations for the primary airport, without imposing additional communications burdens on airspace users. This action is necessary at Riverside March Field to provide controlled airspace for Category E aircraft conducting circling maneuvers in conjunction with published SIAPs. Generally, Category E aircraft are very large and/or high performance. These aircraft require additional airspace when conducting circling maneuvers.

Class E3 airspace areas designated as an extension are published in Paragraph 6000 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E3 airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposed to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6000 Class E3 airspace designated as an extension.

* * * * *

AWP CA E3 Riverside March Field, CA [NEW]

Riverside March Field, CA

(Lat. 33°52′50″ N, long. 117°15′34″ W)

That airspace extending upward from the surface between the 5 mile radius and 7 mile radius of Riverside March Field and between a line 2 miles east of 150° bearing from the airport clockwise to the 216° bearing from the airport.

* * * * *

Issued in Los Angeles, California, on July 11, 2005.

Stephen J. Lloyd,

Acting Area Director, Terminal Operations, Western Service Area.

[FR Doc. 05–15180 Filed 8–1–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU23

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the California Tiger Salamander in Sonoma County

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; public hearing announcement.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the California tiger salamander (*Ambystoma californiense*) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 74,223 acres (ac) (30,037 hectares (ha)) fall within the boundaries of the proposed critical habitat designation. The proposed critical habitat is located in Sonoma County, California.

DATES: We will accept comments from all interested parties until October 3, 2005. We will hold a public hearing on September 8, 2005, at the Flamingo Hotel in Santa Rosa, California. The public hearing will include two sessions from 1 p.m. to 3 p.m. and 6 p.m. to 8 p.m. Registration for the hearings will begin a half-hour before each session. For more information, see ''Public Hearing'' section below or contact Arnold Roessler of the Sacramento Fish and Wildlife Office at (916) 414–6600.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to Wayne White, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (SFWO), Cottage Way, W–2605, Sacramento, CA 95825.

2. You may hand-deliver written comments to the SFWO, at the above address.

3. You may send comments by electronic mail (e-mail) to *fw1sonoma_tiger_salamander@fws.gov*. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

4. You may fax your comments to (916) 414–6713.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection,

by appointment, during normal business hours at the SFWO, at the above address (telephone (916) 414–6600).

FOR FURTHER INFORMATION CONTACT: Wayne White, Field Supervisor, SFWO (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments are particularly sought concerning:

(1) The reasons why any habitat in this proposed rule should or should not be determined to be critical habitat as provided by section 4 of the Act;

(2) Comment and identification on any habitat included in this proposed rule which does not contain the primary constituent elements;

(3) Specific information on the amount and distribution of occupied California tiger salamander (CTS) habitat in Sonoma County;

(4) Specific information on the amount and distribution of any other habitat which may be essential to the conservation of the species (this rule proposed to designate significant amounts of habitat not known to be occupied at the time of listing; the Service has varying amounts of information as to whether such habitat is essential to the conservation of the species;

(5) Current, planned, or potential land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(6) The benefits related to the designation of critical habitat proposed in this rule;

(7) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities;

(8) If any proposed habitat should be excluded and the benefits of such exclusion; and

(9) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

We are also soliciting comments concerning the relative benefits of designation or exclusion of any lands as California tiger salamander critical habitat in Sonoma County (see Conservation Strategy for the Santa Rosa Plain section for specifics).

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to *fw1sonoma_tiger_salamander@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: California tiger salamander in Sonoma County'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling the SFWO at phone number (916) 414–6600. Please note that the Internet address *fw1sonoma_tiger_salamander@fws.gov* will be closed out at the termination of the public comment period.

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

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 445 species, or 36 percent of the 1,244 listed species, in the U.S. under the jurisdiction of the Service, have designated critical habitat.

We address the habitat needs of all 1,244 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that two courts found our definition of adverse modification to be invalid (March 15, 2001, decision of the United States Court Appeals for the Fifth Circuit, *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, F.3d 434, and the August 6, 2004, Ninth Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*). In response to these decisions, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions

with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

A physical description of the California tiger salamander and other information about its taxonomy, distribution, life history, and biology is included in the Background section of the final rule to list California tiger salamander as a threatened species, published in the **Federal Register** on August 4, 2004 (69 FR 47212). Additional relevant information may be found in the final rules to list the Santa Barbara County Distinct Population Segment (DPS) (65 FR 57242, September 21, 2000) and the Sonoma County DPS California tiger salamander (68 FR 13498, March 13, 2003), and the proposed rules to designate critical habitat for the California tiger salamander in Santa Barbara County (69 FR 3064, January 22, 2004) and the Central population of the species range (69 FR 48570, August 10, 2004) as well as the final rule to designate critical habitat for the California tiger salamander in Santa Barbara County (69 FR 68568, November 24, 2004). The information contained in those previous **Federal Register** documents was used in developing this rule.

Critical Habitat and Private Lands: The California tiger salamander in Sonoma County occurs primarily on private lands. Approximately 80–95 percent of imperiled species in the United States occur partly or solely on private lands where the Service has little or no management authority (Hilty and Merenlender 2003, Wilcove *et al.* 1996). In addition, recovery actions involving the reintroduction or positive management of listed species on private lands usually require the voluntary cooperation of the landowner (Bean 2002, James 2002, Knight 1999, Main *et al.* 1999, Norton 2000, Shogren *et al.* 1999). Therefore, ''a successful recovery program is highly dependent on developing working partnerships with a wide variety of entities, and the voluntary cooperation of thousands of non-Federal landowners and others is essential to accomplishing recovery for listed species'' (Crouse *et al.* 2002). Because large tracts of land suitable for conservation of threatened and endangered species are owned by private landowners, successful recovery of many listed species is especially dependent upon working partnerships and the voluntary cooperation of non-Federal landowners (Crouse *et al.* 2002, James 2002, Wilcove and Chen 1998).

The designation of critical habitat on privately-owned lands can have both negative and positive impacts on the conservation of listed species (Bean 2002). There is a growing body of documentation that some regulatory actions by the Federal Government, while well-intentioned and required by law, can under certain circumstances have unintended negative consequences for the conservation of species on private lands (Brook *et al.* 2003, Bean 2002, Conner and Mathews 2002, James 2002, Koch 2002, Wilcove *et al.* 1996). Some landowners fear a decline in value of their properties because of their belief that the Act may restrict future land-use options where threatened or endangered species are found. Consequently, endangered species are perceived by many landowners as a financial liability, which sometimes results in anti-conservation incentives to these landowners (Brook *et al.* 2003, Main *et al.* 1999).

According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that many landowners will support and carry out conservation actions (Bean 2002, Brook *et al.* 2003, Main *et al.* 1999). The magnitude of this negative outcome is amplified in conservation situations, such as on privately-owned lowlands in California, where it is insufficient simply to prohibit harmful activities. Instead, it is necessary in many cases to encourage and carry out proactive management measures to prevent extinctions and promote recovery (Bean 2002).

Consideration of this concern is especially important in areas where species have been extirpated and their recovery requires access and permission for reintroduction efforts, or where interventionist activities are necessary for conservation (*e.g.*, fire management or control of invasive species). Simply preventing ''harmful activities'' will not slow the extinction of many listed species. For example, some species need reintroduction within their former range to fully recover, or they need protection from invasive nonnative species.

In the case of the California tiger salamander in Sonoma County, natural repopulation is likely not possible without human assistance and landowner cooperation. Examples of such proactive activities that benefit the California tiger salamander include enhancement or creation of breeding ponds and control of nonnative predators. These are the types of proactive, voluntary conservation efforts that are necessary to prevent the extinction and promote the recovery of many other species (Wilcove and Lee 2004, Shogren *et al.* 1999, Wilcove and Chen 1998, Wilcove *et al.* 1998).

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and ''any other relevant impact'' of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. Under certain circumstances, such as those occurring on private lands as outlined above, a designation of critical habitat can have a net negative conservation impact due to the legal, economic, and sociological concerns of private landowners. In these cases the Secretary of the Interior may exclude land from critical habitat when the benefits of excluding the area are greater than the benefits of including it in critical habitat.

Conservation Strategy for the Santa Rosa Plain

California tiger salamander occurs primarily on private lands in Sonoma County. At the time of its listing, local jurisdictions, land owners, and developers were apprehensive as to how the listing would affect their activities. Local stakeholders, including local governments, landowners, and the environmental community, met with the Service to discuss possible cooperative approaches to protecting the California tiger salamander and listed plant species (*Blennosperma bakeri* (Sonoma sunshine), *Lasthenia burkei* (Burke's goldfields), *Limnanthes vinculans* (Sebastopol meadowfoam), and *Navarretia leucocephala* ssp. *plieantha* (many-flowered navarretia). The goal of such an approach would be to develop an alternative to a critical habitat designation that provides special management for those physical and biological characteristics that are essential to the conservation of the species while allowing planned land uses to occur within the county. The potential result of the plan would be to avoid critical habitat designation due to the fact that special management or protection would not be necessary. Another potential result would be that the benefits from the local plan would exceed benefits of that would result from the designation of critical habitat, and therefore, the Secretary could consider excluding areas covered by the plan pursuant to section 4(b)(2).

Consistent with the Secretary's ''4C's'' policy, Conservation through Cooperation, Communication and Consultation, it is the Service's goal to identify and support innovative cooperative conservation approaches that have a similar or greater likelihood of providing for the conservation of listed species when compared to traditional regulatory approaches such as designation of critical habitat. In our determination of whether habitat is in need of ''special management or protection,'' the Service will evaluate the Sonoma County draft conservation strategy for CTS to determine whether its implementation is likely to occur and if so, whether its implementation provide a similar or greater level of conservation benefits to the CTS in Sonoma County when compared to a final designation of critical habitat.

In recognition of the ongoing local conservation planning, this proposed designation includes all occupied and unoccupied habitat in Sonoma County with the potential to support CTS. While we do not currently have the information to justify inclusion of all of these lands in the final designation, we intend to rely on the public comments to assist in our determination of which of the lands not identified as occupied at the time of listing are essential to the conservation of the species. We believe this approach has two benefits. First, it will provide the maximum public comment on the benefits and potential contribution to CTS conservation from the maximum area available. Second, this approach does not undermine the local effort to encourage participation by local landowners and local government in the Sonoma County CTS Conservation Strategy. Our proposed designation is intentionally broad in order to identify all potential lands available to the CTS and so as not of unintentionally affect the local planning process.

Description of Sonoma County CTS Conservation Strategy Alternative: A local conservation strategy for the Sonoma County CTS was initiated due to concerns over how the listing of the CTS and its critical habitat designation may affect development and other local economic activities. Two teams were formed to develop and implement this strategy: the Santa Rosa Plain Conservation Strategy Team (Conservation Team) and the Implementation Committee.

The Conservation Team includes representatives of the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the California Department of Fish and Game, County and Cities, the North Coast Regional Water Quality Control Board, local governmental agencies, the Laguna de Santa Rosa Foundation, the environmental community, and the private landowner community. The purpose of this team was to develop a Santa Rosa Plain Conservation Strategy (Conservation Strategy) for the Santa Rosa Plain that conserves and enhances enough habitat for the California tiger salamander in Sonoma County and listed plants to provide for long-term conservation, while considering the need for development pursuant to the general plans for the local jurisdictions.

The Implementation Committee consists of representatives from the City of Santa Rosa, City of Cotati, City of Rohnert Park, County of Sonoma, the California Department of Fish and Game, and the U.S. Fish and Wildlife Service. The purpose of this team is to use the Conservation Strategy to develop an implementation approach that is compatible with local planning efforts.

The purpose of the Conservation Strategy is threefold: (1) To establish a long-term conservation program sufficient to mitigate potential adverse effects of future development on the Santa Rosa Plain, and to substantively contribute to the conservation of the listed species and their sensitive habitat; (2) to accomplish the preceding in a manner that protects stakeholders' land use interests; and (3) to support issuance of an authorization for incidental take of CTS and provide coverage for listed plants that may occur in the course of carrying out project activities on the Plain.

The Conservation Strategy will:

- Be a coordinated mechanism for processing permits for projects that are in the potential range of listed species on the Plain; this process will provide consistency, timeliness, and certainty;
- Identify the basic biological requirements for the conservation of CTS and listed plants, geographic areas where preservation is recommended, criteria for selection of these conservation areas, and mitigation measures necessary to achieve the recommended conservation goals;
- Address the application of mitigation banks, the development of management plans for preserves, adaptive management, and ongoing monitoring needs.

The Implementation Team will enumerate the steps necessary to ensure successful implementation of the strategy. The implementation section will identify the scope of covered activities, the areas within the potential range likely to be impacted by development, mechanisms for review and approval for public and private projects, and potential funding sources.

As noted earlier, development of the conservation strategy included identifying the most appropriate geographic areas for conservation. Approximately 4,000 acres ranging from northwest Santa Rosa to south of Cotati have been identified as conservation areas. The conservation area boundaries identify areas where mitigation for project related impacts to the listed species and vernal pools should be directed. The boundaries and distribution of the conservation areas are based upon an analysis of the following factors: (1) Known distribution of CTS based on recorded breeding sites and adult occurrences, (2) the presence of additional suitable CTS habitat, (3) presence of large blocks of land which are natural or restorable potential habitat, (4) location of existing preserves, and (5) known location of the listed plants (although this designation focuses on the effect of the conservation strategy on the CTS, the strategy itself

addresses other listed species and areas of concern).

Conservation areas are integral to the conservation of the listed species by directing preservation efforts into the most important areas, as well as to ensure well distributed populations. At this point in their deliberations, the local jurisdictions appear to be considering all the best available scientific and commercial information in identifying those elements important to the conservation of the CTS.

This Conservation Strategy is in the final stages of development, and it is anticipated that a final Administrative Draft Conservation Strategy will be available for public review and comment the summer of 2005. We recognize that the public is not able to comment on specific aspects of the strategy without it being available for review, but we would like to solicit public comments as described below. Additional information on the conservation areas and Conservation Strategy can be found on the Santa Rosa Plain Conservation Strategy Web page at *http://ci.santa-rosa.ca.us*.

Solicitation of comments concerning the relative benefits of designation of California tiger salamander critical habitat: In addition to the analysis conducted when assessing potential economic impacts of the California tiger salamander in Sonoma County critical habitat designation, the Secretary will evaluate other considerations as part of the 4(b)(2) exclusion process. As part of the Secretary's deliberative process, the Service identifies the benefits of inclusion and exclusion of various areas.

As part of our designation, we will evaluate the following with respect to the Local Conservation Strategy:

- The degree to which a critical habitat designation would confer conservation benefits on the California tiger salamander when compared to the likely benefits of the alternative strategy;
- The degree to which the designation or the proposed alternative conservation strategy would educate members of the public such that conservation efforts would be enhanced;
- The degree to which a critical habitat designation or the proposed alternative conservation strategy would have a positive, neutral, or negative impact on voluntary conservation efforts on privately-owned lands; and
- The extent to which a critical habitat designation is likely to encourage or discourage future conservation activities on private lands.

The Service will evaluate whether the regulatory benefits of designation of critical habitat in Sonoma County for the California tiger salamander outweigh the conservation benefits of implementation of the alternative conservation strategy proposed by local public and private interests. In this proposed rule, we are soliciting public comment on the relative merits of a critical habitat designation when compared to implementation of this alternative strategy. We are particularly interested in public comment on the following issues:

- What is necessary to ensure the conservation of the CTS with regard to private lands in Sonoma County;
- Identification of whether the species or its habitat requires proactive management actions, and, if so, of what type, on private lands;
- Identification of current voluntary conservation efforts or working partnerships existing on private lands and how those efforts are likely to be affected by the proposed designation;
- Whether the Service could expect an increase or decline in conservation activities on private lands that are designated as critical habitat;
- Whether a critical habitat designation of private lands already occupied by the California tiger salamander and subject to the regulatory provisions of the Act will provide additional regulatory conservation benefits to accrue on those lands;
- Whether traditional methods of regulation under the Act (*e.g.*, Section 7 consultation with the U.S. Army Corps of Engineers) are adequate to provide for the long-term conservation of the California tiger salamander on private lands in Sonoma County; and
- What conservation efforts are likely to occur on private lands in the foreseeable future and how designation of critical habitat is likely to affect those future actions?

The Service will evaluate information received on these and other issues when making a decision concerning the final designation of critical habitat. It is important to note that the Service will only consider a plan which contains provisions that all the public entities and any other parties necessary to implement those provisions have signed. A draft plan which has not been finalized provides the Service with little to no certainty of the type or the extent of the conservation measures that will be implemented. As a result, the Service would have no basis for finding that the habitat is not in need of special management or protection, or alternatively, for excluding the habitat on the basis for any but economic reasons. Any economic exclusions would be predicated on the results of the economic analysis.

Previous Federal Actions

On October 13, 2004, a complaint was filed in the U.S. District Court for the Northern District of California (*Center for Biological Diversity and Environmental Defense Council* v. *U.S. Fish and Wildlife Service et al.* (Case No. C–04 4324 FMS)), which in part identified the failure of designating critical habitat for the California tiger salamander in Sonoma County. On February 3, 2005, the District Court approved a settlement agreement between the parties that requires the Service to submit for publication in the **Federal Register**, on an expedited basis, a proposal for designation of critical habitat for the Sonoma County population of California tiger salamander. The agreement also requires the Service to submit for publication in the **Federal Register** a final determination on the proposed critical habitat designation on or before December 1, 2005. This proposed rule is in accordance with the settlement agreement.

For a discussion of previous Federal actions regarding the Sonoma population, please see the final rule listing the Central California tiger salamander as threatened rangewide (August 4, 2004, 69 FR 47212). Federal actions on the California tiger salamander prior to May 2004 are summarized in that final rule (69 FR 47212) and used in developing this rule. That final rule listed the California tiger salamander as threatened throughout its range, and eliminated the separate listings for the Santa Barbara and Sonoma populations.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat

with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. However, Section 7 provides no protection for strictly private actions on private lands that are designated as critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Designation of critical habitat does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species at the time of listing must first have features that are ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b); see Primary Constituent Elements section).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).) Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species at the time of listing. An area currently occupied by the species but not known to have been occupied at the time of listing may or may not be essential to the conservation of the species and, therefore, its inclusion will be based on a determination by the Secretary that the habitat is essential to the conservation of the species.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. They require Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing documents for the species. Additional information sources include the data in the recovery plan for the species, articles in peer-reviewed journals, data in conservation plans developed by States and counties, data included as part of scientific status surveys and studies, data in biological assessments, or other unpublished materials, public comment and scientific judgment. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available in determining areas that contain the features that are essential to the conservation of the California tiger salamander in Sonoma County. We have reviewed the overall approach to the conservation of the California tiger salamander undertaken by local, State, and Federal agencies operating within the species' range within Sonoma County and those efforts related to the conservation strategy being undertaken by the resource agencies, local governments, and representatives from the environmental and building communities (see Conservation Strategy section).

We based the extent of the proposed critical habitat for the California tiger salamander in Sonoma County on historic and current range of the species as well as the Santa Rosa Plain conservation strategy. Historic records for the species and/or its habitat have been documented throughout the Santa Rosa Plain and into the Petaluma River watershed. Additional criteria used in refining the extent of the critical habitat were the specific soil types associated with habitat for the species and below the 200-foot (61-meter) elevation. Major water courses or floodplains were used to delineate boundaries where information on their location and extent was available. In addition, we used aerial photography to examine historic and current habitat as well as land use patterns.

We have also reviewed available information that pertains to the upland and aquatic habitat requirements of this species. Based on the best available information, we included areas where the species historically occurred, or currently occurs, or has the potential to occur based on the suitability of habitat. We identified areas which represent the range of environmental, ecological, and genetic variation of the California tiger salamander in Sonoma County and contain the primary constituent elements (see Primary Constituent Elements section). In addition, to avoid influencing the local conservation planning process, we included the maximum area representing the historic range of the species with the expectation that the final rule would be significantly revised based on refinements resulting from development of additional information and public comment. Identification of the broadest possible proposal would be most likely to elicit information regarding the current presence of PCEs, the occupancy

of identified habitat, and other information regarding the benefit of designating or excluding the habitat.

This proposed unit was delineated by digitizing a polygon (map unit) using ArcView (Environmental Systems Research Institute, Inc.), a computer GIS program. The polygon was created by modifying the Potential Range of the California tiger salamander polygon as identified in the *Interim Guidance on Site Assessments and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander* (Service and California Department of Fish and Game 2003). We evaluated the historic and current geographic range and potential suitable habitat, and identified areas of nonessential habitat (*i.e.*, not containing the primary constituent elements) (see Primary Constituent Elements section). We have included areas within this unit which are already developed or are planned for development. We anticipate that public comment will help refine the mapped areas so as to avoid inclusion of areas that do not contain the PCEs or do not meet the definition of critical habitat. Those undeveloped areas within and adjacent to developed areas which do contain the PCE features would be considered as potential critical habitat for the species.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements (''PCEs'')) that are essential to the conservation of the species, and whether such areas may require special management considerations and protection. These include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific PCEs required for the Sonoma population are based on the biological needs of the California tiger salamander (see Background section). All areas proposed as critical habitat for the Sonoma population are within the species' historic range and contain one or more of the physical or biological features (PCEs) identified as essential for the conservation of the species. Critical habitat for the Sonoma population includes essential aquatic habitat, essential upland nonbreeding habitat with underground refugia, and dispersal habitat connecting occupied California tiger salamander locations. In addition, the critical habitat we have proposed is designed to allow for an increase in the size of California tiger salamander populations in Sonoma County.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the primary constituent elements for the California tiger salamander in Sonoma County are:

(1) Standing bodies of fresh water (including natural and manmade (*e.g.*, stock) ponds, vernal pools and other ephemeral or permanent water bodies which typically support inundation during winter rains and hold water for a minimum of 12 weeks in a year of average rainfall.

(2) Upland habitats adjacent and accessible to and from breeding ponds that contain small mammal burrows or other underground habitat that California tiger salamanders depend upon for food, shelter, and protection from the elements and predation.

(3) Acessible upland dispersal habitat between occupied locations that allow for movement between such sites.

We describe the relationship between each of these PCEs and the conservation of the salamander in more detail below.

The essential aquatic habitat described as the first PCE is essential for Sonoma population breeding and for providing space, food, and cover necessary to sustain early life history stages of larval and juvenile California tiger salamander. Breeding habitat consists of fresh water bodies, including natural and manmade ponds (*e.g.* stockponds), and vernal pools. To be considered essential, aquatic and breeding habitats must have the capability to hold water for a minimum of 12 weeks in the winter or spring in a year of average rainfall because this is the amount of time needed for larvae to grow into metamorphosed juveniles so they can become capable of surviving in upland habitats. During periods of drought or less-than-average rainfall, these sites may not hold water long enough for individuals to complete metamorphosis; however, these sites would still be considered essential because they constitute breeding habitat in years of average rainfall. Without its essential aquatic and breeding habitats, the Sonoma population would not survive, reproduce, and develop juveniles that could grow into adult individual salamanders that can complete their life cycles.

Upland habitats containing underground refugia are essential for the survival of adult and juvenile salamanders that have recently undergone metamorphosis. Adult and juvenile California tiger salamanders are primarily terrestrial. Adult California tiger salamanders enter aquatic habitats only for relatively short periods of time to breed. For the majority of their life cycle, California tiger salamanders depend for survival on upland habitats containing underground refugia in the form of small mammal burrows or other underground structures. California tiger salamanders cannot persist without upland underground refugia, which provide protection from the hot, dry weather typical of California in the nonbreeding season. California tiger salamanders also find food in these refugia and rely on them for protection from predators. The presence of small burrowing mammal populations is a key element for the survival of California tiger salamander as they construct burrows used by California tiger salamander. Without the continuing presence of small mammal burrows in upland habitats, California tiger salamanders would not be able to survive.

Essential dispersal habitats are generally upland areas adjacent and accessible to aquatic habitats. Essential dispersal habitats provide connectivity among California tiger salamander suitable aquatic and upland habitats. While California tiger salamander can bypass many obstacles, and do not require a particular type of habitat for dispersal, the habitats connecting essential aquatic and upland habitats need to be accessible (no physical or biological features that prevent access to adjacent areas) to function effectively. Agricultural lands such as row crops, orchards, vineyards, and pastures do not constitute barriers to the dispersal of California tiger salamanders, however, a busy highway or interstate may constitute a barrier. The extent to which any feature is a barrier is a function of the specific geography of the area and its contribution to limiting salamander access to a greater or lesser extent.

Dispersal habitats are essential for the conservation of the California tiger salamander. Protecting the ability of California tiger salamanders to move freely across the landscape in search of suitable aquatic and upland habitats is essential in maintaining gene flow and for recolonization of sites that may

become temporarily extirpated. Lifetime reproductive success for the California tiger salamander and other tiger salamanders may be naturally low. Trenham *et al.* (2000) found the average female bred 1.4 times and produced 8.5 young that survived to metamorphosis per reproductive effort. This reproduction resulted in roughly 11 metamorphic offspring over the lifetime of a female. In part, this low reproductive success may be due to the extended time it takes for California tiger salamanders to reach sexual maturity; most do not breed until 4 or 5 years of age. While individuals may survive for more than 10 years, it is possible that many breed only once. This presumed low breeding rate, combined with a hypothesized low survivorship of metamorphosed individuals indicates that reproductive output in most years may not be sufficient to maintain populations.

Dispersal habitats help to preserve the population structure of the California tiger salamander. The life history and ecology of the California tiger salamander make it likely that this species has a metapopulation structure. A metapopulation is a set of breeding sites within an area, where typical migration from one local occurrence or breeding site to other areas containing suitable habitat is possible, but not routine. Movement between areas containing suitable upland and aquatic habitats (*i.e.*, dispersal) is restricted due to inhospitable conditions around and between areas of suitable habitats. Because many of the areas of suitable habitats may be small and support small numbers of salamanders, local extinction of these small units may be common. The persistence of a metapopulation depends on the combined dynamics of these local extinctions and the subsequent recolonization of these areas through dispersal (Hanski and Gilpin 1991; Hanski 1994).

Stock ponds and vernal pools provide a significant amount of habitat for the Sonoma population remaining in the Santa Rosa Plain. More recently manmade stock ponds joined or, in some areas, replaced vernal pools as breeding habitat.

A landscape that supports a California tiger salamander population, whether vernal pool or stockpond, is typically grassland with areas of stockponds or seasonally flooded depressions with an impermeable layer that form pools which remain wetted for at least 12 weeks in a year with average rainfall.

Upland areas associated with the water bodies are an important source of nutrients to stock ponds or vernal pools. These nutrients provide the foundation for the water body's aquatic community's food chain. These plants and invertebrate and vertebrate animals are important providers of food and habitat for salamanders (Proctor *et al.* 1967; Krapu 1974; Swanson 1974; Morin 1987; Simovich *et al.* 1991; Silveira 1996). The uplands may also provide breeding, feeding, and sheltering habitat for small mammals that adult California tiger salamanders depend upon for food, shelter, and protection from the elements and predation.

In summary, the primary constituent elements consist of three components. At a minimum, these elements will include:

- Suitable breeding locations;
- Associated uplands surrounding the breeding locations, and
- Accessible dispersal habitat connecting breeding habitat to uplands or other breeding habitat.

Criteria Used To Identify Critical Habitat

We are proposing to designate critical habitat on lands that we have determined are occupied at the time of listing and contain the primary constituent elements and have identified other additional areas that may be essential to the conservation of the California tiger salamander in Sonoma County. In recognition of the ongoing local conservation planning, this proposed designation includes all occupied and potentially unoccupied habitat in Sonoma County with the potential to support California tiger salamander. While we do not currently have the information to justify inclusion of these potentially unoccupied lands, we intend to rely on the public comments to assist in our determination of which of the lands not identified as occupied at the time of listing are essential to the conservation of the species. While we are proposing these potentially unoccupied areas, we are not and have not made a determination as to whether they are essential to the conservation of the species. In the months between publication of this proposal, and publication of a final rule, we will review the information available to us through public comment and the scientific literature to determine which of the proposed areas are essential to the conservation of the species in Sonoma County. We believe this approach has two benefits. First, it will provide the maximum public comment on the benefits and potential contribution to California tiger salamander conservation from the maximum area available. Second, this approach does not undermine the local effort to encourage participation by local landowners and local government in the Santa Rosa Plain Conservation Strategy. The final rule will not include areas that the Secretary is unable to determine are essential. Therefore, we particularly seek public comment on particular areas that the public believes are essential and the basis for that belief.

When determining proposed critical habitat boundaries, we made every effort to avoid proposing the designation of developed areas such as buildings, paved areas, extensive vineyards, parks and golf courses, and other structures that lack PCEs for the California tiger salamander. Any such structures inadvertently left inside proposed critical habitat boundaries are not considered part of the proposed unit. This also applies to the land on which such structures sit directly. Therefore, Federal actions limited to these areas would not trigger section 7 consultations, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

After identifying the PCEs, we used the PCEs in combination with information on California tiger salamander locations, geographic distribution, vegetation, topography, geology, soils, distribution of California tiger salamander occurrences within and between vernal pool types, watersheds, current land uses, scientific information on the biology and ecology of the California tiger salamander, and conservation principles to identify essential habitat. As a result of this process, the proposed critical habitat unit possesses a combination of occupied and potential aquatic and upland habitat types, landscape features, surrounding land uses, vernal pool types, ponds, topography, and representation of geographical range, and environmental variability for the California tiger salamander.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to the maximum extent practicable, minimize and mitigate the impacts of the requested incidental take. These provisions ensure the management of the physical and biological elements of critical habitat for species covered under the HCP and in some cases when covered species rely on the same physical and biological characteristics provide protection and management for

non-covered species. We often exclude non-Federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) under section 10(a)(1)(B) of the Act from designated critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. We are not aware of any HCP's under development; therefore, we are not proposing any areas for exclusion.

In summary, we are proposing to designate critical habitat on lands that we have determined are occupied at the time of listing and contain the primary constituent elements and those additional areas that may or may not be essential to the conservation of the California tiger salamander in Sonoma County. We do not have adequate data at this point to make a determination as to whether these areas are essential and so are requesting that the public comment and provide any information on the areas as to whether they are or are not essential to the conservation of the species.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be essential for conservation may require special management considerations or protections. Areas in need of management include not only the immediate locations where the species may be present, but additional areas adjacent to these that can provide for normal population fluctuations that may occur in response to natural and unpredictable events. The Sonoma population of the California tiger salamander may depend upon habitat components beyond the immediate areas where individuals of the species occur, if these areas support the presence of small mammals or are essential in maintaining ecological processes such as hydrology, expansion of distribution, recolonization, and maintenance of natural predator-prey relationships. We believe that the areas proposed for critical habitat may require special management considerations or protections due to the threats outlined below:

(1) Introduction of non-native predators such as bullfrogs and fish can be significant threats to the California tiger salamander breeding ponds in Sonoma County;

(2) Activities that could disturb aquatic breeding habitats during the breeding season, such as heavy equipment operation, ground disturbance, maintenance projects (*e.g.* pipelines, roads, powerlines), off-road travel or recreation;

(3) Activities that impair the water quality of aquatic breeding habitat;

(4) Activities that would reduce small mammal populations to the point that there is insufficient underground refugia used by California tiger salamander in Sonoma County for foraging, protection from predators, and shelter from the elements;

(5) Activities that create barriers impassable for salamanders or increase mortality in upland habitat between extant occurrences in breeding habitat; and

(6) Activities that disrupt vernal pool complexes' ability to support California tiger salamander breeding function.

Proposed Critical Habitat Designation

We are proposing to designate critical habitat for the California tiger salamander in the Santa Rosa Plain Region. The critical habitat area described below constitutes our best assessment at this time of the areas occupied at the time of listing that contain the PCEs and may require protection or special management, and those areas not identified as occupied at the time of listing but which may be found to be essential to the conservation of the species.

The approximate area encompassed within the proposed critical habitat is 74,223 ac (30,037 ha). The area estimate reflects all land within the critical habitat unit boundary. We have included areas with the unit which are already developed or planned for development. The developed areas would not contain any of the PCEs and would not be considered as proposed critical habitat for the species. Those undeveloped areas within and adjacent to developed areas which do contain the essential habitat features would be considered as proposed critical habitat for the species.

No federal lands are included in this proposed unit. Although some State lands occur within the boundaries of proposed critical habitat, the majority of the areas proposed for critical habitat occur on private lands. The approximate areas encompassed within the proposal and the associated land ownership are shown in Table 1.

TABLE 1.—APPROXIMATE AREAS WITHIN THE PROPOSED CRITICAL HABITAT AND ASSOCIATED LAND OWNERSHIP

Proposed critical habitat	Federal lands acres (hectares)	State lands acres (hectares)	Private and other lands acres (hectares)	Total acres (hectares)
Santa Rosa Plain	0 ac (0 ha)	887 ac (359 ha)[1]	73,336 ac (29,678 ha)	74,223 ac (30,037 ha)

[1] Land ownership within the unit includes approximately 676 ac (274 ha) of California Department of Fish and Game lands, 211 ac (85 ha) of State land Commission lands, and 26 ac (10.5 ha) of County Regional Park (Crane Creek).

We present a brief description of the designation, and reasons why areas within it may be essential for the conservation of the Sonoma population of California tiger salamander, below. To our knowledge at this point each area within the proposed designation contain aquatic, upland, and dispersal habitats and contain the primary constituent elements and those additional areas found to be essential to the conservation of the California tiger salamander.

Proposed Designation Description

This critical habitat designation consists of 74,223 ac (30,037 ha) located in central Sonoma County, bordered on the west by the Laguna de Santa Rosa, on the south by Skillman Road northwest of Petaluma, on the east by the foothills, and on the north by Windsor Creek. The Santa Rosa Plain and adjacent areas are characterized by vernal pools, seasonal wetlands, and associated grassland habitat. This proposed designation represents the northernmost part of the geographic distribution of California tiger salamander and supports California tiger salamander breeding through various vernal pool complexes. The proposed designation encompasses all of the nine vernal pool complexes, each of which contain wetlands which are currently known to support breeding California tiger salamander in Sonoma County. At the time of listing, there were eight known breeding sites and fewer known occurrences of California tiger salamander within the breeding sites.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In response to the 9th Circuit Court's decision on Gifford Pinchot the Service has provided direction regarding the analysis of adverse modification of critical habitat. Such alterations include, but are not limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). The conservation recommendations in a conference report are advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency ensures that its actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the California tiger salamander or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the California tiger salamander. Federal activities that, when carried out, may adversely affect critical habitat for the California tiger salamander include, but are not limited to:

(1) Actions that would significantly compromise the function of vernal pools, swales, ponds, and other seasonal wetlands as described in Primary Constituent Elements section (see #1). Such activities could include, but are not limited to, constructing new structures, vineyards, and roads; disking; grading; and water diversion. These activities could destroy California tiger salamander breeding sites, reduce the hydrological regime necessary for successful larval metamorphosis, and/or eliminate or reduce the habitat necessary for the growth and reproduction of the California tiger salamander.

(2) Actions that would significantly fragment and isolate aquatic and upland habitat. Such activities could include, but are not limited to, constructing new structures and new roads. These activities could limit or prevent the dispersal of California tiger salamanders from breeding sites to upland habitat or vice versa due to obstructions to movement composed of structures, certain types of curbs, or increased traffic density. These activities could compromise the metapopulation structure of the Sonoma population by reducing opportunities for recolonization of some sites that may have experienced natural local extinctions.

All lands proposed for designation as critical habitat are within the geographic area occupied by the species, and may be used by the California tiger salamander, whether for foraging, breeding, growth of larvae and juveniles, dispersal, migration, genetic exchange, or sheltering. Areas within the Santa Rosa Plain proposed critical habitat unit that contain the primary constituent elements may be essential to the conservation of the California tiger salamander. Federal agencies already consult with us on activities in areas currently occupied by the species or if the species may be affected by the action to ensure that their actions do not jeopardize the continued existence of the species. Consultations could arise if a project is proposed within a temporarily unoccupied portion of a critical habitat unit and primary constituent elements of the designated

critical habitat may be adversely affected by the project.

Pursuant to section 4(b)(2) of the Act, we must consider relevant impacts in addition to economic ones. Lands within the designation of critical habitat for the Sonoma population are not owned or managed by the Department of Defense, there are currently no habitat conservation plans for the California tiger salamander in Sonoma County, and the designation does not include any Tribal lands or trust resources.

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for the California tiger salamander in Sonoma County is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.fws.gov/pacific/sacramento*, or by contacting the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the data used, specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final rule may differ from this proposed rule.

Public Hearing

Section 4(b)(5)(E) of the Act requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. Given the high likelihood of a request, we have scheduled a public hearing to be held on August 4, 2005, at the Flamingo Hotel, 2777 Fourth Street in Santa Rosa, California from 1 p.m. to 3 p.m. and 6 p.m. to 8 p.m. Registration will begin a half-hour before each session. Anyone wishing to make oral comments for the record at the public hearing is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration.

Persons needing special accommodations in order to attend and participate in the public hearing should contact Patti Carroll at (503) 231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments. When available, the draft economic analysis can be obtained from the Internet Web site at *http://www.fws.gov/pacific/sacramento* or by contacting the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Our assessment of economic effect will be completed prior to final rulemaking based upon review of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish & Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section

4(b)(2) of the ESA and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation for an additional 60 days. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the Sonoma population is not a significant regulatory action under E.O. 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments. The lands being proposed for critical habitat are mostly private lands with some other local government lands. Given the distribution of this species, small governments will not be uniquely affected by this proposed rule. Small governments will not be affected at all unless they propose an action requiring Federal funds, permits, or other authorization. Any such activity will require that the involved Federal agency ensure that the action is not likely to adversely modify or destroy designated critical habitat. However, as discussed above, Federal agencies are currently required to ensure that any such activity is not likely to jeopardize the species, and no further regulatory impacts from the designation of critical habitat are anticipated. Because we believe this rule will not significantly or uniquely affect small governments, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), the rule is not anticipated to have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. Although private parties that receive Federal funding, or assistance or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Due to current public knowledge of the species' protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the proposed critical habitat designation. While real estate market values may temporarily decline following designation, due to the perception that critical habitat designation may impose additional regulatory burdens on land use, we expect any such impacts to be short term. Additionally, critical habitat designation does not preclude development of HCPs and issuance of incidental take permits. Owners of areas that are included in the designated critical habitat will continue to have opportunity to use their property in ways consistent with the survival of the California tiger salamander. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State of California resource agencies. The designation of critical habitat in areas currently occupied by the California tiger salamander imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the California tiger salamander.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (Douglas County v. Babbitt, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's Manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of the California tiger salamander. Therefore, designation of critical habitat for the Sonoma population of the California tiger salamander has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this package is the Sacramento Fish and Wildlife Office staff.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. The entry for ''Salamander, California tiger'' in § 17.11(h), which was proposed to be further revised on August 10, 2004 at 69 FR 48570, is further revised as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
AMPHIBIANS							
*	*	*	*	*	*		*
Salamander, California.	*Ambystoma californiense*..	U.S.A. (CA)	U.S.A. (CA)	T	667E, 702, 744	17.95(d)	17.43(c)
*	*	*	*	*	*		*

3. In critical habitat for the California tiger salamander (*Ambystoma californiense*) in § 17.95(d), which was proposed to be revised on August 10, 2004, at 69 FR 48570, is proposed to be further amended by revising the heading and adding paragraphs (63) through (67) as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) Amphibians.

* * * * *

California Tiger Salamander (*Ambystoma californiense*)

* * * * *

California Tiger Salamander in Sonoma County

(63) Critical habitat units are depicted for Sonoma County, California, on the maps below.

(64) The primary constituent elements (PCEs) of critical habitat for the Sonoma County population of the California tiger salamander (CTS) are the habitat components that provide:

(i) Standing bodies of fresh water, including natural and manmade (*e.g.*, stock) ponds, vernal pools, vernal pool complexes, and other ephemeral or permanent water bodies that typically become inundated during winter rains and hold water for a sufficient length of time (*i.e.*, 12 weeks in a year of average rainfall) necessary for the species to complete the aquatic portion of its life cycle.

(ii) Upland habitats adjacent and accessible to and from breeding ponds that contain small mammal burrows, or other underground habitat that California tiger salamanders depend upon for food, shelter, and protection from the elements and predation.

(iii) Accessible upland dispersal habitat between occupied locations (paragraphs 1 and 64 (i) for this proposed designation) that allow for movement between such sites.

(65) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, flood control channels, airport buildings, structures and runways, highways, the land on which such structures are located, and other developed areas not containing one or more of the primary constituent elements.

Critical Habitat Map Unit

(66) Data layers defining map units were created on a base of USGS 7.5' quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(67) Unit 1: Santa Rosa Plain Unit, Sonoma County, California.

(i) From USGS 1:24,000 quadrangle map Healdsburg, Sebastopol, Santa Rosa, Two Rock, Cotati, Petaluma, and Mark West Springs, California, land bounded by the following UTM 10 NAD 83 coordinates (E,N): 523679,4258509; 523834,4258467; 524018,4258341; 524190,4258157; 4293,4257939; 524443,4257767; 524695,4257629; 524890,4257468; 525074,4257239; 525235,4257066; 25441,4256848; 525510,4256779; 525740,4256378; 525889,4256217; 526256,4255953; 26451,4255873; 526807,4255574; 526991,4255333; 527266,4255184; 527312,4254610; 527312,4254515; 27369,4254491; 527557,4254495; 527640,4254481; 527649,4254480; 527689,4254470; 27713,4254454; 27723,4254437; 527721,4254421; 527720,4254402; 527747,4254403; 527761,4254408; 527775,4254392; 27845,4254312; 527941,4254207; 528190,4254143; 528241,4254099; 528386,4254098; 528469,4254054; 28585,4253998; 528654,4253985; 528811,4253949; 528976,4253912; 529206,4253788; 529380,4253622; 29440,4253566; 529495,4253515; 529563,4253538; 529685,4253594; 529713,4253634; 529721,4253637; 29726,4253637; 529735,4253634; 529747,4253630; 529758,4253627; 529766,4253620; 29773,4253614; 29775,4253607; 529780,4253594; 529783,4253580; 529786,4253573; 529793,4253552; 529807,4253539; 29809,4253535; 529817,4253524; 529820,4253514; 529824,4253500; 529824,4253497; 529826,4253494; 29828,4253477; 529830,4253469; 529837,4253458; 529848,4253446; 529850,4253444; 529854,4253442; 29865,4253431; 529868,4253422; 529872,4253414; 529875,4253389; 529885,4253369; 529889,4253359; 29896,4253353; 529903,4253348; 529915,4253344; 529919,4253343; 529930,4253339; 29938,4253339; 29950,4253340; 529958,4253339; 529964,4253338; 529984,4253332; 529996,4253315; 530001,4253304; 29997,4253293; 529996,4253287; 529993,4253277; 529994,4253268; 529995,4253259; 529997,4253249; 30005,4253241; 530013,4253234; 530021,4253230; 530040,4253222; 530060,4253214; 530068,4253209; 30073,4253200; 530074,4253194; 530071,4253191; 530068,4253187; 530056,4253182; 530040,4253175; 30037,4253170; 530036,4253167; 530027,4253153; 530018,4253139; 530016,4253136; 30013,4253128; 30008,4253116; 530007,4253112; 530004,4253103; 530003,4253094; 529999,4253084; 530001,4253073; 30006,4253063; 530008,4253056; 530011,4253055; 530018,4253051; 530029,4253045; 530040,4253039; 30047,4253035; 530054,4253029; 530061,4253022; 530068,4253017; 530078,4253011; 530093,4253004; 530096,4253002; 30123,4253001; 530113,4252984; 530114,4252974; 530105,4252964; 530102,4252953; 30099,4252946; 30095,4252939; 530084,4252930; 530075,4252919; 530071,4252916; 530068,4252912; 530055,4252904; 30043,4252891; 530040,4252889; 530033,4252884; 530025,4252879; 530013,4252867; 530010,4252864; 30007,4252858; 530002,4252847; 529998,4252836; 529997,4252824; 529997,4252820; 529996,4252809; 29993,4252801; 529985,4252784; 529983,4252779; 529974,4252765; 529969,4252754; 529967,4252744; 29965,4252734; 529964,4252726; 529965,4252719; 529966,4252707; 529966,4252699; 29969,4252688; 29970,4252683; 529972,4252671; 529976,4252661; 529981,4252647; 529983,4252644; 529985,4252637; 29990,4252621; 529992,4252616; 529992,4252610; 529992,4252596; 529992,4252588; 529993,4252581; 29995,4252571; 529996,4252561; 530002,4252550; 530010,4252536; 530013,4252532; 530024,4252517; 30028,4252506; 530030,4252495; 530030,4252489; 530031,4252478; 530030,4252468; 530030,4252461; 30030,4252451; 530026,4252437; 530024,4252423; 530022,4252414; 530021,4252404; 30020,4252396; 30020,4252389; 530019,4252375; 530020,4252368; 530020,4252361; 530019,4252347; 530019,4252341; 30019,4252334; 530018,4252318; 530018,4252313; 530021,4252306; 530021,4252294; 530025,4252286; 30029,4252275; 530040,4252260; 530044,4252235; 530046,4252231; 530050,4252221; 530051,4252214; 30059,4252203; 530062,4252197; 530068,4252184; 530071,4252178; 530092,4252179; 530095,4252177; 30095,4252174; 530070,4252173; 530068,4252169; 530060,4252156; 530057,4252148; 30050,4252139; 30046,4252126; 530044,4252121; 530043,4252118; 530040,4252093; 530034,4252071; 530033,4252065; 30023,4252055; 530013,4252042; 530011,4252040; 530006,4252031; 530001,4252023; 529996,4252010; 29994,4252002; 529992,4251990; 529991,4251983; 529990,4251978; 529988,4251958; 529987,4251953; 29985,4251932; 529985,4251928; 529982,4251903; 529982,4251900; 529982,4251897; 529980,4251878; 29980,4251873; 529976,4251864; 529974,4251857; 529970,4251845; 529965,4251838; 29958,4251832; 29952,4251823; 529950,4251818; 529949,4251809; 529948,4251800; 529948,4251790; 529951,4251783; 29958,4251776; 529966,4251771; 529981,4251763; 529985,4251760; 529999,4251749; 530013,4251741; 30016,4251739; 530020,4251735; 530024,4251724; 530025,4251720; 530029,4251708; 530030,4251697; 30040,4251680; 530044,4251656; 530045,4251653; 530046,4251647; 530047,4251632; 530049,4251625; 30049,4251616; 530048,4251605; 530049,4251597;

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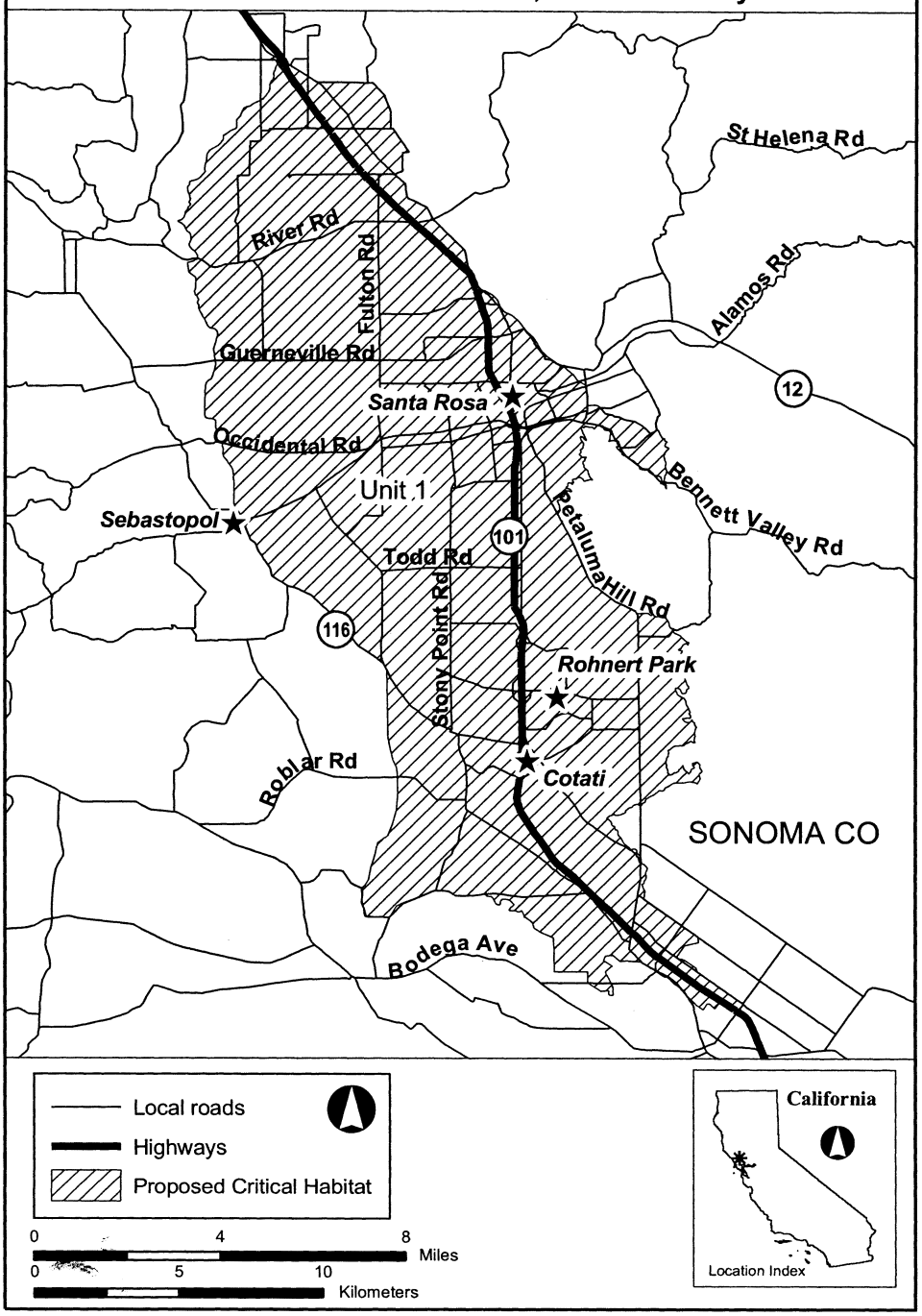
(ii) **NOTE:** Unit 1 (Map 36) follows:

BILLING CODE 4310–55–P

Map 36. California Tiger Salamander in Sonoma County, Unit 1: Santa Rosa Plain Unit, Sonoma County California



* * * * *

Dated: July 21, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–14992 Filed 8–1–05; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register
Vol. 70, No. 147
Tuesday, August 2, 2005

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

AGENCY: Advisory Council on Historic Preservation.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet on Friday, August 5, 2005. The meeting will be held in the Grand Orrington Ballroom, Second Floor, Hotel Orrington, 710 Orrington Avenue, Evanston, Illinois, beginning at 12:15 p.m.

The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and Congress on national historic preservation policy and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Chairman's Awards Presentation
III. Consideration of Actions to Address Historic Preservation Issues in the Base Realignment and Closure Process
IV. Report of the Preservation Initiatives Committee
  A. Heritage Tourism Initiative
  B. Historic Preservation Tax Issues
  C. National Heritage Areas Legislation
V. Report of the Federal Agency Programs Committee
  A. ACHP Report to the President Under Executive Order 13287
  B. Section 106 Case Update
VI. Report of the Communications, Education, and Outreach Committee
  A. Preserve America Presidential Awards for 2006
  B. 40th Anniversary of the NHPA and the ACHP
VII. Report of the Native American Advisory Group
VIII. Report of the Archaeology Task Force
IX. Report of the Affordable Housing and Historic Preservation Task Force
X. Preserve America Program Status Report
XI. Chairman's Report
  A. ACHP Alumni Foundation
  B. Legislative Issues
  1. ACHP Reauthorization Legislation
  2. ACHP FY 2006 Appropriation
XII. Executive Director's Report
XIII. New Business
XIV. Adjourn

Note: The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Washington, DC, 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., #809, Washington, DC 20004.

Dated: July 27, 2005.

John M. Fowler,

Executive Director.

[FR Doc. 05–15174 Filed 8–1–05; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 28, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Domestic Quarantines.

OMB Control Number: 0579–0088.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701–7772) the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the introduction of plant pests into the United States or their dissemination within the United States. Plant Protection and Quarantine, a program within USDA's Animal and Plant Health Inspection Service, (APHIS) is responsible for implementing this Act and does so through the enforcement of its domestic quarantine regulations

contained in title 7 of the Code of Federal Regulations, CFR part 301. Implementing these quarantines often requires us to collect information from a variety of individuals who are involved in growing, packing, handling, transporting, and exporting of plants and plant products. The information collected from these individuals is vital to helping ensure that injurious plant diseases and insect pests do not spread within the United States. Information to be collected is necessary to determine compliance with domestic quarantines. Federal/State domestic quarantines are necessary to regulate the movement of articles from infested areas to non-infested area. Collecting information requires the use of a number of forms and documents. APHIS will collect information using various forms and documents.

Need and Use of the Information: APHIS will collect information by interviewing growers and shippers at the time the inspections are being conducted and by having growers and shippers of exported plants and plant products complete an application for a transit permit. Information is collected from the growers, packers, shippers, and exporters of regulated articles to ensure that the articles, when moved from a quarantined area, do not harbor injurious plant diseases and insect pests. The information obtained will be used to determine compliance with regulations and for issuance of forms, permits, certificates, and other required documents.

Description of Respondents: Business or other for-profit; farm; individuals or households; farms; Federal Government; State, local or tribal government.

Number of Respondents: 191,866.

Frequency of Responses: Recordkeeping; reporting: on occasion.

Total Burden Hours: 98,033.

Animal and Plant Health Inspection Service

Title: Hawaiian and Territorial Quarantine Notices.

OMB Control Number: 0579–0198.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant products to prevent the introduction of plant pest into the United States or their dissemination within the United States. The Plant Protection and Quarantine, a program within the Animal and Plant Health Inspection Service (APHIS), is responsible for implementing the Act and does so through the enforcement of its Hawaiian and territorial quarantine regulations, contained in part 318 of title 7, Code of Federal Regulations. Hawaiian and territorial quarantines are necessary to prevent the spread of dangerous plant diseases and pests. APHIS will collect information using several forms.

Need and Use of the Information: APHIS will collect information from a variety of individuals who are involved in growing, packing, handling, and transporting plants and plant products. The information collected will be used to determine compliance with regulations and for issuance of forms, permits, certificates, and other required documents.

Description of Respondents: Business or other for-profit.

Number of Respondents: 903.

Frequency of Responses: Recordkeeping; reporting: on occasion.

Total Burden Hours: 646.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–15230 Filed 8–1–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 05–019N]

Notice of Request for a New Information Collection (Voluntary Recalls of Meat and Poultry Products)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request a new information collection regarding the voluntary recalls from commerce of meat and poultry products.

DATES: Comments on this notice must be received on or before October 3, 2005.

ADDRESSES: FSIS invites interested persons to submit comments on this information collection request. Comments may be submitted by mail, including floppy disks or CD–ROM's, and hand-or courier-delivered items. Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250. All submissions received must include the Agency name and docket number 05–019N.

All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/2005_Notices_Index/index.asp.*

FOR ADDITIONAL INFORMATION: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Recalls of Meat and Poultry Products.

Type of Request: New information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting a new information collection addressing paperwork requirements regarding the Agency's voluntary recalls from commerce of meat and poultry products. Although FSIS is responsible for the inspection of egg products under the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*), the Food and Drug Administration handles the recalls of egg products under a Memorandum of Understanding with FSIS.

A firm that has produced or imported meat or poultry product that is adulterated or misbranded and is being distributed in commerce, may voluntarily recall the product in question. When there is a recall, FSIS asks that the recalling firm provide the Agency with some basic information, including the identity of the recalled product, the reason for the recall, and information about the distributors and retail consignees to whom the product was actually shipped. Under the FMIA, firms are required to keep such records that fully and correctly disclose all transactions in their business (21 U.S.C. 642). Under the PPIA, firms are required to keep such records as are properly necessary for the effective enforcement of the PPIA (21 U.S.C. 460(b)).

When a firm voluntarily recalls a product, FSIS conducts recall

effectiveness checks. In conducting recall effectiveness checks, if the recall is to the retail or consumer level, the Agency contacts the distributors and actual retail consignees to ensure that they were notified of the recall, to verify the amount of product they received, and to confirm that they are removing the product from commerce and returning it to the recalling firm or otherwise disposing of the product. Sometimes, however, while it is possible to confirm that consignees were notified, and that they are removing product from commerce, it is not possible to ascertain how much product the consignee received. Therefore, FSIS is revising its Report of Recall Effectiveness form to provide a space to include, if necessary, along with other information on the form, an explanation of why the amount of product received by a retail consignee cannot be determined.

FSIS has made the following estimates based upon an information collection assessment.

Estimate of Burden: FSIS estimates that it will take an average of .97 hours to collect and submit this information to FSIS.

Respondents: Official establishments, importers, and retail consignees.

Estimated Number of Respondents: 3,060.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,980 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–5627, (202) 720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and, (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both John O'Connell, Paperwork Reduction Act Coordinator, at the address provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/index.asp*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC, on: July 28, 2005.

Barbara J. Masters,

Acting Administrator.

[FR Doc. 05–15212 Filed 8–1–05; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet August 19, 2005, (RAC) in Covelo, California. Agenda items to be covered include: (1) Approval of minutes, (2) Public Comment, (3) Sub-committees (4) Discussion—items of interest (5) Next agenda and meeting date.

DATES: The meeting will be held on August 19, 2005, from 9 a.m. until 12 noon.

ADDRESSES: The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St., Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo, CA 95428. (707) 983–8503; e-mail *rhurt@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by August 15, 2005. Public comment will have the opportunity to address the committee at the meeting.

Dated: July 20, 2005.

Blaine Baker,

Designated Federal Official.

[FR Doc. 05–15172 Filed 8–1–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting; Siskiyou Resource Advisory Committee (RAC)

Summary: The Siskiyou Resource Advisory Committee will meet on Wednesday, August 31, 2005 to recommend Title II projects for fiscal year 2006 under the Secure Rural Schools and Community Self Determination Act of 2000. The meeting will be held at the Cave Junction City Hall, 222 W. Lister Street, Cave Junction, Oregon. It begins at 8 a.m., ends at 4:30 p.m. The open public comments begin at 11 a.m. and ends at 11:30 a.m. Written comments may be submitted prior to the meeting and delivered to Designated Federal Official, Scott Conroy at the Rogue River-

Siskiyou National Forest, P.O. Box 520, Medford, Oregon 97501.

For Further Information Contact: Rogue River-Siskiyou National Forest Public Affairs Officer Patty Burel at telephone: (541) 858–2211, e-mail: *pburel@fs.fed.us,* or USDA Forest Service, P.O. Box 520, 333 West 8th Street, Medford, OR 97501.

Dated: July 27, 2005.

Greg A. Clevenger,

Resource Staff Officer, Rogue River-Siskiyou National Forest.

[FR Doc. 05–15191 Filed 8–1–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072605C]

Permits; Foreign Fishing

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

ACTION: Notice of receipt of foreign fishing application; request for comments.

SUMMARY: NMFS publishes for public review and comment information regarding a foreign fishing application submitted under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received by August 16, 2005.

ADDRESSES: Send written comments or requests for a copy of the application to NMFS, Office of International Affairs, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910.

Comments on this notice may also be submitted by e-mail to *nmfs.foreignfishing@noaa.gov*. Include in the subject line the following document identifier: 072605C.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, Office of International Affairs, (301) 713–2276.

SUPPLEMENTARY INFORMATION:

Background

Section 204(d) of the Magnuson-Stevens Act (16 U.S.C. 1824(d)) provides, among other things, that the Secretary of Commerce (Secretary) may issue a transshipment permit which authorizes a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the U.S. Exclusive Economic Zone (EEZ) or, with the concurrence of a state, within the boundaries of that state to a point outside the United States.

Section 204(d)(3)(D) of the Magnuson-Stevens Act provides that an application may not be approved until the Secretary determines that ''no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated ... an interest in performing the transportation at fair and reasonable rates.'' NMFS is publishing this notice as part of its effort to make such a determination with respect to the application described below.

Summary of Application

NMFS has received an application requesting authorization for a Mexican vessel to receive, within the Pacific waters of the U.S. EEZ south of 38°00′ N. lat., transfers of live tuna from U.S. purse seiners for the purpose of transporting the tuna alive to an aquaculture facility located in Baja California, Mexico.

Interested U.S. vessel owners and operators may obtain a copy of the complete application from NMFS (see **ADDRESSES**).

Dated: July 27, 2005.

Dean Swanson,

Acting Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 05–15226 Filed 8–1–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office (USPTO).

Title: Substantive Submissions Made During Prosecution of the Trademark Application.

Form Number(s): PTO Form 1553, 1581, 2000, 2194, 2195, 2200, 2202.

Agency Approval Number: 0651–00xx.

Type of Request: New collection.

Burden: 29,174 hours.

Number of Respondents: 183,710 responses.

Avg. Hours Per Response: 3 to 20 minutes. This includes time to gather the necessary information, create the documents, and mail the completed request. The time estimates shown for the electronic forms in this collection are based on the average amount of time needed to complete and electronically file the associated form.

Needs and Uses: The information in this collection is a matter of public record and is used by the public for a variety of private business purposes related to establishing and enforcing trademark rights. At this time, the USPTO is proposing to split collection 0651–0009, Trademark Processing, into four separate collections based upon the structure of the Trademark business processes. The USPTO believes that dividing this extensive collection into smaller, more manageable, information collection requests will result in a more efficient updating and renewal process. This new collection is one of the newly created, or ''split'' groups.

The USPTO is proposing to add two paper submissions into this collection, namely ''Request to Delete Section 1(b) Basis, Intent to Use'' and ''Request for Express Abandonment (Withdrawal) of Application.'' The electronic versions of these submissions were additions to collection 0651–0009, which was recently approved by OMB on December 2, 2004.

The USPTO is also proposing to add a new category into this collection, ''Other Petitions.'' ''Other Petitions'' includes all petitions other than ''Petitions to Revive.'' ''Other Petitions'' cannot be submitted electronically.

The remaining 12 items in this collection were part of the existing approved 0651–0009 collection.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms, the Federal Government, and State, local or Tribal governments.

Frequency: On occasion.

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 any of the following methods:

- E-mail: *Susan.Brown@uspto.gov.* Include ''0651–0031 copy request'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan Brown.
- Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before September 1, 2005 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: July 25, 2005.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 05–15195 Filed 8–1–05; 8:45 am]

BILLING CODE 3510–16–P

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Open Meeting

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; Defense Base Closure and Realignment Commission—open meeting regarding the impacts on Homeland Security and Homeland Defense of various Department of Defense recommendations for closure or realignment of installations; and various Department of Defense recommendations regarding units of the Air National Guard (Washington, DC).

SUMMARY: Notice is hereby given that a delegation of Commissioners of the Defense Base Closure and Realignment Commission will hold an open meeting on August 11, 2005 from 1 p.m. to 4:30 p.m. at Senate Hart Hearing Room 216, Constitution Avenue, Washington, DC 20510. The delay of this change notice resulted from the short time-frame established by statute for the operations of the Defense Base Closure and Realignment Commission and the necessity of coordinating this meeting with Federal and state government officials. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site *http://www.brac.gov,* for updates.

The Commission delegation will meet to receive testimony from the Department of Defense, the Department of Homeland Security, United States Northern Command, the Department of the Air Force, the National Guard Bureau, and the Adjutants General Association of the United States regarding impacts on Homeland Security and Homeland Defense of various Department of Defense recommendations for closure or realignment of installations, and various Department of Defense recommendations regarding units of the Air National Guard. This meeting will be open to the public, subject to the availability of space. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

DATES: August 11, 2005 from 1 p.m. to 4:30 p.m.

ADDRESSES: Senate Hart Hearing Room 216, Constitution Avenue, Washington, DC 20510.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov.* The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street, Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters hearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990,* as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–669–2950 or 2708.

Dated: July 27, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–15196 Filed 8–1–05; 8:45 am]

BILLING CODE 5001–06–M

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Open Meeting

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; Defense Base Closure and Realignment Commission—open meeting regarding the environmental stewardship of installations recommended for closure or realignment (Washington, DC).

SUMMARY: Notice is hereby given that a delegation of Commissioners of the Defense Base Closure and Realignment Commission will hold an open meeting on August 11, 2005 from 8:30 a.m. to 11:30 a.m. at Senate Hart Hearing Room 216, Constitution Avenue, Washington, DC 20510. The delay of this change notice resulted from the short time-frame established by statute for the operations of the Defense Base Closure and Realignment Commission and the necessity of coordinating this meeting with Federal, state and local government officials. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

The Commission delegation will meet to receive testimony from Federal, state and local government officials, professional associations and the general public regarding the issues related to the appropriate environmental stewardship of installations recommended for closure and realignment. This meeting will be open to the public, subject to the availability of space. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

DATES: August 11, 2005 from 8:30 a.m. to 11:30 a.m.

ADDRESSES: Senate Hart Hearing Room 216, Constitution Avenue, Washington, DC 20510.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov.* The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street, Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: July 27, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–15198 Filed 8–1–05; 8:45 am]

BILLING CODE 5001–06–U

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Open Meeting

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; Defense Base Closure and Realignment Commission—open meeting regarding consideration of certain installations located in the States of Alaska, California and Colorado not recommended for closure or realignment by the Secretary of Defense (Monterey, CA).

SUMMARY: Notice is hereby given that a delegation of Commissioners of the Defense Base Closure and Realignment Commission will hold an open meeting on August 8, 2005 from 1 p.m. to 4 p.m. at the Monterey Convention Center, 1 Portola Plaza, Monterey, California 93940. The delay of this change notice resulted from the short time-frame established by statute for the operations of the Defense Base Closure and Realignment Commission and the necessity of coordinating this meeting with Federal, state and local government officials. The Commission requests that the public consult with 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

The Commission delegation will meet to receive comment from Federal, state and local government representatives and the general public on certain base closure and realignment actions under consideration by the Commission in the states of Alaska, California and Colorado that were not recommended by the Department of Defense (DoD). The installations concerned are listed in FR Doc. 05–14596, published in the **Federal Register** of July 22, 2005, on page 42311. The purpose of this regional meeting is to allow communities an opportunity to voice their concerns, counter-arguments, and opinions related to the proposed action in a live public forum. This meeting will be open to the public, subject to the availability of space. Sign language interpretation will be provided. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

DATES: August 8, 2005 from 1 p.m. to 4 p.m.

ADDRESSES: Monterey Convention Center, 1 Portola Plaza, Monterey, California 93940.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*. The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street, Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Section 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: July 27, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–15199 Filed 8–1–05; 8:45 am]

BILLING CODE 5001–06–M

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Open Meeting

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; Defense Base Closure and Realignment Commission—open meeting regarding consideration of certain installations located in the Commonwealth of Virginia not recommended for closure or Realignment by the Secretary of Defense (Washington, DC).

SUMMARY: Notice is hereby given that a delegation of Commissioners of the Defense Base Closure and Realignment Commission will hold an open meeting on August 4, 2005 from 1 p.m. to 2 p.m. at Senate Hart Hearing Room 216, Constitution Avenue, Washington, DC 20510. The delay of this change notice resulted from the short time-frame established by statute for the operations of the Defense Base Closure and Realignment Commission and the necessity of coordinating this meeting with Federal, state and local government officials. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov,* for updates.

The Commission delegation will meet to receive comment from Federal, state and local government representatives and the general public on certain base closure and realignment actions under consideration by the Commission in the Commonwealth of Virginia that were not recommended by the Department of Defense (DoD). The installations concerned are listed in FR Doc. 05–14596, published in the **Federal Register** of July 22, 2005, on page 42311. The purpose of this regional meeting is to allow communities an opportunity to voice their concerns, counter-arguments, and opinions related to the proposed action in a live public forum. This meeting will be open to the public, subject to the availability of space. Sign language interpretation will be provided. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

DATES: August 4, 2005 from 1 p.m. to 2 p.m.

ADDRESSES: Senate Hart Hearing Room 216, Constitution Avenue, Washington, DC 20510.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov.* The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street, Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the

Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: July 27, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–15200 Filed 8–1–05; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Open Meeting

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; Defense Base Closure and Realignment Commission—open meeting regarding consideration of certain installations located in the States of Indiana, Maine, North Carolina and Ohio not recommended for closure or realignment by the Secretary of Defense (Washington, DC).

SUMMARY: Notice is hereby given that a delegation of Commissioners of the Defense Base Closure and Realignment Commission will hold an open meeting on August 10, 2005 from 8:30 a.m. to 12:30 p.m. at Senate Hart Hearing Room 216, Constitution Avenue, Washington, DC 20510. The delay of this change notice resulted from the short time-frame established by statute for the operations of the Defense Base Closure and Realignment Commission and the necessity of coordinating this meeting with Federal, State and local government officials. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

The Commission delegation will meet to receive comment from Federal, State and local government representatives and the general public on certain base closure and realignment actions under consideration by the Commission in the States of Indiana, Maine, North Carolina and Ohio that were not recommended by the Department of Defense (DoD). The installations concerned are listed in FR Doc. 05–14596, published in the **Federal Register** of July 22, 2005, on page 42311. The purpose of this regional meeting is to allow communities an opportunity to voice their concerns, counter-arguments, and opinions related to the proposed action in a live public forum. This meeting will be open to the public, subject to the availability of space. Sign language interpretation will be provided. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

DATES: August 10, 2005 from 8:30 a.m. to 12:30 p.m.

ADDRESSES: Senate Hart Hearing Room 216, Constitution Avenue, Washington, DC 20510.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*. The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street, Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: July 27, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–15201 Filed 8–1–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–31]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05–31 with attached transmittal and policy justification.

Dated: July 27, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

21 JUL 2005
In reply refer to:
I-05/006760

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-31, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Israel for defense articles and services estimated to cost $600 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 05-31

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Israel

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$600 million
TOTAL	$600 million

Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: a fleet management program for U.S. Government and contractor management and logistics support of Israeli Air Force F-15 and F-16A/B Pratt and Whitney F-100 model engines, spare and repair parts, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support.

Military Department: Air Force (QDG)

Prior Related Cases, if any: none

Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

Date Report Delivered to Congress: 21 JUL 2005

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Israel - Fleet Management Program

The Government of Israel has requested a possible sale of a fleet management program for U.S. Government and contractor management and logistics support of Israeli Air Force F-15 and F-16A/B Pratt and Whitney F-100 model engines, spare and repair parts, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support. The estimated cost is $600 million.

This proposed sale will contribute to the foreign policy and national security of the U.S. by helping to improve the security of a friendly country that has been, and continues to be, an important force for economic progress in the Middle East. This proposed sale will help Israel to maintain its qualitative edge by supporting its existing systems, promoting Israeli readiness and self-sufficiency, and standardizing weapon system operability with the U.S. forces.

The Israel fleet management program for U. S. Government management and contractor sustainment support consists of spare parts forecasting, inventory management, and maintenance prioritization to ensure 95 per cent flying hour capability for the existing Israeli Air Force (IAF) fleet of 202 Pratt and Whitney F-100 engines in support of both F-15 and F-16 fleet aircraft for a period of ten (10) years. Contractor support will include, but not be limited to, management, maintenance, support, overhaul, repair, testing, spare and repair parts, support equipment, engineering and technical support, training and other related elements of program support of F-100-PW-100DPI engines installed in IAF F-15 Fighter aircraft and F100-PW-200DPI engines installed in IAF F-16A/B fighter aircraft for a period of ten years.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Pratt and Whitney of East Hartford, Connecticut. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of 2 U.S. Government and 12 contractor representatives for 10 years to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 05–15203 Filed 8–1–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–32]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05–32 with attached transmittal and policy justification.

Dated: July 27, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

21 JUL 2005
In reply refer to:
I-05/006892

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-32, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Thailand for defense articles and services estimated to cost $46 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 05-32

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended (U)

(i) Prospective Purchaser: Thailand

Total Estimated Value:

Major Defense Equipment*	$30 million
Other	$16 million
TOTAL	$46 million

Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: two UH-60L BLACK HAWK helicopters with engines, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, U.S. Government Quality Assurance Team, contractor engineering and technical support services and other related elements of logistics support.

Military Department: Army (WFV, TEV, and ODG)

(v) Prior Related Cases, if any:
FMS case WEZ - $27 million - 11Sep03
FMS case WES - $28 million - 30Aug02
FMS case WEC - $19 million - 29Sep00

Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

Date Report Delivered to Congress: 21 JUL 2005

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Thailand - UH-60L BLACK HAWK Helicopters

The Government of Thailand has requested a possible sale of two UH-60L BLACK HAWK helicopters with engines, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services and other related elements of logistics support. The estimated cost is $46 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force in the war on drugs.

The Royal Thai Navy (RTN) requires the helicopters to fulfill utility lift requirements. This was emphasized during the heightened operation tempo during the recent tsunami search and rescue operations. The RTN intends to reduce the variety of airframe platforms in its inventory. Thailand, which already has UH-60 model helicopters in its inventory, will have no difficulty absorbing these additional aircraft.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Sikorsky Aircraft Corporation of Stratford, Connecticut. There are no known offset agreements proposed in connection with this potential sale.

When the helicopters arrive, implementation will require eight U.S. contractor representatives for two weeks and one field service representative for up to two years in Thailand.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 05–15204 Filed 8–1–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–34]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05–34 with attached transmittal, policy justification, and Section 484(a)(2).

Dated: July 27, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 JUL 2005
In reply refer to:
I-05/007177

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-34, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Colombia for defense articles and services estimated to cost $100 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a determination as required by Section 484(a)(2) of the Foreign Assistance Act of 1961, as amended.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Section 484(a)(2)

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 05-34

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Colombia

(ii) Total Estimated Value:

Major Defense Equipment*	$ 97 million
Other	$ 3 million
TOTAL	$100 million

Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: eight UH-60L BLACK HAWK helicopters with engines, spare and repair parts, tools and support equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor technical assistance and other related elements of logistics support.

Military Department: Army (UXM)

Prior Related Cases, if any:
FMS case UUF - $143 million - 13Jun00
FMS case UTN - $116 million - 24Dec96
FMS case USI - $ 37 million - 28Dec93
FMS case ULY - $ 35 million - 29Jun89
FMS case UKZ - $ 36 million - 30Jul87

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

Date Report Delivered to Congress: 22 JUL 2005

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Colombia - UH-60L BLACK HAWK Helicopters

The Government of Colombia has requested a possible sale of eight UH-60L BLACK HAWK helicopters with engines, spare and repair parts, tools and support equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $100 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force in the war on drugs.

Colombia needs these helicopters to fulfill its strategic commitments and self-defense within the region and continue its counter narco-terrorist mission. These helicopters will be used to pinpoint and destroy narco-terrorists identified and operating within Colombia. The proposed sale will upgrade its anti-personnel and day/night mission capability, provide for the defense of vital installations, and provide close air support for ground forces. Colombia, which already has UH-60 model helicopters in its inventory, will have no difficulty absorbing these additional aircraft.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractors will be: United Technologies, Sikorsky Aircraft Corporation of Stratford, Connecticut and General Electric of Lynn, Massachusetts. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to Colombia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

DETERMINATION

Pursuant to § 484 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2261) (the "Act"), the International Narcotics Control Corrections Act of 1994, Executive Order 12163, as amended, and State Department Delegation of Authority Number 145, I hereby waive the application of § 484(a)(1) of the Act (which requires that the United States retain title to aircraft made available to a foreign country primarily for narcotics-related purposes), for the sale of eight UH-60L BLACK HAWK helicopters to the Government of Colombia because retention of title to the aircraft would be contrary to the national interest of the United States.

This waiver shall be reported to Congress immediately in accordance with the procedures applicable to reprogramming notifications under § 634A of the Act as required by § 484(a)(2)(ii) of the Act.

JUN 27 2005

Date

Robert Joseph
Under Secretary of State for
Arms Control and
International Security

[FR Doc. 05–15205 Filed 8–1–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–40]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives Transmittal 05–40 with attached transmittal and policy justification.

Dated: July 27, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

21 JUL 2005
In reply refer to:
I-05/008130

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-40, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Bahrain for defense articles and services estimated to cost $150 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 05-40

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Bahrain

Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$150 million
TOTAL	$150 million

Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: continuation of logistics support services/equipment for the F-16 aircraft, ALR-69 radar warning receiver, ALQ-131 electric countermeasure pods, radar systems, and engines. The possible sale also includes support equipment, aircraft engine services/modification, repair/return services, depot level repair support; precision measurement equipment laboratory calibration, spare and repair parts, support equipment, supply support, personnel training and training equipment, publications and technical data, contractor technical services and other related elements of logistics support and to ensure aircraft operational availability.

Military Department: Air Force (QAT, Amendment 6)

(v) Prior Related Cases, if any: none

Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(viii) Date Report Delivered to Congress: 21 JUL 2005

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION (U)

Bahrain - Continuation of Logistics Support Services and Equipment

The Government of Bahrain has requested a possible sale of continuing logistics support services/equipment for the F-16 aircraft, ALR-69 radar warning receiver, ALQ-131 electric countermeasure pods, radar systems, and engines. The possible sale also includes support equipment, aircraft engine services/modification, repair/return services, depot level repair support; precision measurement equipment laboratory calibration, spare and repair parts, support equipment, supply support, personnel training and training equipment, publications and technical data, contractor technical services and other related elements of logistics support and to ensure aircraft operational availability. The estimated cost is $150 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

These defense articles and services are required to maintain the operational readiness of the Royal Bahrain Air Force. The Government of Bahrain needs the technical, maintenance, and logistical services to maintain the operational capabilities of its F-16 aircraft radar systems; and engines previously procured from the United States.

This proposed sale will permit Bahrain to order spares, obtain needed repairs and technical guidance on maintaining existing systems, but will not alter the basic military balance in the region.

The principal contractor will be: General Electric Aircraft Engines of Cincinnati, Ohio and Lockheed-Martin Tactical Aircraft Systems of Fort Worth, Texas. There are no known offset agreements proposed in connection with this potential sale.

There will be no new U.S. Government personnel in-country, but currently five contractor representatives have been in-country since 1991.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 05–15206 Filed 8–1–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice; Public Meeting of the Defense Advisory Committee on Military Compensation

AGENCY: DoD.

SUMMARY: *Name of Committee:* The Defense Advisory Committee on Military Compensation (DACMC).

Committee Membership: Chairman: ADM (Ret) Donald L. Pilling. Members: Dr. John P. White; Gen (Ret) Lester L. Lyles; Mr. Frederic W. Cook; Dr. Walter Oi; Dr. Martin Anderson; and Mr. Joseph E. Jannotta.

General Function of the Committee: The Committee will provide the Secretary of Defense, through the Under Secretary of Defense (Personnel and Readiness), with assistance and advice on matters pertaining to military compensation. The Committee will examine what types of military compensation and benefits are the most effective for meeting the needs of the Nation.

Agenda: On August 31, 2005, from 10 a.m. to 12 p.m. and 1 p.m. to 3 p.m. During the morning session, the Committee will deliberate on compensation issues identified by its Subcommittees on the areas of retirement compensation, health benefits, special and incentive pays,

reserve compensation, and quality of life matters as it continues to prepare its interim report. In the afternoon, the Committee will conduct a discussion with invited groups.

Procedure: Public participation in Committee discussions at this meeting will not be permitted. Written submissions of data, information, and views may be sent to the Committee contact person at the address shown. Submissions should be received by close of business August 24, 2005. Persons attending are advised that the Committee is not responsible for providing access to electrical outlets.

DATES: Wednesday, August 31, 2005, from 10 a.m. to 12 p.m. (morning session) and 1 p.m. to 3 p.m. (afternoon session).

Location: Crystal City Hilton, 2399 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Mintz, Designated Federal Official, Defense Advisory Committee on Military Compensation, 2521 S. Clark Street, Arlington, VA 22202. Telephone: 703–699–2700.

Dated: July 27, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–15197 Filed 8–1–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Defense Science Board

AGENCY: Department of Defense (DoD).

ACTION: Notice; Correction—Notice of Advisory Committee meeting date and location change.

SUMMARY: The Defense Science Board published a document in the **Federal Register** of May 20, 2005, announcing a closed meeting of the Defense Science Board (DSB) Task Force on Nuclear Capabilities. The *August 30–31*, 2005, tasked force has been revised to meet in closed session on *August 31–September 1, 2005, at the Institute for Defense Analysis (IDA).* IDA is located at 4850 Mark Center Drive, Alexandria, VA. All other meeting dates and locations remain unchanged. The Task Force will review DoD needs and specific requirements for nuclear capabilities.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTRACT: LtCol David Robertson, USAF, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *david.robertson@osd.mil*, or via phone at (703) 571–0081.

Correction

In the **Federal Register** of May 20, 2005, in FR Doc 05–10155, on page 29288, in the last column, correct the **SUMMARY** and **DATES** captions to read:

SUMMARY: The August 30–31, 2005, tasked force meeting has been revised to meet in closed session on August 31–September 1, 2005, at the Institute for Defense Analysis (IDA).

DATES: The August 30–31, 2005, tasked force meeting has been revised to meet in closed session on August 31–September 1, 2005.

Dated: July 27, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–15202 Filed 8–1–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 1, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, 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.

Dated: July 27, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Annual Client Assistance Program (CAP) Report.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 350.

Abstract: Form RSA–227 is used to analyze and evaluate the Client Assistance Program (CAP) administered by designated CAP agencies. These agencies provide services to clients and client applicants of programs, projects, and community rehabilitation programs authorized by the Rehabilitation Act of 1973, as amended. Data also are reported on information and referral services provided to any individual with a disability.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2780. 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 the Internet address *OCIO_RIMG@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 directed to Sheila Carey at her e-mail address *Sheila.Carey@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.

Office of Planning, Evaluation and Policy Development

Type of Review: Reinstatement.

Title: Follow Up Evaluation of the GEAR UP Program.

Frequency: One time.

Affected Public: Individuals or household; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 7,255.

Burden Hours: 3,907.

Abstract: The evaluation responds to legislative requirement in P.L. 105–244, Section G to evaluate and report on the effectiveness of projects funded under the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) program. Using a quasi-experimental design, high school graduation and postsecondary enrollment as well as students' and parents' expectations for postsecondary education, their knowledge of the academic preparation needed and availability of financial resources and students' academic performance will be compared over time for students who participated in GEAR UP with students who did not participate in GEAR UP projects. Descriptive information about projects will also be collected.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2773. 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 the Internet address *OCIO_RIMG@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 directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@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. 05–15194 Filed 8–1–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Expression of Interest Regarding the Scope of an Intended Solicitation for Superconductivity Partnerships With Industry (SPI) Projects

AGENCY: Department of Energy, Office of Electricity Delivery and Energy Reliability.

ACTION: Notice of inquiry.

SUMMARY: The Department of Energy (DOE), as part of its Superconductivity Program for Electric Power Systems, is currently pursuing the development of electric power equipment incorporating high temperature superconductors (HTS) through PSIs. The purpose is to accelerate future commercial availability of the more efficient, higher capacity new technology enabled by HTS for modernizing the electricity infrastructure.

The DOE is contemplating issuing a solicitation in FY–2006 in response to continued industrial interest and due to the impressive technical accomplishments made to date by participating industry teams. Applications of interest could address the next stage of HTS power line R&D, or begin R&D for power equipment based on the expected 2006 availability of second generation (2G) HTS wires in limited quantity. The purpose of this notice is to request expressions of interest in responding to the contemplated solicitation. DOE also welcomes comments on the content of the solicitation.

DATES: Written comments are to be filed electronically by e-mailing to: *SPI.comments@tms-hq.doe.gov* no later than 5 p.m. eastern time September 16, 2005. Comments can also be submitted at the address listed below.

ADDRESSES: Office of Electricity Delivery and Energy Reliability, OE–2, Attention: SPI Comments, U.S. Department of Energy, Forrestal Building, Room 6H–034, 1000 Independence Avenue, SW., Washington, DC 20585.

Note that U.S. Postal Service mail sent to DOE continues to be delayed by several weeks due to security screening. Submission via FedEx or electronically is therefore encouraged.

FOR FURTHER INFORMATION CONTACT: Dr. James Daley, Office of Electricity Delivery and Energy Reliability, OE–2, Attention: SPI Comments, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: DOE intends offering to share the cost of multi-year projects that advance program equipment goals where the industry contribution is typically 50% or more of the total project costs. DOE contemplates that proposals submitted pursuant to a future solicitation would be prepared by vertically integrated teams that include an equipment manufacturer, an end user such as an electric utility, and a HTS wire supplier. In addition, each team would be able to access (via separate Cooperative Research and Development Agreements) the capabilities of national laboratories currently participating in the superconductivity program in performing their project. These teams would be responsible for design, manufacture, installation and testing the technology of their choice. The program currently has a major focus on HTS power lines, but also has cost-shared projects for HTS generators, transformers, motors, fault current limiters and flywheel systems.

The DOE is contemplating issuing a solicitation in FY–2006 in response to continued industrial interest and due to the impressive technical accomplishments made to date by participating industry teams. Applications of interest could address the next stage of HTS power line R&D, or begin R&D for power equipment based on the expected 2006 availability of second generation (2G) HTS wires in limited quantity. Subject to availability of funds, DOE anticipates that awards for the contemplated solicitation will range from hundreds of thousands of dollars to several million dollars per year and for project periods of up to four years. The SPI awards would be cost-shared cooperative agreements between DOE and the industry team. The solicitation would also require that greater than 50% of manufacturing expenditures be in the United States. Further, the solicitation would require that the application include energy and economic benefits analysis, technical performance expectations, product or system design studies, and a plan for eventual product commercialization. A resulting award would fund first-of-a-kind equipment R&D concluding with its operation and testing, but would not commit DOE to follow-on phases or projects.

Issued in Washington, DC on July 26, 2005.

Kevin M. Kolevar,

Director, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 05–15208 Filed 8–1–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, September 8, 2005, 9 a.m.—5 p.m.; Friday, September 9, 2005, 8:30 a.m.—4 p.m.

ADDRESSES: DoubleTree Hotel, Lloyd Center, 1000 Northeast Multnomah, Portland, Oregon, phone number: (503) 281–6111, Fax number: (503) 284–8553.

FOR FURTHER INFORMATION CONTACT: Yvonne Sherman, Public Involvement Program Manager, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352; phone: (509) 376–6216; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Senior Management review by U.S. Department of Energy Office of River Protection, U.S. Department of Energy Richland Operations Office, U.S. Environmental Protection Agency, and Washington State Department of Ecology.
- Board Priorities for Fiscal Year 2006.
- Estimate at Completion for the Waste Treatment and Immobilization Plant (if information is available).
- Advice from the Health & Safety Committee on Records Management.
- Advice from the Budgets and Contracts Committee on Contracts.
- Complex-Wide Waste Disposition.

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 Yvonne Sherman's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer 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 this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Erik Olds, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352, or by calling him at (509) 376–1563.

Issued at Washington, DC on July 28, 2005.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–15209 Filed 8–1–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 05–35–NG, et al.]

Masefield Natural Gas, Inc., et al.; Orders Granting Authority to Import and Export Natural Gas, Including the Import of Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during June 2005, it issued Orders granting authority to import and export natural gas, including the import of liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). They are also available for inspection and copying in the Office of Natural Gas Regulatory Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 20, 2005.

R.F. Corbin,

Manager, Natural Gas Regulatory Activities, Office of Oil and as Global Security and Supply, Office of Fossil Energy.

Appendix

ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS DOE/FE AUTHORITY

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
2098	6–8–05	Masefield Natural Gas, Inc., 05–35–NG.	20 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on June 8, 2005, and extending through June 7, 2007.
2099	6–8–05	Dynegy Power Marketing, Inc., 05–36–NG.	230 Bcf	100 Bcf	Import and export natural gas from and to Canada and Mexico, beginning on June 25, 2005, and extending through June 24, 2007.
2100	6–8–05	Chevron U.S.C. Inc., 05–34–NG.	200 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on July 1, 2005, and extending through June 30, 2007.
1886–A	6–8–05	Chevron U.S.C. Inc., 03–41–NG.			Vacate blanket import authority.
2101	6–9–05	Transco Energy Marketing Company, 05–41–NG.	730 Bcf		Import natural gas from Canada, beginning on February 7, 2005, and extending through February 6, 2007.
2102	6–10–05	Cascade Natural Gas Corporation, 05–40–NG.	200 Bcf		Import natural gas from Canada, beginning on July 1, 2005, and extending through June 30, 2007.
453–C	6–24–05	Duke Energy LNG Sales, Inc., 89–77–LNG.			Vacate long-term import authority.

ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS DOE/FE AUTHORITY—Continued

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
289–C	6–24–05	Duke Energy LNG Sales, Inc., 89–77–LNG.	.....	.....	Vacate long-term import authority.
2106	6–24–05	Apache Corporation, 05–43–NG.	55 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on July 8, 2005, and extending through July 7, 2007.
334–A	6–24–05	Ocean State Power and Ocean State Power II.	.....	.....	Vacate long-term import authority.
335–A	6–24–05	Ocean State Power and Ocean State Power II.	.....	.....	Vacate long-term import authority.
2107	6–30–05	Louis Dreyfus Energy Canada LP, 05–44–NG.	100 Bcf	10 Bcf	Import and export a combined total of natural gas from and to Canada, beginning on August 1, 2005, and extending through July 31, 2007.

[FR Doc. 05–15207 Filed 8–1–05; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Chief Joseph Dam Hatchery Program

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

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

SUMMARY: This notice announces BPA's intention to prepare an EIS on a comprehensive management program for summer/fall Chinook salmon in the Okanogan subbasin and the Columbia River between the confluence of the Okanogan River and Chief Joseph Dam including construction, operation, and maintenance of a hatchery and acclimation ponds. While the focus of the Chief Joseph Dam Hatchery Program (CJDHP) is on the propagation of summer/fall Chinook salmon, the EIS will also consider the use of the proposed facilities to reintroduce extirpated spring Chinook salmon to their historical habitats in the Okanogan subbasin in Okanogan County, Washington.

DATES: Written comments are due to the address below no later than September 19, 2005. Comments may also be made at one of the EIS scoping meetings to be held on August 24, 2005, and August 25, 2005, at the address below.

ADDRESSES: Comments and suggestions on the proposed scope of the Draft EIS for this project, and requests to be placed on the project mailing list, may be mailed by letter to Bonneville Power Administration, Communications—DM–7, P.O. Box 14428, Portland, OR 97292–4428. Or, you may FAX them to 503–230–3285; or submit them on-line at *http://www.bpa.gov/comment/.*

Public scoping meetings will be held on Wednesday, August 24, 2005, from 5 p.m to 8 p.m. at the Okanogan PUD in the Auditorium, 1331 2nd Avenue, Okanogan, Washington 98840, and Thursday, August 25, 2005, from 2 p.m. to 6 p.m. at the Wenatchee Convention Center in the Golden Delicious Room, 201 N. Wenatchee Avenue, Wenatchee, Washington 98801. At these informal open house meetings, we will provide information about the project, including maps, and have members of the project team available to answer questions and accept oral and written comments.

FOR FURTHER INFORMATION CONTACT: Mickey Carter, Project Manager, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; e-mail address *macarter@bpa.gov.*

SUPPLEMENTARY INFORMATION: BPA shall be the lead Federal agency in preparing and issuing an EIS for this project. The Confederated Tribes of the Colville Reservation (Colville Tribe), although not a Federal agency, are a primary proponent and cooperating entity for this EIS and would be operating and maintaining the program and facilities if implemented. Additional cooperating agencies on this EIS may include the U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, Washington Department of Fish and Wildlife, NOAA Fisheries, and Public Utility Districts.

Proposed Action: The Proposed Action is to develop a comprehensive management program for summer/fall Chinook salmon in the Okanogan subbasin and the Columbia River between the confluence of the Okanogan River and Chief Joseph Dam including construction, operation, and maintenance of a hatchery (at the base of the Chief Joseph Dam) and acclimation ponds (throughout the Okanogan River subbasin), broodstock collection, egg incubation, rearing, release, and selective harvest. While the focus of the CJDHP is on the propagation of summer/fall Chinook salmon, the EIS will also consider the use of the proposed facilities to reintroduce extirpated spring Chinook salmon to their historical habitats in the Okanogan subbasin.

To ensure programmatic flexibility and cost effectiveness, the CJDHP proposes to make use of a combination of new and existing fish production facilities. The summer/fall Chinook component of the CJDHP is designed to increase the abundance, distribution, and diversity of naturally-spawning summer/fall Chinook salmon within their historical Okanogan subbasin habitat, which will support recreational, ceremonial and subsistence fisheries. The summer/fall Chinook population in the Okanogan River is at present supported by a single hatchery program that produces 576,000 yearling smolts annually.

The proposed CJDHP will increase production of juvenile summer/fall Chinook by 2,000,000, including 1,100,000 fish primarily for conservation purposes and 900,000 fish primarily for harvest purposes. This increased production level is expected to result in an adult return to the Okanogan subbasin of approximately 6,000 to 29,000 summer/fall Chinook salmon. The spring Chinook component of the CJDHP is designed to introduce naturally-spawning spring Chinook populations to their historical Okanogan subbasin habitat, which will support stable ceremonial, subsistence, and recreational fisheries. The CJDHP spring Chinook component proposes to initially increase production of Carson stock spring Chinook destined for the Okanogan subbasin to 900,000 smolts. This increased production level is expected to result in an adult return to the Okanogan subbasin of approximately 2,700 to 9,000 spring Chinook. As surplus Upper Columbia

River spring Chinook become available from other fish production programs, the Carson stock spring Chinook will be replaced with endangered stock.

Process to Date: In May 2004, the Colville Tribes submitted a Master Plan for the CJDHP as part of Step 1 of the Northwest Power and Conservation Council's Three-Step Review Process. The Master Plan included conceptual designs for hatchery facilities necessary for the production of summer/fall Chinook and spring Chinook. The Master Plan was reviewed by the Independent Science Review Panel as part of the Council's process.

The project was also available for public comment as part of the Council's process. In February 2005, the Northwest Power and Conservation Council approved the CJDHP Master Plan and directed the project to proceed with Step 2, which includes National Environmental Policy Act analysis.

Alternatives Proposed for Consideration: BPA is currently considering two alternatives for evaluation in the EIS: (1) The construction of a new summer/fall Chinook salmon and spring Chinook salmon hatchery facility at the base of Chief Joseph Dam along with a combination of new and existing acclimation facilities and adult collection facilities; and (2) the no-action alternative. Other alternatives may be identified through the scoping process. Mitigation measures will be considered, separate from features of the proposed action that could avoid or substantially reduce the environmental consequences of the proposed action.

Public Participation and Identification of Environmental Issues: The scoping process will help BPA ensure that a full range of alternatives and issues related to this proposal is addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project. BPA has established a 45-day scoping period for this project during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. Public and internal scoping on this project will also include two public open house meetings. When completed, the Draft EIS will be circulated for review and comment and BPA will hold public meetings to receive comments on the Draft EIS. BPA and the cooperating agencies will consider and respond in the Final EIS to comments received on the Draft EIS. BPA's decision will be documented in a Record of Decision. The EIS will satisfy the requirements of the National Environmental Policy Act. When completed, the Draft EIS will be circulated for review and comment, and BPA will hold at least one public comment meeting for the Draft EIS. BPA will consider and respond in the Final EIS to comments received on the Draft EIS. BPA's subsequent decision will be documented in a Record of Decision. Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on July 27, 2005.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 05–15192 Filed 8–1–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05-109-000]

CES Marketing VII, LLC; Notice of Filing

July 26, 2005.

Take notice that on July 21, 2005, CES Marketing VII, LLC (CESM) tendered for filing an application under section 203 of the Federal Power Act for approval of the conversion of CESM's form of business organization to a corporation.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on August 11, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4114 Filed 8–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–81–000]

FPL Energy Montezuma Wind, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

July 14, 2005.

Take notice that on July 6, 2005, FPL Energy Montezuma Wind, LLC, (FPL Energy) located at 700 Universe Blvd., Juno Beach, Florida, 33408, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

FPL Energy Montezuma Wind, LLC states it is a wind facility with a nameplate generating capacity of approximately 34.2 MW located in Solano County, California.

FPL Energy states that copies of this filing have been served upon the Securities and Exchange Commission, the Florida Public Service Commission and the California Public Utilities Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 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 July 28, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4107 Filed 8–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05-110-000]

MidAmerican Energy Holdings Company; Scottish Power plc; PacifiCorp Holdings, Inc.; PacifiCorp; Notice of Filing

July 26, 2005.

Take notice that on July 22, 2005, MidAmerican Energy Holdings Company (MEHC), Scottish Power plc, PacifiCorp and PacifiCorp Holdings, Inc., (PacifiCorp Holdings) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of the sale of PacifiCorp from PacifiCorp Holdings to a wholly owned, indirect subsidiary of MEHC.

The applicants also are requesting confidential treatment pursuant to 18 CFR 388.112 for certain data submitted in support of the application.

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 September 26, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4115 Filed 8–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–82–000]

Shiloh I Wind Project LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

July 14, 2005.

Take notice that on July 8, 2005, Shiloh I Wind Project LLC (Shiloh), 1125 NW Couch, Suite 700, Portland, Oregon 97209, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed 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.

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 ime on July 29, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4106 Filed 8–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 27, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER00–826–004; ER00–828–004; ER98–421–015; ER98–4055–012; ER01–1337–007; ER96–2504–012; ER02–177–008; ER96–2506–010; ER03–1212–006.

Applicants: Brownsville Power I, L.L.C.; Caledonia Power I, L.L.C.; CinCap IV, LLC; CinCap V, LLC; Cinergy Capital &Trading, Inc.; Cincinnati Gas & Electric Co.; Cinergy Power Investments, Inc.; PSI Energy, Inc.; St. Paul Cogeneration, LLC.

Description: Brownsville Power I, L.L.C.; Caledonia Power I, L.L.C., CinCap IV, LLC; CinCap V, LLC; Cinergy Capital & Trading, Inc.; Cincinnati Gas & Electric Co.; Cinergy Power Investments, Inc.; St. Paul Cogeneration, LLC, submit revised market-based rate tariffs, in compliance with the Commission's order issued 7/15/05 in Docket No. ER00–836–002, et al.

Filed Date: 07/21/2005.

Accession Number: 20050726–0010.

Comment Date: 5 p.m. eastern time on Thursday, August 11, 2005.

Docket Numbers: ER00–2887–004.

Applicants: Newark Bay Cogeneration Partnership L.P.

Description: Newark Bay Cogeneration Partnership, L.P. supplements its 7/15/05 compliance filing and submits its First Revised Sheet Nos. 1 and 2 to its FERC Electric Tariff, Second Revised Volume No. 1.

Filed Date: 07/22/2005.

Accession Number: 20050726–0152.

Comment Date: 5 p.m. eastern time on Friday, August 12, 2005.

Docket Numbers: ER05–853–002.

Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas & Electric Company submits revised tariff sheets to its FERC Electric Tariff, Original Volume 11, in compliance with the Commission's order issued 6/20/05, 111 FERC ¶61,426.

Filed Date: 07/21/2005.

Accession Number: 20050726–0003.

Comment Date: 5 p.m. eastern time on Thursday, August 11, 2005.

Docket Numbers: ER05–1217–001.

Applicants: Black Hills Power, Inc.; Powder River Energy Corporation.

Description: Black Hills Power, Inc & Powder River Energy Corporation submit a corrected version of the revised Attachment H to their joint open access transmission tariff, originally filed on 7/15/05.

Filed Date: 07/22/2005.

Accession Number: 20050726–0009.

Comment Date: 5 p.m. eastern time on Friday, August 12, 2005.

Docket Numbers: ER05–1218–001.

Applicants: Bayonne Plant Holding, L.L.C.

Description: Bayonne Plant Holding, L.L.C. submits a supplement to its compliance filing submitted on 7/15/05 and submits First Revised Sheet Nos. 1 and 2 to its FERC Gas Tariff, Second Revised Volume No. 1.

Filed Date: 07/22/2005.

Accession Number: 20050726–0259.

Comment Date: 5 p.m. eastern time on Friday, August 12, 2005.

Docket Numbers: ER05–1219–001.

Applicants: Camden Plant Holding, L.L.C.

Description: Camden Plant Holding, L.L.C. submits a supplement to its compliance filing submitted on 7/15/05 and submits First Revised Sheet Nos. 1 and 2 to its FERC Electric Tariff, Second Revised Volume No. 1.

Filed Date: 07/22/2005.

Accession Number: 20050726–0260.

Comment Date: 5 p.m. eastern time on Friday, August 12, 2005.

Docket Numbers: ER05–1232–000.

Applicants: JPMorgan Ventures Energy Corporation.

Description: JPMorgan Ventures Energy Corporation submits an application requesting Commission acceptance of its Rate Schedule FERC No. 1; the granting of certain blanket approvals; and the waiver of certain Commission regulations.

Filed Date: 07/22/2005.

Accession Number: 20050726–0033.

Comment Date: 5 p.m. eastern time on Friday, August 12, 2005.

Docket Numbers: ER05–1233–000; ER05–1234–000.

Applicants: MidAmerican Energy Company; PacifiCorp.

Description: MidAmerican Energy Company and PacifiCorp submit pro-forma revised tariff sheets for each company's open access transmission tariff.

Filed Date: 07/22/2005.

Accession Number: 20050726–0031.

Comment Date: 5 p.m. eastern time on Friday, August 12, 2005.

Docket Numbers: ER05–1235–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits proposed revisions to its Open Access Transmission Tariff to implement its proposal to contract with an independent third party to administer various OATT-related functions.

Filed Date: 07/22/2005.

Accession Number: 20050726–0012.

Comment Date: 5 p.m. eastern time on Friday, August 12, 2005.

Docket Numbers: ER05–1236–000.

Applicants: Duke Power, a division of Duke Energy Corporation.

Description: Duke Power, a division of Duke Energy Corporation submits proposed revisions to its Open Access Transmission Tariff FERC Electric Tariff, Volume No. 4 regarding its proposal to institute an independent transmission coordinator for performing certain OATT related functions.

Filed Date: 07/22/2005.

Accession Number: 20050726–0013.

Comment Date: 5 p.m. eastern time on Friday, August 12, 2005.

Docket Numbers: ER05–1237–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection LLC submits an executed interconnection service agreement among PJM, Baileyville WindFarm L.L.C and Commonwealth Edison Company.

Filed Date: 07/22/2005.

Accession Number: 20050726–0014.

Comment Date: 5 p.m. eastern time on Friday, August 12, 2005.

Docket Numbers: ER05–1238–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits a first revised Interconnection Agreement with Indianola Municipal Utilities.

Filed Date: 07/22/2005.

Accession Number: 20050726–0261.

Comment Date: 5 p.m. eastern time on Friday, August 12, 2005.

Docket Numbers: ER05–1239–000.

Applicants: TPS Dell, LLC.

Description: TPS Dell, LLC submits notice of cancellation of its market-based electric tariff effective 7/22/05.

Filed Date: 07/22/2005.

Accession Number: 20050726–0262.

Comment Date: 5 p.m. eastern time on Friday, August 12, 2005.

Docket Numbers: ER05–1240–000.

Applicants: TPS McAdams, LLC.

Description: TPS McAdams, LLC submits a notice of cancellation of its market-based electric tariff effective 7/22/05.

Filed Date: 07/22/2005.

Accession Number: 20050726–0264.

Comment Date: 5 p.m. eastern time on Friday, August 12, 2005.

Docket Numbers: ER05–1241–000.

Applicants: Montaup Electric Company.

Description: New England Power Co, successor in interest to Montaup Electric Company (Montaup), submits notice of cancellation of Rate Schedule 107, an agreement between Montaup and MASSPOWER, a Massachusetts general partnership, concerning transmission service.

Filed Date: 07/22/2005.

Accession Number: 20050726–0265.

Comment Date: 5 p.m. eastern time on Friday, August 12, 2005.

Docket Numbers: ER05–1242–000.

Applicants: Fitchburg Gas and Electric Light Company.

Description: Fitchburg Gas and Electric Light Company submits the data & schedules used to calculate its annual transmission revenue requirement for non-PTF local network transmission service, firm point-to-point transmission service and non-firm point-to-point transmission service for the period of 6/1/05 through 5/31/06.

Filed Date: 07/22/2005.

Accession Number: 20050726–0263.

Comment Date: 5 p.m. eastern time on Friday, August 12, 2005.

Docket Numbers: ER05–941–001.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits revised sheets to its open access transmission tariff & market administration and control area services tariff in compliance with the Commission's 7/1/05 Order, 112 FERC ¶ 61,004.

Filed Date: 07/22/2005.

Accession Number: 20050726–0258.

Comment Date: 5 p.m. eastern time on Friday, August 12, 2005.

Docket Numbers: ER91–569–028; EL04–123–003.

Applicants: Entergy Services, Inc.

Description: Notice of withdrawal of request for market-based rate authority in control area, intent to adopt cost-based rates and request to terminate hearing procedures of Entergy Services, Inc.

Filed Date: 07/22/2005.

Accession Number: 20050722–5059.

Comment Date: 5 p.m. eastern time on Friday, August 12, 2005.

Docket Numbers: ER99–2774–007; ER03–956–007.

Applicants: Duke Energy Trading and Marketing, L.L.C.; Duke Energy Marketing America, LLC.

Description: Duke Energy Trading and Marketing, L.L.C. and Duke Energy Marketing America, LLC submits a notice of a change in status concerning their market-based rate authority.

Filed Date: 07/20/2005, as amended on 7/25/2005.

Accession Number: 20050726–0007.

Comment Date: 5 p.m. eastern time on Wednesday, August 10, 2005.

Docket Numbers: ER99–830–011; ER04–925–003.

Applicants: Merrill Lynch Capital Services, Inc.; Merrill Lynch Commodities, Inc.

Description: Merrill Lynch Commodities, Inc. and Merrill Lynch Capital Services, Inc. submit a notice of change in status in compliance with the Commission's Order 652.

Filed Date: 07/20/2005.

Accession Number: 20050726–0004.

Comment Date: 5 p.m. eastern time on Wednesday, August 10, 2005.

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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4113 Filed 8–1–05; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 16, 2005.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Hoffman, Inc., Arapahoe, Nebraska; to acquire voting shares of Central Bancshares, Inc., Cambridge, Nebraska, and thereby indirectly acquire voting shares of First Central Bank, Cambridge, Nebraska and First Central Bank McCook, National Association, McCook, Nebraska.

Board of Governors of the Federal Reserve System, July 27, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–15185 Filed 8–1–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part

225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 26, 2005.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Texas United Bancshares, Inc., La Grange, Texas, Texas United Nevada, Inc., Carson City, Nevada; to acquire by merger Gateway Holding Company, Inc., Dallas, Texas, and thereby indirectly acquire Gateway Delaware Holding Company, Inc., Wilmington, Delaware, and Gateway National Bank, Dallas, Texas.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. FCB Bancorp, Camarillo, California; to become a bank holding company by acquiring 100 percent of the voting shares of First California Bank, Camarillo, California.

2. FCB Bancorp, Camarillo, California, to merge with South Coast Bancorp, Inc., Irvine, California, and thereby indirectly acquire South Coast Commercial Bank, Irvine, California.

Board of Governors of the Federal Reserve System, July 27, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–15184 Filed 8–1–05; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0057]

Information Collection; Standard Form 150, Deposit Bond-Individual Invitation, Sale of Government Personal Property

AGENCY: Federal Supply Service, General Services Administration (GSA).

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding Standard Form 150, Deposit Bond-Individual Invitation, Sale of Government Personal Property. A request for public comments was published at 70 FR 16820, April 1, 2005. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Iris Wright-Simpson, Property Disposal Specialist, Property Management Division, at (703) 605–2912 or via email at *iris.wright-simpson@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0057, Standard Form 150, Deposit Bond-Individual Invitation, Sale of Government Personal Property, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Standard Form (SF) 150 is used by bidders participating in sales of Government personal property whenever the sales invitation permits an individual type of deposit bond in lieu of cash or other form of bid deposit.

B. Annual Reporting Burden

Respondents: 1000.
Responses Per Respondent: 1.
*Total Responses:*1000.
Hours Per Response: .25.
Total Burden Hours: 250.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0057, Standard Form 150, Deposit Bond-Individual Invitation, Sale of Government Personal Property, in all correspondence.

Dated: July 26, 2005.

Michael W. Carleton,

Chief Information Officer

[FR Doc. 05–15183 Filed 8–1–05; 8:45 am]

BILLING CODE 6820–89–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health Advisory Board on Radiation and Worker 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: Working Group of the Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

Working Group Meeting Time and Date: 9:30 a.m.–5:30 p.m. e.d.t., Thursday, August 4, 2005.

Place: Hilton Cincinnati Airport, 7373 Turfway Road, Florence, Kentucky 41042, Telephone 859–371–4400; Fax 859–371–3361.

Status: Open to the public, but without a public comment period.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President,

delegated to the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, and renewed on August 3, 2003.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: Agenda for this workgroup meeting will focus on the Mallinckrodt Site Profile, particularly presentations by the National Institute for Occupational Safety and Health on the progress of specific tasks identified by the ABRWH. These tasks include the handling of raffinate exposures; handling of radon exposure; application of correction factors for external doses to organs; assessment of intermittent incident exposures; specification of dose reconstruction methodology for unmonitored workers; and examples of dose reconstruction for representative cases. Also included on the agenda will be a discussion of issues and an identification of next steps.

The agenda is subject to change as priorities dictate. In the event a member of the working group cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Lewis V. Wade, Executive Secretary, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513–533–6825, fax 513–533–6826.

Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 27, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–15190 Filed 8–1–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4978–N–07]

Notice of Proposed Information Collection for Public Comment; Inspector Candidate Assessment Questionnaire

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 3, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Aneita Waites, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Aneita Waites, (202) 708–0713, extension 4114, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Inspector Candidate Assessment Questionnaire

OMB Control Number: Pending.

Description of the need for the information and proposed use: To meet the requirements of the Uniform Physical Condition Standards and the Public Housing Assessment System (PHAS) rules, the Department conducts physical condition inspections of approximately 12,500 multifamily and public housing properties annually. To conduct these inspections, HUD uses contract inspectors that are trained in the Uniform Physical Condition Standards protocol and certified by HUD. Individuals who wish to be trained and certified by HUD are requested to electronically submit the questionnaire via the Internet. The questionnaire provides HUD with basic knowledge of an individual's inspection skills and abilities. No confidential information is being requested.

Agency form number, if applicable: Form number not yet available.

Members of affected public: Individuals.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated number of respondents is 700 individuals that submit one questionnaire. The average number for each individual response is 1 hour, for a total reporting burden of 700 hours.

Status of the proposed information collection: New.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 26, 2005.

Glenda N. Green,

Deputy, Director, Office of Policy, Program and Legislative Initiative.

[FR Doc. E5–4092 Filed 8–1–05; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4984–C–02]

Public Housing Graduation Incentive Bonus Program; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability; correction.

SUMMARY: On June 2, 2005, HUD published its notice of funding availability (NOFA) for the Public Housing Graduation Incentive Bonus Program. In the NOFA, HUD inadvertently identified the Fort Worth, Texas, public housing authority (PHA) as an eligible medium PHA rather than an eligible large PHA. This notice corrects this error.

FOR FURTHER INFORMATION CONTACT: For questions and technical assistance, applicants may call the Public and Indian Housing Information and Resource Center at 800–955–2232. For the hearing- or speech-impaired, please call the Federal Relay Service at 800–877–8339. (These are toll-free numbers.)

SUPPLEMENTARY INFORMATION: On June 2, 2005 (70 FR 32470), HUD published its NOFA for the Public Housing Graduation Incentive Bonus Program. The deadline for application for this program was July 18, 2005. The purpose of the program is to invite PHAs to apply for a Graduation Incentive Bonus. The Graduation Incentive Bonus is granted to PHAs that can show their public housing residents are moving away from long-term dependence on housing assistance as evidenced by the proportion of households that leaves public housing and end their participation in assisted housing programs during calendar year 2004 as well as the average length of stay among public housing residents. The NOFA announced the availability of up to $10 million under the Graduation Incentive Bonus Program in fiscal year 2005. Eligible applicants are PHAs that operated a public housing program during calendar year 2004; have reported Public and Indian Housing Information Center (PIC) Family Household form HUD–50058 data for residents who ended their residency in public housing during calendar year 2004; have a minimum of 100 dwelling units in management status as reported in PIC as approved by the field office as of January 15, 2005; have a minimum of twenty-five Family Household form HUD–50058 records reported in PIC, and have met the minimum threshold criteria based upon its size category.

Subsequent to publication of the June 2, 2005, NOFA, HUD discovered that the Fort Worth, Texas PHA was improperly identified as an eligible medium PHA rather than an eligible large PHA in the appendix of the NOFA.

Accordingly, in the Public Housing Graduation Incentive Bonus Program, HUD will remove the Fort Worth, Texas PHA from the list of eligible medium PHAs and move it to the list of eligible large PHAs.

Dated: July 26, 2005.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. E5–4091 Filed 8–1–05; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Sent to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; 1018–0118; Private Stewardship Grants Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service or Service) have submitted the collection of information described below to OMB for approval under the provisions of the Paperwork Reduction Act. The information collected for the Private Stewardship Grants Program (PSGP) is needed to review requests for funding and to comply with Federal reporting requirements for grants awarded under this program.

DATES: You must submit comments on or before September 1, 2005.

ADDRESSES: Send your comments and suggestions on this information collection renewal to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirements, explanatory information, or related materials, contact Hope Grey at the addresses above or by phone at (703) 358–2482.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). The OMB control number for the collection of information for the Private Stewardship Grants Program is 1018–0118, which expires July 31, 2005. We have sent a request to OMB to renew its approval of this collection of information. OMB has up to 60 days to approve or disapprove our request for renewal, but may respond in as early as 30 days. To ensure consideration, send your comments to OMB by the date listed in the **DATES** section. Federal agencies 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.

On January 21, 2005, we published in the **Federal Register** (70 FR 3221) a 60-day notice of our intent to request renewal of this information collection authority from OMB. In that notice, we solicited public comments for 60 days, ending on March 23, 2005. We received one comment regarding this notice. The commenter expressed opposition to the awarding of grants to gun clubs and requested a list of 2003 PSGP grant recipients. We note the concerns raised by this individual; however, under the PSPG, all private landowners are eligible to receive funding for on-the-ground conservation actions that benefit at-risk species. We have not made any changes to our information collection as a result of the comment. A list of 2003 awards is online at *http://endangered.fes.gov/grants/private_stewardship/FY2003/index.html*.

The PSGP provides grants and other assistance on a competitive basis to individuals and groups engaged in private conservation efforts that benefit species listed or proposed as endangered or threatened under the Endangered Species Act, candidate species, or other at-risk species. In implementing the PSGP, we request project proposals from the public. For projects selected for funding, we also request information to satisfy Federal reporting requirements. These requests constitute an information collection requiring OMB approval.

Congress established the Private Stewardship Grants Program (PSGP) in 2002. Pending appropriations, a notice of funding availability is posted

annually on the *www.grants.gov* Web site. The information collection associated with the PSGP is voluntary, but is required to receive benefits in the form of a grant. The funding provided to private landowners through this program will address threats to many critically imperiled species. Taking action to establish partnerships with private landowners through the PSGP is central to our mission.

The information collected in the request for proposals is used in a competitive funding process to determine the eligibility and relative value of conservation projects as described in the project proposals. A diverse panel of representatives from State and Federal government, conservation organizations, agriculture and development interests, and the science community assesses project proposals and makes funding recommendations to the Service. We use the information collected under this program to respond to such needs as: Government Performance and Results Act (GPRA) reporting, grant agreements, budget reports and justification, public and private requests for information, data provided to other programs for databases on similar programs, Congressional inquiries, and other informational reports. We also collect information from award recipients on an annual basis to fulfill Federal grant reporting requirements.

This information collection is associated with an annual request for proposals (RFP). The annual RP is issued at the beginning of the fiscal year concurrent with an annual appropriation. If we did not collect the information, we would have to eliminate the PSGP because it would not be possible to determine eligibility and the scale of resource values or relative worth of the proposed projects. Reducing the frequency of the information collection would only reduce the frequency of windows for grant opportunities as the information is unique to each project.

Title: Private Stewardship Grants Program.

OMB Control Number: 1018–0118.

Form Number: None.

Frequency: A request for proposals is issued annually. In addition, grant recipients must submit reports on an annual basis.

Description of Respondents: Private landowners, including individuals and nonprofit organizations.

Total Annual Burden Hours: 12,400 hours.

Total Annual Responses: Approximately 300 respondents.

We consulted four previous respondents about the availability of the information requested, the clarity of the instructions, and the annual hour burden for the application materials and the annual reports. All respondents said that the application instructions are clear and the information is easily available. The respondents estimated the hour burden for the application from 1 day to 3 weeks. We believe that this variance results from some respondents estimating the entire time it took them to develop the project as well as to present that information in the form of an application, whereas other respondents only included the actual time to write the application materials. The average hour burden estimated by respondents is approximately 40 hours. The average number of applicants is about 300. The hour burden estimated by the respondents for the reporting requirements varied between 2 hours and 8 hours, with an average of about 4 hours. The average number of award recipients is about 100. The total annual burden hour is 12,000 hours for the project proposals and 400 hours for reporting activities.

We invite your comments on: (1) Whether or not the collection of information is necessary for the proper performance of the Private Stewardship Grants Program, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: July 1, 2005.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 05–15187 Filed 8–1–05; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Okefenokee National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for Okefenokee National Wildlife Refuge in Folkston, Georgia.

SUMMARY: This notice announces that a Draft Comprehensive Conservation Plan and Environmental Assessment for Okefenokee National Wildlife Refuge are available for review and comment. The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the plan identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

DATES: Three meetings will be held to present the plan to the public and accept formal public comments. Mailings, newspaper articles, and postings on the refuge Web site will be the avenues to inform the public of the date and time of the meetings. Individuals wishing to comment on the Draft Comprehensive Conservation Plan and Environmental Assessment for Okefenokee National Wildlife Refuge should do so no later than September 16, 2005.

ADDRESSES: Requests for copies of the Draft Comprehensive Conservation Plan and Environmental Assessment should be addressed to Mr. M. Skippy Reeves, Refuge Manager, Okefenokee National Wildlife Refuge—CCP, Route 2, Box 3330, Folkston, Georgia 31537; Telephone 912/496–7366; Fax 912/496–3332. The draft plan and environmental assessment may be accessed and downloaded from the Fish and Wildlife Service's Internet Web site *http://www.southeast.fws.gov/planning/*. Comments on the draft plan and environmental assessment may be submitted to the above address or via electronic mail to *okefenokee@fws.gov*. Please include CCP in the subject line and your name and return address in your Internet message. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we

withhold their home addresses from the record, which we will honor to the extent allowable by law.

SUPPLEMENTARY INFORMATION: The draft plan identifies and evaluates four alternatives for managing the refuge over the next 15 years.

Alternatives

Alternative 1. Maintain Current Management (No Action Alternative)

The current management of Okefenokee National Refuge recognizes the importance of looking beyond the refuge boundary. Open communication and partnerships with adjacent landowners and interest groups downstream from the Okefenokee Swamp are important aspects of the current management strategy. To protect the resources outside the refuge boundary, as well as within the refuge, cooperation during emergency fire/weather incidents has been established and would be continued under this alternative. Upland management would emphasize the maintenance and restoration of longleaf pine communities. The refuge would continue to seek partnerships with adjacent landowners to enhance the refuge's habitat for the endangered red-cockaded woodpecker and associated species by providing corridors between refuge upland management compartments or expanding foraging and nesting areas. Environmental parameters would be monitored, and additional parameters would be added as issues arise. Current staff would monitor selected flora and fauna for long-term trends. Other institutions would be sought to investigate topics in detail. The protection of wilderness qualities is considered in management decisions and standard operating procedures are established for management activities within the wilderness. The use of fire to benefit the resources is implemented and expanded. The refuge messages are disseminated through the public services program. All six priority uses (*e.g.,* hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation) are incorporated in the current program. Emphasis is on refuge facilities and activities with some outreach avenues established at both the local and State level. Recreational solitude is emphasized through the current canoe system. Current staffing has limited the quantity and quality of the service the refuge provides. With the addition of 20 requested positions identified in the Refuge Operating Needs System (RONS), staffing would be adequate to meet the management needs at the level presented in this alternative.

Alternative 2. Integrated Landscape Management (Preferred Alternative)

Threats to the refuge are becoming more prominent as development activities occur in northeast Florida and southeast Georgia. Although Okefenokee Refuge is a large system in itself, it can be greatly compromised by activities a distance away from its boundary. Through Alternative 2, the refuge staff fully recognizes the impact these activities may have on the integrity of the swamp. These ''zones of influence'' vary depending on the resources involved. Under this alternative, the staff would continue activities as stated in Alternative 1 and extend beyond the immediate neighbors to address issues associated with the aquifer, air shed, and biota exchange pathways. Extensive resource sharing and networking with other refuges, State agencies, organizations, specialists, researchers, and private citizens would expand the knowledge base and develop cooperation between interest groups. Restoration of natural systems, native communities, and healthy environments would be emphasized, thus promoting a high quality of life regionally. Within the refuge, the original refuge purpose, natural processes, and the wilderness philosophy will be strongly considered in all decisions. Management within the wilderness will be evaluated through the Minimum Requirement Decision Guide. Monitoring environmental parameters, flora, and fauna would be incorporated into an integrated study to gain knowledge on the health of the Okefenokee ecosystem. The refuge and surrounding area would be promoted, linking recreational and educational avenues. Education and outreach would be expanded with an emphasis on the health of the whole ecosystem and the links between the components. Staffing would be expanded to meet the needs of partners and the greater number of interest groups, and accommodate data and resource sharing. A significant increase in staff is presented in this alternative due to the time necessary to manage the refuge with a greater consciousness for the wilderness resource. Ninety-eight additional staff members would be needed to fully implemented this alternative at the highest quality level.

Alternative 3. Conservation Through National Processes

Management of the upland management compartments outside the wilderness boundary would be similar to Alternative 2, including the interest in networking and partnerships to address outside threats within the ''zones of influence.'' This alternative differs from the others in the concept of embracing the exclusive use of natural processes to govern the health of the Okefenokee Wilderness Area. It also promotes primitive and unconfined recreation. Hand tools and non-motorized equipment would be used exclusively to maintain the network of boat trails. The use of motorized boats by the public in designated areas, as established in the legislation for the Okefenokee Wilderness Area, would continue; however, motorized transportation, such as motorboats, airboats, and helicopters, and equipment would not be allowed for administrative purposes except for emergencies such as wildland fires. Large crews in canoes using hand tools would maintain the trail system. To promote primitive and unconfined recreation, the canoe reservation system would be eliminated, along with all platforms, toilets, and trail markers. The visitors would be allowed to travel throughout the swamp and camp where they are able. Natural processes are relied on exclusively with no prescribed fires conducted on interior wilderness islands. Protection of private property adjacent to the refuge would be focused on due to the increased threat of wildland fires moving off refuge lands. Land purchases to create a fire management zone outside the wilderness area would be considered. Fire, water levels, and weather parameters would be monitored to make predictions to meet the needs of adjacent landowners. Other monitoring, of environmental parameters, fauna, and flora, would continue at a level to determine general long-term trends as they relate to natural processes. Obtaining data on trends of the endangered red-cockaded woodpecker on interior islands would be limited to Billys Island, which is accessible by boat. Because of the time and effort needed to maintain trails and conduct surveys in compliance with the specified tool restrictions, a significant increase in staff over the number that would be required to implement Alternative 2 is necessary. A total of 129 staff members, mostly in resource management, have been identified to fully implement this alternative.

Alternative 4. Refuge-Focused Management

This alternative would focus the refuge staff activities internally, within the jurisdictional boundaries, on the land that is directly under the care of

the U.S. Fish and Wildlife Service as Okefenokee National Wildlife Refuge. Collecting information on outside threats would continue but few partnerships would be pursued. The refuge would rely on interest groups to carry the refuge's concerns forward to the appropriate level. The restoration of native communities and the health of resident wildlife species would be emphasized on refuge lands. Monitoring of environmental parameters, flora, and fauna would demonstrate long-term trends, environmental changes, or the results of management practices on refuge lands. Research, management, protection, education, and public use would be conducted to maximize benefits to Okefenokee Refuge specifically. Land acquisition on high-priority areas, rather than partnership formation, would be emphasized. This alternative requires an increase in staff similar to that of Alternative 2 because of the additional time and manpower needed to conduct surveys, trail maintenance, and other management functions within the wilderness area. The additional staff identified in Alternative 2 for developing and maintaining partnerships and outreach are not included in Alternative 4 due to Alternative 4's emphasis on refuge lands only. Eighty-four additional staff members are necessary to fully implement this alternative.

The Okefenokee Refuge is situated in the southeastern Georgia counties of Ware, Charlton, and Clinch, and in northeastern Florida's Baker County, roughly between latitudes 30°33′ and 31°05′ North and longitudes 82°07′ and 82°33′ West. In 1937, with Executive Order 7593 (later amended by Executive Order 7994), President Franklin Delano Roosevelt established the refuge, designating it as ''a refuge and breeding ground for migratory birds and other wildlife.'' It protects the ecological system of the 438,000-acre Okefenokee Swamp. The refuge consists presently of 395,080 acres. The refuge's approved acquisition boundary includes 519,480 acres, 123,480 acres beyond the current refuge acres. Approximately 371,000 acres of the Okefenokee Swamp wetlands are incorporated into the refuge; and 353,981 acres within the swamp were designated as wilderness by the Okefenokee Wilderness Act of 1974, making it the third largest National Wilderness Area east of the Mississippi River. In 1986, the Okefenokee Refuge was designated by the Wetlands Convention as a Wetland of International Importance.

Okefenokee's natural beauty was first threatened in the 1890s, when attempts were made to drain the swamp to facilitate logging operations. The Suwannee Canal was dug 11.5 miles into the swamp from Camp Cornelia. After the failure of this project, other interests acquired the swamp and began removing timer in 1909, using a network of tram roads extending deep into the major timbered areas. When logging operations were halted in 1927, more than 423 million board feet of timber, mostly cypress, had been removed from the swamp.

The establishment of Okefenokee Refuge in 1937 marked the culmination of a movement that had been initiated at least 25 years earlier by a group of scientists from Cornell University who recognized the educational, scientific, and recreational values of this unique area. The Okefenokee Preservation Society, formed in 1918, promoted nationwide interest in the swamp. With the support of State and local interests and numerous conservation and scientific organizations, the Federal Government acquired most of the swamp for refuge purposes in 1936.

Okefenokee Refuge preserves the unique qualities of the Okefenokee Swamp for future generations to enjoy. The swamp is considered the headwaters of the Suwannee and St. Marys Rivers. Habitats provide for threatened and endangered species, such as red-cockaded woodpeckers, wood storks, indigo snakes, and a wide variety of other wildlife species. It is world renowned for its amphibian populations that are bio-indicators of global health. More than 600 plant species have been identified on refuge lands.

Combining Okefenokee National Wildlife Refuge with Osceola National Forest, private timberlands, and State-owned forests, more than 1 million contiguous acres provide wildlife habitat and recreational opportunities. Researchers and students study the resources.

The Georgia communities of Waycross (12 miles north), Folston (7 miles east), St. George (8 miles southeast), Fargo (5 miles west), and Homerville (20 miles northwest) surround the refuge, and Jacksonville, Florida is 40 miles to the southeast. Nearly 300,000 people visit the refuge each year, making it the 16th most visited refuge in the National Wildlife Refuge System. In 1999, the economic impact of tourists in Charlton, Ware, and Clinch Counties in Georgia exceeded $67 million.

The Okenfenokee swamp has shaped the culture of southeast Georgia. Most residents of Charlton, Clinch, and Ware Counties have ancestors who once lived or worked in the swamp and view the swamp as a part of their heritage.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement ACt of 1997, Public Law 105–57.

Dated: May 13, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05–15182 Filed 8–1–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. ALLTEL Corporation and Western Wireless Corporation; Competitive Impact Statement, Proposed Final Judgment, Complaint, Preservation of Assets Stipulation and Order

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Preservation of Assets Stipulation and Order, and Competitive Impact Statement have been filed with the U.S. District Court for the District of Columbia in *United States* v. *ALLTEL Corporation and Western Wireless Corporation*, Civil Case No. 1:05CV01345. On July 6, 2005, the United States filed a complaint alleging that the proposed acquisition of Western Wireless Corporation (''Western Wireless'') by ALLTEL Corporation (''ALLTEL''), would violate section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in the provision of mobile wireless telecommunications services. The proposed Final Judgment, filed at the same time as the Complaint, Competitive Impact Statement, and Preservation of Assets Stipulation and Order, requires ALLTEL to divest assets in three states—Arkansas, Kansas, and Nebraska—in order to proceed with ALLTEL's $6 billion stock-and-cash acquisition of Western Wireless. The Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, Preservation of Assets Stipulation and Order, the Competitive Impact Statement, and all further papers filed with the Court in connection with this Complaint will be available for inspection at the Antitrust Documents Group, Antitrust Division, Liberty Place Building, Room 215, 325 7th Street, NW., Washington, DC 20530 (202–514–2481), and the Office of the Clerk of the

U.S. District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments in writing regarding the proposed consent decree to the United States. Such comments must be received by the Antitrust Division within sixty (60) days and will be filed with the Court by the United States. Comments should be addressed to Nancy Goodman, Chief, Telecommunications & Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 8000, Washington, DC 20530 (202–514–5621). At the conclusion of the sixty (60) day comment period, the U.S. District Court for the District of Columbia may enter the proposed consent decree upon finding that it serves the public interest.

J. Robert Kramer II,

Director of Operations.

United States of Amercia, Plaintiff, v. Alltel Corporation and Western Wireless Corporation, Defendants.

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgement submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendants entered into an Agreement and Plan of Merger dated January 9, 2005, pursuant to which ALLTEL Corporation (''ALLTEL'') will acquire Western Wireless Corporation (''Western''). Plaintiff filed a civil antitrust Complaint on July 6, 2005 seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially for mobile wireless telecommunications services in sixteen (16) geographic areas in the states of Arkansas, Kansas, and Nebraska in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition would result in consumers facing higher prices and lower quality or quantity of mobile wireless telecommunications services.

At the same time the Complaint was filed, plaintiff also filed a Preservation of Assets Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgement, which is explained more fully below, defendants are required to divest Western Wireless' mobile wireless telecommunications services businesses and related assets in sixteen (16) markets (''Wireless Business Divestiture Assets'') and Western Wireless' Cellular One Group Assets which includes the Cellular One service mark and related assets (''Cellular One Group Assets'') (collectively the ''Divestiture Assets''). Under the terms of the Preservation of Assets Stipulation and Order, defendants will take certain steps to ensure (a) that these assets are preserved and that the Divestiture Assets are operated as competitively independent, economically viable and ongoing businesses; (b) that they will remain independent and uninfluenced by defendants or the consummation of the transaction; and (c) that competition is maintained during the pendency of the ordered divestiture.

Plaintiff and defendants have stipulated that the proposed Final Judgement may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof. Defendants have also stipulated that they will comply with the terms of the preservation of Assets Stipulation and Order and the proposed Final Judgment from the date of signing of the Preservation of Assets Stipulation and Order, pending entry of the proposed Final Judgment by the Court and the required divestitures. Should the Court decline to enter the proposed Final Judgement, defendants have also committed to continue to abide by its requirements and those of the Preservation of Assets Stipulation and Order until the expiration of time for appeal.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

ALLTEL, with headquarters in Little Rock, Arkansas, is a corporation organized and existing under the laws of the state of Delaware. ALLTEL is the sixth-largest provider of mobile wireless voice and data services in the United States by number of subscribers; it serves approximately 8.8 million customers. It provides mobile wireless telecommunications services in one hundred fifty-one (151) rural service areas and in ninety-two (92) metropolitan statistical areas located within twenty-four (24) states and roaming services in these areas to other mobile wireless providers who use the CDMA platform. ALLTEL provides local wireline telephone service to 3 million customers primarily located in rural areas in fifteen (15) states. In 2004, ALLTEL earned revenues of approximately $8.2 billion.

Western Wireless, with headquarters in Bellevue, Washington, is a corporation organized and existing under the laws of the state of Washington. Western is the ninth-largest provider of mobile wireless voice and data services in the United States by number of subscribers; it serves approximately 1.4 million customers. It operates in eighty-eight (88) rural service areas and nineteen (19) metropolitan statistical areas located within nineteen (19) western states under the Cellular One service mark, except in one (1) license area in Texas where it operates as Western Wireless. Western Wireless also provides in its service areas roaming services to other providers who use CDMA, TDMA, and GSM technology. Through its subsidiary, Western Wireless International, it provides communications services in seven (7) countries outside of the United States. Western Wireless owns the Cellular One Group, a general partnership that owns the Cellular One service mark and licenses use of the mark to other mobile wireless providers. In 2004, Western Wireless earned approximately $1.9 billion in revenues.

Pursuant to an Agreement and Plan of Merger dated January 9, 2005, ALLTEL will acquire Western Wireless in a stock-and-cash transaction valued at approximately $6 billion. If this transaction is consummated, ALLTEL and Western Wireless combined would have approximately 10 million subscribers, with $10.1 billion in revenues and operations in thirty-three (33) states.

The proposed transaction, as initially agreed to by defendants, would lessen competition substantially for mobile wireless telecommunications services in sixteen (16) markets. This acquisition is the subject of the Complaint and proposed Final Judgement filed by plaintiffs.

B. Mobile Wireless Telecommunications Services Industry

Mobile wireless telecommunications services allow customers to make and receive telephone calls and use data services using radio transmissions without being confined to a small area

during the call or data session, and without the need for unobstructed line-of-sight to the radio tower. This mobility is highly prized by customers, as demonstrated by the more than 180 million people in the United States who own mobile wireless telephones. In 2004, revenues for the sale of mobile wireless telecommunications services in the United States were over $100 billion. To provide these services, mobile wireless telecommunications services providers must acquire adequate and appropriate spectrum, deploy an extensive network of switches, radio transmitters, and receivers, and interconnect this network with those of local and long-distance wireline telecommunications providers and other mobile wireless telecommunications services providers.

The first wireless voice system were based on analog technology, now referred to as first-generation or ''IG'' technology. These analog systems were launched after the FCC issued the first licenses for mobile wireless telephone service: two cellular licenses (A-block and B-block) in each geographic area in the early to mid-1980s. The licenses are in the 800 MHz range of the radio spectrum, each license consists of 25 MHz of spectrum, and they are issued for each Metropolitan Statistical Area (''MSA''), and Rural Service Area (''RSA'') (collectively) ''Cellular Marketing Areas'' or ''CMAs''), with a total of 734 CMAs covering the entire United States. In 1982, one of the licenses was issued to the incumbent local exchange carrier in the market, and the other was issued by lottery to someone other than the incumbent. Cellular licenses must support analog service until February 2008.

In 1995, the FCC allocated and subsequently issued licenses for additional spectrum for the provision of Personal Communications Services (''PCS''), a category of services that includes mobile wireless telecommunications services comparable to those offered by cellular licensees. These licenses are in the 1.8 GHz range of the radio spectrum and are divided into six blocks: A, B, and C, which consist of 30 MHz each; and D, E, and F, which consist of 10 MHz each. Geographically, the A and B-block 30 MHz licenses are issued by Major Trading Areas (''MTAs''), and C, D, E and F-block licenses are issued by Basic Trading Areas (''BTAs''), several of which comprise each MTA. MTAs and BTAs do not generally correspond to MSAs and RSAs. With the introduction of the PCS licenses, both cellular and PCS licensees began offering digital services, thereby increasing capacity, shrinking handsets, and extending battery life. In 1996, one provider, a specialized mobile radio (''SMR'' or ''dispatch'') spectrum licensee, began to use its SMR spectrum to offer mobile wireless telecommunications services comparable to those offered by other mobile wireless telecommunications services providers, in conjunction with its dispatch, or ''push-to-talk,'' service.

Today, more than 90 percent of the all mobile wireless telecommunications services customers have digital service, and nearly all mobile wireless voice service has migrated to second-generation or ''2G'' digital technologies: TDMA (time division multiple access), GSM (global standard for mobile, a type of TDMA standard used by all carriers in Europe), and CDMA (code division multiple access). Mobile wireless telecommunications services providers have chosen to build their networks on these incompatible technologies and most have chosen CDMA or GSM, with TDMA having been orphaned by equipment vendors. (The SMR providers use a fourth incompatible technological standard better suited to the spectrum they own, and, as SMR licensees, they have no obligation to support a specific technology standard.) Even more advanced technologies (''3G'') have begun to be deployed for voice and data. In all of the geographic areas alleged in the complaint, ALLTEL and Western Wireless own 25 MHz cellular licenses. Western also owns some additional PCS licenses. Cellular spectrum because of its propagation characteristics is more efficient to use in serving rural areas.

C. The Competitive Effects of the Transaction on Mobile Wireless Telecommunications Services

ALLTEL's proposed acquisition of Western Wireless will substantially lessen competition in mobile wireless telecommunications services in the sixteen (16) relevant geographic areas. Mobile wireless telecommunications services include both voice and data services provided over a radio network and allow customers to maintain their telephone calls or data sessions without wires, such as when traveling. Fixed wireless services and other wireless services that have a limited range (*e.g.,* Wi-Fi) do not offer a viable alternative to mobile wireless telecommunications services primarily because customers using these services cannot maintain a call or data session while moving from one location to another.

Most customers use mobile wireless telecommunications services in close proximity to their workplaces and homes. Thus, customers purchasing mobile wireless telecommunications services choose among mobile wireless telecommunications services providers that offer services where they are located and travel on a regular basis: Home, work, other areas they commonly visit, and areas in between. The number and identity of mobile wireless telecommunications services providers varies from geographic area to geographic area, along with the quality of their services and the breadth of their geographic coverage, all of which are significant factors in customers' purchasing decisions. Mobile wireless telecommunications services providers can and do offer different promotions, discounts, calling plans, and equipment subsidies in different geographic areas, effectively varying the actual price for customers by geographic area.

The relevant geographic markets for mobile wireless telecommunications services are, therefore, local in nature. The FCC has licensed a limited number of mobile wireless telecommunications services providers in these and other geographic areas based upon the availability of radio spectrum. These FCC spectrum licensing areas often represent the core of the business and social sphere where customers face the same competitive choices for mobile wireless telecommunications services. Although not all FCC spectrum licensing areas are relevant geographic areas for the purpose of analyzing the antitrust impact of this transaction, the FCC spectrum licensing areas that encompass the sixteen (16) geographic areas of concern in this transaction are where consumers in these communities principally use their mobile wireless telecommunications services. As described in the Complaint, the relevant geographic markets where the transaction will substantially lessen competition for mobile wireless telecommunications services are represented by the following FCC spectrum licensing areas which are all Rural Service Areas (''RSAs''): Arkansas RSA–11 (CMA 334), Kansas RSA–3 (CMA 430), Kansas RSA–4 (CMA 431), Kansas RSA–8 (CMA 435), Kansas RSA–9 (CMA 436), Kansas RSA–10 (CMA 437), Kansas RSA–14 (CMA 441), Nebraska RSA–2 (CMA 534), Nebraska RSA–3 (CMA 535), Nebraska RSA–4 (CMA 536), Nebraska RSA–5 (CMA 537), Nebraska RSA–6 (CMA 538), Nebraska RSA–7 (CMA 539), Nebraska RSA–8 (CMA 540), Nebraska RSA–9 (CMA 541), and Nebraska RSA–10 (CMA 542).

The sixteen (16) geographic markets of concern for mobile wireless telecommunications services were identified by a fact-specific, market-by-

market analysis that included consideration of, but was not limited to, the following factors: The number of mobile wireless telecommunications service providers and their competitive strength and weaknesses; ALLTEL's and Western Wireless' market shares along with those of the other providers; whether additional spectrum is or is likely to be available; whether any providers are limited by insufficient spectrum or other factors in their ability to add new customers; the concentration of the market, and the breadth and depth of coverage by different providers in each market; and the likelihood that any provider would expand its existing coverage.

ALLTEL and Western Wireless both own businesses that offer mobile wireless telecommunications services in the sixteen (16) relevant geographic areas. The companies' combined market shares for mobile wireless telecommunications services in the relevant markets as measured in terms of subscribers range from over 50 to nearly 100 percent. In each relevant geographic market, ALLTEL has the largest market share, and, in all but four RSAs, Western Wireless is the second-largest mobile wireless telecommunications services provider. In all of the relevant geographic markets, ALLTEL and Western Wireless own the only 800 MHz band cellular spectrum licenses which are more efficient in serving rural areas than 1900 MHz band PCS spectrum. As a result of holding the cellular spectrum licenses and being early entrants into these markets, ALLTEL's and Western Wireless' networks provide greater depth and breadth of coverage than their competitors, which are operating on PCS spectrum in the relevant geographic markets, and thus are more attractive to consumers.

In addition, mobile wireless telecommunications services providers with partial coverage in a geographic area do not aggressively market their services in this location because potential customers would use their wireless telephones primarily in places where these providers have no network. In theory, these less built-out providers could service residents of these rural areas through roaming agreements, but as a practical matter when service is provided on another carrier's network, the providers would have to pay roaming charges to, and rely on, that carrier to maintain the quality of the network. Because of these constraints, the other providers who own partially built-out networks in the sixteen (16) geographic areas are reluctant to market their services to rural residents of these areas. Therefore, ALLTEL and Western Wireless are likely closer substitutes for each other than the other mobile wireless telecommunications services providers in the relevant geographic markets. Additionally, post-merger in these markets, there will be insufficient remaining competitors, with the type of coverage desired by customers, and the ability to compete effectively to defeat a small, but significant price increase by the merged firm.

The relevant geographic markets for mobile wireless telecommunications services are highly concentrated. As measured by the Herfindahl-Hirschman Index (''HHI''), which is commonly employed in merger analysis and is defined and explained in Appendix A to the Complaint, concentration in these markets ranges from over 2100 to more than 8500, which is well above the 1800 threshold at which the Department considers a market to be highly concentrated. After ALLTEL's proposed acquisition of Western Wireless is consummated, the HHIs in the relevant geographic markets will range from over 3400 to almost 9700, with increases in the HHI as a result of the merger ranging from over 1100 to over 4600.

Competition between ALLTEL and Western Wireless in the relevant geographic markets has resulted in lower prices and higher quality in mobile wireless telecommunications services than would otherwise have existed in these geographic markets. If ALLTEL's proposed acquisition of Western Wireless is consummated, the competition between ALLTEL and Western Wireless in mobile wireless telecommunications service will be eliminated in these markets and the relevant geographic markets for mobile wireless telecommunications services will become substantially more concentrated. As a result, the loss of competition between ALLTEL and Western Wireless increases the likelihood of unilateral actions by the merged firm in the relevant geographic markets to increase prices, diminish the quality or quantity of services provided, and refrain from or delay making investments in network improvements.

Entry by a new mobile wireless telecommunications services provider in the relevant geographic markets would be difficult, time-consuming, and expensive, requiring the acquisition of spectrum licenses and the build-out of a network. Expansion by providers who hold spectrum in these areas and are only partially built-out is also unlikely as the relevant geographic markets are rural service areas where the combined firm would own all of the available 800 MHz spectrum. Due to propagation characteristics of 800 MHz cellular spectrum and 1900 MHz PCS spectrum, the 800 MHz signals can cover a substantially broader area than the 1900 MHz signals. The estimated coverage advantage of the 800 MHz spectrum in rural areas ranges from two to as much as five times greater than PCS. In rural markets, this difference results in higher build-out costs for PCs networks than for cellular networks. The high costs of constructing PCS networks in rural markets combined with the relatively low population density makes it less likely that carriers that own PCS spectrum would build out in the relevant geographic markets. Therefore, new entry in response to a small but significant price increase for mobile wireless telecommunications services by the merged firm in the relevant geographic markets would not be timely, likely, or sufficient to thwart the competitive harm that would result from ALLTEL's proposed acquisition of Western Wireless.

For these reasons, plaintiff concluded that ALLTEL's proposed acquisition of Western Wireless will likely substantially lessen competition, in violation of Section 7 of the Clayton Act, in the provision of mobile wireless telecommunications services in the relevant geographic markets.

III. Explanation of the Proposed Final Judgment

The divestiture requirements of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition of mobile wireless telecommunications services in the sixteen (16) geographic markets of concern. The proposed Final Judgment requires defendants, within one hundred twenty (120) days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest the Wireless Business Divestiture Assets and the Cellular One Group Assets. The Wireless Business Divestiture Assets are essentially Western's entire mobile wireless telecommunications services business in the sixteen (16) markets where ALLTEL and Western Wireless are each other's closest competitors for mobile wireless telecommunications services. These assets must be divested in such a way as to satisfy plaintiff in its sole discretion that they will be operated by the purchaser as a viable, ongoing, business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

With respect to the Wireless Business Divestiture Assets, in some markets the merged firm may retain Western's PCS wireless spectrum. Western's PCS spectrum is used primarily to provide roaming services to other providers who use GSM technology. ALLTEL does not currently provide GSM roaming and therefore the proposed acquisition will not lessen competition in providing these services. In requiring divestitures, plaintiff seeks to make certain that the potential buyer acquires all the assets it may need to be a viable competitor and replace the competition lost by the merger. The 25 MHz of cellular spectrum that must be divested will support the operation and expansion of the mobile wireless telecommunications services businesses being divested, allowing the buyer to be a viable competitor to the merged entity.

The Final Judgment requires that the Wireless Business Divestiture Assets in the Nebraska RSAs be divested to a single acquirer who, as a result, will be able to supply service to customers that require wireless telecommunications service throughout eastern and central rural Nebraska in the same way that Western Wireless is currently able to provide that service. This provision resolves concerns about the loss of competition for customers that demand coverage over a combination of Nebraska FCC licensing areas, in addition to the concerns due to eliminating competition within each licensing area.

The Cellular One Group Assets consist of all right, title and interest in trademarks, trade names, service marks, service names, and designs for the Cellular One mark. Western Wireless owns the Cellular One Group Assets and under the terms of the Cellular One licensing agreements it has entered with other mobile wireless telecommunications services providers, it is required to promote and maintain the value of the mark. Western Wireless markets its mobile wireless telecommunications services under the Cellular One mark in the sixteen (16) geographic markets of concern in the Complaint. As a result of the proposed transaction, ALLTEL would have acquired the Cellular One Group Assets. ALLTEL has no need to use the Cellular One mark in the United States as it has its own established name. The buyer of the Wireless Business Divestiture Assets, on the other hand, may need to use the Cellular One Group name, short term or long term, in order to provide continuity for existing customers or attract new business.

When agreeing to divestitures to remedy the loss of competition as a result of a merger, the plaintiff seeks to make certain that the potential buyer acquires or has accesses to all assets that it may need to be a viable and substantial competitor. Having an established name is an important asset that can impact the ability of the buyer to quickly come into a market and attract customers. In order to ensure that the buyer has unimpaired access to the Cellular One mark and that the mark is in the hands of an owner who will aggressively act to promote and preserve it, the proposed Final Judgment requires ALLTEL to divest the Cellular One Group Assets. Under the terms of the proposed Final Judgment, defendants will sell these assets to an appropriate purchaser who has the intent and capability to maintain the value of the Cellular One service mark.

A. Timing of Divestitures

In antitrust cases involving mergers or joint ventures in which plaintiff seeks a divestiture remedy, it requires completion of the divestitures within the shortest time period reasonable under the circumstances. The proposed Final Judgment in this case requires, in Section IV.A, divestiture of the Divestiture Assets, within one hundred twenty (120) days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later. Plaintiff in its sole discretion may extend the date for divestiture of the Divestiture Assets by up to sixty (60) days. Because the FCC's approval is required for the transfer of the wireless licenses to a purchaser, Section IV.A provides that if applications for transfer of a wireless license have been filed with the FCC, but the FCC has not acted dispostively before the end of the required divestiture period, the period for divestiture of those assets shall be extended until five (5) days after the FCC has acted. This extension is to be applied only to the individual Divestitures Assets affected by the delay in approval of the license transfer and does not entitle defendants to delay the divestiture of any other Divestiture Assets for which license transfer approval has been granted.

The divestiture timing provisions of the proposed Final Judgment will ensure that the divestitures are carried out in a timely manner, and at the same time will permit defendants an adequate opportunity to accomplish the divestitures through a fair and orderly process. Even if all Divestiture Assets have not been divested upon consummation of the transaction, there should be no adverse impact on competition given the limited duration of the period of common ownership and the detailed requirements of the Preservation of Assets Stipulation and Order.

B. Use of a Management Trustee

The Preservation of Assets Stipulation and Order, filed simultaneously with this Competitive Impact Statement, ensures that, prior to divestiture, the Divestiture Assets are maintained, the Wireless Business Divestiture Assets remain an ongoing business concern, and the Cellular One Group Divestiture Assets remain economically viable. The Divestiture Assets will remain preserved, indepdent and uninfluenced by defendants, so that competition is maintained during the pendency of the ordered divestiture.

The Preservation Assets Stipulation and Order appoints a management trustee selected by plaintiff to oversee the Divestiture Assets in the relevant geographic markets. The appointment of a management trustee in this unique situation is required because the Wireless Business Divestiture Assets are not independent facilities that can be held separate and operated as standalone units by the merged firm. Rather, the Wireless Business Divestiture Assets are an integral part of a larger network, and to maintain their competitive viability and economic value, they should remain part of that network during the divestiture period. To insure that these assets are preserved and supported by defendants during this period, yet run independently, a management trustee is necessary to oversee the continuing relationship between defendants and these assets. The management trustee will also preserve and ensure the viability of the Cellular One Group Assets. The management trustee will have the power to operate the Divestiture Assets in the ordinary course of business, so that they will remain preserved, independent, and uninfluenced by defendants, and so that the Wireless Business Divestiture Assets remain an ongoing and economically viable competitor to defendants and to other mobile wireless telecommunications services providers. The management trustee will preserve the confidentiality of competitively sensitive marketing, pricing, and sales information; insure defendants' compliance with the Preservation of Assets Stipulation and Order and the proposed Final Judgment; and maximize the value of the Divestiture Assets so as to permit expeditious divestiture in a manner consistent with the proposed Final Judgment.

The Preservation of Assets Stipulation and Order provides that defendants will

pay all costs and expenses of the management trustee, including the cost of consultants, accountants, attorneys, and other representatives and assistants hired by the management trustee as are reasonably necessary to carry out his or her duties and responsibilities. After his or her appointment becomes effective, the management trustee will file monthly reports with plaintiffs setting forth the efforts to accomplish the goals of the Preservation of Assets Stipulation and Order and the proposed Final Judgment and the extent to which defendants are fulfilling their responsibilities. Finally, the management trustee may become the divestiture trustee, pursuant to the provisions of Section V of the proposal Final Judgment.

C. Use of a Divestiture Trustee

In the event that defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by plaintiff to effect the divestitures. As part of this divestiture, defendants must relinquish any direct or indirect financial ownership interests and any direct or indirect role in management or participation in control. Pursuant to Section V of the proposed Final Judgment, the divestiture trustee will own and control of Divestiture Assets until they are sold a final purchaser, subject to safeguards to prevent defendants from influencing their operation.

Section V details the requirements for the establishment of the divestiture trust, the selection and compensation of the divestiture trustee, the responsibilities of the divestiture trustee in connection with the divestiture and operation of the Divestiture Assets, and the termination of the divestiture trust. The divestiture trustee will have the obligation and the sole responsibility, under Section V.D, for the divestiture of any transferred Divestiture Assets. The divestiture trustee has the authority to accomplished divestitures at the earliest possible time and ''at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee.'' In addition, to insure that the divestiture trustee can promptly locate and divest to an acceptable purchaser, plaintiff, in its sole discretion, may require defendants to include additional assets, or allow defendants to substitute substantially similar assets, which substantially relate to the Divestiture Assets to be divested by the divestiture trustee.

The divestiture trustee will not only have responsibility for sale of the Divestiture Assets, but will also be the authorized holder of the wireless licenses, with full responsibility for the operations, marketing, and sales of the wireless businesses to be divested, and will not be subject to any control or direction by defendants. Defendants will no longer have any role in the ownership, operation, or management of the Divestiture Assets following consummation of the transaction, as provided by Section V, other than the right to receive the proceeds of the sale, and certain obligations to provide support to the Divestiture Assets, and cooperate with the divestiture trustee in order to complete the divestiture, as indicated in Section V.L and in the Preservation of Assets Stipulation and Order.

The proposed Final Judgment provides that defendants will pay all costs and expenses of the divestiture trustee. The divestiture trustee's commission will be structured, under Section V.G of the proposed Final Judgment, so as to provide an incentive for the divestiture trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the divestiture trustee will file monthly reports with the Court and plaintiff setting forth his or her efforts to accomplish the divestitures. Section V.J requires the divestiture trustee to divest the Divestiture Assets to an acceptable purchaser or purchasers no later than six (6) months after the assets are transferred to the divestiture trustee. At the end of six (6) months, if all divestitures have not been accomplished, the trustee and plaintiff will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the transaction in the provision of mobile wireless telecommunications services. The divestitures of the Divestiture Assets will preserve competition in mobile wireless telecommunications services by maintaining an independent and economically viable competitor in the relevant geographic markets.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that plaintiff has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to plaintiff written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register.** All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of plaintiff will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to: Nancy M. Goodman, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 8000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

Plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. Plaintiff could have continued the litigation and sought preliminary and permanent injunctions against ALLTEL's acquisition of Western Wireless. Plaintiff is satisfied, however,

that the divestiture of assets and other relief described in the proposed Final Judgment will preserve competition for the provision of mobile wireless telecommunications services in the relevant markets identified in the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court shall consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16 (e)(1)(A) & (B). As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the consent judgment is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the consent judgment may positively harm third parties. See *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

''Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). Thus, in conducting this inquiry, ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).[1] Rather:

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); see also Microsoft, 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is *''within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *AT&T Corp.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting Gillette, 406 F. Supp. at 716), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent judgment even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. Id. at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by plaintiff United States in formulating the proposed Final Judgment.

Dated: July 6, 2005.

Respectfully submitted,

Deborah A. Roy (D.C. Bar #452573),
Laura R. Starling,
Hillary B. Burchuk (D.C. Bar #366755),
Matthew C. Hammond,

Attorneys, Telecommunications & Media Enforcement Section, Antitrust Division.

U.S. Department of Justice, City Center Building, 1401 H Street, NW., Suite 8000, Washington, DC 20530, (202) 514–5621, Facsimile: (202) 514–6381.

United States of America, Plaintiff, v. ALLTEL Corporation and Western Wireless Corporation, Defendants.

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on July 6, 2005, plaintiff and defendants, ALLTEL Corporation (''ALLTEL'') and Western Wireless Corporation (''Western Wireless''), by their respective attorneys, have consented to the entry of this Final

[1] See United States v. Gillette Co., 204 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer ''whether the settlement achieved [was] within the reaches of the public interest''). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed by the Department of Justice pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. No. 93–1463, 93d Cong., 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538–39.

[2] Cf. BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); Gillette, 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); see generally Microsoft, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by defendants to assure that competition is not substantially lessened;

And whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to plaintiff that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' or ''Acquirers'' means the entity or entities to whom defendants divest the Divestiture Assets.

B. ''ALLTEL'' means defendant ALLTEL Corporation, a Delaware corporation with headquarters in Little Rock, Arkansas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Cellular One Group'' means the Delaware general partnership, with headquarters in Bellevue, Washington, engaged in the business of licensing and promoting the Cellular One service mark and certain related trademarks, service marks, and designs.

D. ''Cellular One Group Assets'' means all legal and economic interests Western Wireless holds in the Cellular One Group. Cellular One Group Assets shall include all right, title and interest in trademarks, trade names, service marks, service names, designs, and intellectual property, all license agreements for use of the Cellular One mark, technical information, computer software and related documentation, and all records relating to the divestiture assets. If the acquirer of the Cellular One Group Assets is not the acquirer of the Wireless Business Divestiture Assets, defendants will grant the acquirer of the wireless business assets a license to use the Cellular One service marks on terms generally available at the time the merger agreement was entered and make the transfer of the Cellular One Group Assets subject to continuation of these licenses.

E. ''CMA'' means cellular market area which is used by the Federal Communications Commission (''FCC'') to define cellular license areas and which consists of Metropolitan Statistical Areas (''MSAs'') and Rural Service Areas (''RSAs'').

F. ''Divestiture Assets'' means the Wireless Business Divestiture Assets and the Cellular One Group Assets.

G. ''GSM'' means global system for mobile communications which is one of the standards used for the infrastructure of digital cellular service.

H. ''Multi-line Business Customer'' means a corporate or business customer that contracts with Western Wireless for mobile wireless services to provide multiple telephones to its employees or members whose services are provided pursuant to a contract with the corporate or business customer.

I. ''Transaction'' means the Agreement and Plan of Merger between ALLTEL and Western Wireless, dated January 9, 2005.

J. ''Western Wireless'' means defendant Western Wireless Corporation, incorporated in the state of Washington with headquarters in Bellevue, Washington, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

K. ''Wireless Business Divestiture Assets'' means, for each mobile wireless telecommunications services business to be divested under this Final Judgment, all types of assets, tangible and intangible, used by defendants in the operation of the mobile wireless telecommunications services businesses to be divested. ''Wireless Business Divestiture Assets'' shall be construed broadly to accomplish the complete divestitures of the entire business of Western Wireless in each of the following RSA license areas as required by the Final Judgment and to ensure that the divested mobile wireless telecommunications services businesses remain viable, ongoing businesses:

(a) Arkansas RSA–11 (CMA 334);
(b) Kansas RSA–3 (CMA 430);
(c) Kansas RSA–4 (CMA 431);
(d) Kansas RSA–8 (CMA 435);
(e) Kansas RSA–9 (CMA 436);
(f) Kansas RSA–10 (CMA 437);
(g) Kansas RSA–14 (CMA 441);
(h) Nebraska RSA–2 (CMA 534);
(i) Nebraska RSA–3 (CMA 535);
(j) Nebraska RSA–4 (CMA 536);
(k) Nebraska RSA–5 (CMA 537);
(l) Nebraska RSA–6 (CMA 538);
(m) Nebraska RSA–7 (CMA 539);
(n) Nebraska RSA–8 (CMA 540);
(o) Nebraska RSA–9 (CMA 541); and
(p) Nebraska RSA–10 (CMA 542);

provided that ALLTEL may retain all of the PCS spectrum currently held by Western Wireless in each of these RSAs and provided that ALLTEL need not divest the assets used solely to operate Western Wireless' GSM roaming business, including GSM roaming contracts and equipment.

Wireless Business Divestiture Assets shall include, without limitation, all types of real and personal property, monies and financial instruments, equipment, inventory, office furniture, fixed assets and furnishings, supplies and materials, contracts, agreements, leases, commitments, spectrum licenses issued by the FCC and all other licenses, permits and authorizations, operational support systems, cell sites, network infrastructure, switches, customer support and billing systems, interfaces with other service providers, business and customer records and information, customer contracts, customer lists, credit records, accounts, and historic and current business plans which relate primarily to the wireless business being divested, as well as any patents, licenses, sub-licenses, trade secrets, know-how, drawings, blueprints, designs, technical and quality specifications and protocols, quality assurance and control procedures, manuals and other technical information defendants supply to their own employees, customers, suppliers, agents, or licensees, and trademarks, trade names and service marks or other intellectual property, including all intellectual property rights under third-party licenses that are capable of being transferred to an Acquirer either in their entirety, for assets described in (1) below, or through a license obtained through or from Western Wireless, for assets described in (2) below; provided that defendants shall only be required to divert Multi-line Business Customer contracts, if the primary business address for that customer is located within any of the sixteen (16) license areas described herein, and further, any

subscribers who obtain mobile wireless telecommunications services through any such contract retained by defendants and who are located within the sixteen (16) geographic areas identified above, shall be given the option to terminate their relationship with defendants, without financial cost, within one year of the closing of the Transaction. Defendants shall provide written notice to these subscribers within forty-five (45) days after the closing of the Transaction of the option to terminate.

These divestitures of the Wireless Business Divestiture Assets shall be accomplished by:

(1) Transferring to the Acquirers the complete ownership and/or other rights to the assets (other than those assets used substantially in the operations of Western Wireless' overall wireless telecommunications services business which must be retained to continue the existing operations of the wireless properties that defendants are not required to divest, and that either are not capable of being divided between the divested wireless telecommunications services businesses and those not divested, or are assets that the defendants and the Acquirer(s) agree, subject to approval of plaintiff, shall not be divided); and

(2) Granting to the Acquirer(s) an option to obtain a non-exclusive, transferable license from defendants for a reasonable period, subject to approval of plaintiff, at the election of an Acquirer to use any of Western Wireless's retained assets under paragraph (1) above, used in the operation of the wireless telecommunications services business being divested, so as to enable the Acquirer to continue to operate the divested wireless telecommunications services business without impairment. Defendants shall identify in a schedule submitted to plaintiff and filed with the Court, as expeditiously as possible following the filing of the Complaint and in any event prior to any divestitures and before the approval by the Court of this Final Judgment, any intellectual property rights under third-party licenses that are used by the wireless telecommunications services businesses being divested but that defendants could not transfer to an Acquirer entirely or by license without third-party consent, and the specific reasons why such consent is necessary and how such consent would be contained for each asset.

III. Applicability

A. This Final Judgment applies to defendants ALLTEL and Western Wireless, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, that the purchaser agrees to be bound by the provisions of this Final Judgment, provided that defendants need not obtain such an agreement from the Acquirer(s).

IV. Divestitures

A. Defendants are ordered and directed, within one hundred twenty (120) days after consummation of the Transaction, or five (5) days after notice of entry of this Final Judgment, whichever is later, to divest the Divestiture Assets to an acquirer or Acquirers acceptable to plaintiff in its sole discretion, and, if applicable, to a Divestiture Trustee designated pursuant to Section V of this Final Judgment. Plaintiff, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) days in total, and shall notify the court in such circumstances. With respect to divestiture of the Wireless Business Divestiture Assets by defendants or the Divestiture Trustee, if applications have been filed with the FCC within the period permitted for divestiture seeking approval to assign or transfer licenses to the Acquirer(s) of the Wireless Business Divestiture Assets, but an order or other dispositive action by the FCC on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to divestiture of those Divestiture Assets for which FCC approval has not been issued until five (5) days after such approval is received. Defendants agree to use their best efforts to accomplish the divestitures set forth in this Final Judgment and to seek all necessary regulatory approvals as expeditiously as possible. This Final Judgment does not limit the FCC;s exercise of its regulatory powers and process with respect to the Divestiture Assets. Authorization by the FCC to conduct the divestiture of a Divestiture Asset in a particular manner will not modify any of the requirements of this decree.

B. In accomplishing the divestitures ordered by this Final Judgment, defendants shall promptly make known, if they have not already done so, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquireres, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work product privileges. Defendants shall make available such information to plaintiff at the same time that such information is made available to any other person.

C. Defendants shall provide to the Acquirer(s) and plaintiff information relating to the personnel involved in the operation, development, and sale or license of the Divestiture Assets to enable the Acquirer(s) to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer(s) to employ any defendant employee whose primary responsibility is the operation, development, or sale or license of the Divestiture Assets.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, and other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to all Acquirer(s) that (1) the Wireless Business Divestiture Assets will be operational on the date of sale; (2) every wireless spectrum license is in full force and effect on the date of sale; and (3) the Cellular One Group Assets will be unencumbered and not judged invalid or unenforceable by any court or similar authority on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, licensing, operation, or divestiture of the Divestiture Assets.

G. Defendants shall warrant to the Acquirer(s) of the Divestiture Assets that there are no defects in the environmental, zoning, licensing or other permits pertaining to the operation of each asset that will have a material adverse effect on the operator of the mobile wireless telecommunications services business in which the asset is primarily used, and that following the sale of the Divested Assets, defendant will not undertake, directly or indirectly, any

challenges to the environmental, zoning, licensing or other permits relating to the operation of the Divestiture Assets.

H. Unless plaintiff otherwise consents in writing, the divestitures pursuant to Section IV, or by a Divestiture Trustee appointed pursuant to Seciton V of this Final Judgment, shall include the entire Divestiture Assets and with respect to the Wireless Business Divestiture Assets, shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that these assets can and will be used by the acquirer(s) as part of a viable, ongoing business engaged in the provision of mobile wireless telecommunications services. With the exception of the Wireless Business Divestiture assets in the Nebraska RSAs, all of which must be divested to a single Acquirer, the divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of plaintiff that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures of the Divestiture Assets, whether pursuant to Section IV or Section V of this Final Judgment,

(1) Shall be made to an Acquirer (or Acquirers) that, in plaintiff's sole judgment,

(a) With respect to the Wireless Business Divestiture Assets, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of mobile wireless telecommunications services; and

(b) With respect to the Cellular One Group Assets, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of maintaining and promoting the intellectual property including trademarks and service marks.

(2) Shall be accomplished so as to satisfy plaintiff in its sole discretion, that none of the terms of any agreement between the Acquirer (0r Acquirers) and any defendant shall give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise interfere with the ability of the Acquirer to compete effectively.

I. At the option of the Acquirer(s) of the Divestiture Assets, defendants shall enter into a contract for transition services customarily provided in connection with the sale of a business providing mobile wireless telecommunications services or intellectual property licensing sufficient to meet all or part of the needs of the Acquirer for a period of up to one year. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions.

J. To the extent that the Divestiture Assets use intellectual property, as required to be identified by Section II.K.(2), that cannot be transferred or assigned without the consent of the licensor or other third parties, defendants shall use their best efforts to obtain those consents.

V. Appointment of Divestiture Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV. A, defendants shall notify plaintiff of that fact in writing specifically identifying the Divestiture Assets that have not been divested. Then, upon application of plaintiff, the Court shall appoint a Divestiture Trustee selected by plaintiff and approved by the Court to effect the divestiture of the Divestiture Assets. The Divestiture Trustee, will have all the rights and responsibilities of the Management Trustee appointed pursuant to the Preservation of Assets Stipulation and Order, and will be responsible for:

(1) Accomplishing divestiture of all Divestiture Assets transferred to the Divestiture Trustee from defendants in accordance with the terms of this Final Judgment, to an Acquirer or Acquirers approved by plaintiff, under Section IV.A of this Final Judgment;

(2) Exercising the responsibilities of the licensee of any transferred Wireless Business Divestiture Assets and controlling and operating any transferred Wireless Business Divestiture Assets, to ensure that the business remain ongoing, economically viable competitors in the provision of mobile wireless telecommunications services in the sixteen (16) license areas specified in the Wireless Business Divestiture Assets, until they are divested to an Acquirer or Acquirers, and the Divestiture Trustee shall agree to be bound by this Final Judgment; and

(3) Exercising the responsibilities of the licensee of any transferred Cellular One Group Assets and controlling and operating any transferred Cellular One Group Assets, to ensure that the business remains ongoing and that the obligations of the Cellular One Group under the Cellular One license agreements are fulfilled, and they are divested to an Acquirer or Acquirers, and the Divestiture Trustee shall agree to be bound by this Final Judgment.

B. Defendants shall submit a proposed trust agreement (''Trust Agreement'') to plaintiff, which must be consistent with the terms of this Final Judgment and which must receive approval by plaintiff in its sole discretion, who shall communicate to defendants within ten (10) business days its approval or disapproval of the proposed Trust Agreement, and which must be executed by the defendants and the Divestiture Trustee within five (5) business days after approval by plaintiff.

C. After obtaining any necessary approvals from the FCC for the assignment of the licenses of the remaining Divestiture Assets to the Divestiture Trustee, defendants shall irrevocably divest the remaining Divestiture Assets to the Divestiture Trustee, who will own such assets (or own the stock of the entity owning such assets, if divestiture is to be effected by the creation of such an entity for sale to Acquirer(s)) and control such assets, subject to the terms of the approved Trust Agreement.

D. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer(s) acceptable to plaintiff, in its sole judgment, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V.G of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of defendants the Management Trustee appointed pursuant to the Preservation of Assets Stipulation and Order, and any investment bankers, attorneys or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture.

E. In addition, notwithstanding any provision to the contrary, plaintiff, in its sole discretion, may require defendants to include additional assets, or allow, with the written approval of plaintiff, defendants to substitute substantially similar assets, which substantially relate to the Wireless Business Divestiture Assets to be divested by the Divestiture Trustee to facilitate prompt divestiture to an acceptable Acquirer.

F. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objectives by defendants must be conveyed in writing to plaintiff and the Divestiture Trustee within ten (10) calendar days after the Divestiture

Trustee has provided the notice required under Section VI.

G. The Divestiture Trustee shall serve at the cost and expense of defendants, on such terms and conditions as plaintiff approves, and shall account for all monies derived from the sale of the assets sold and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture, and the speed with which it is accomplished, but timeliness is paramount.

H. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestitures including their best efforts to effect all necessary regulatory approvals and will provide any necessary representations or warranties as appropriate related to sale of the Divestiture Assets. The Divestiture Trustee and any consultants, accountants, attorneys, and other persons retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to the assets to be divested as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestitures.

I. After its appointment, the Divestiture Trustee shall file monthly reports with plaintiff and the Court setting forth the Divestiture Trusee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

J. If the Divestiture Trustee has not accomplished such divestitures within six (6) months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestitures, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestitures have not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the plaintiff, who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by plaintiff.

K. After defendants transfer the Divestiture Assets to the Divestiture Trustee, and until those Divestiture Assets have been divested to an Acquirer or Acquirers approved by plaintiff pursuant to Sections IV.A and IV.H, the Divestiture Trustee shall have sole and complete authority to manage and operate the Divestiture Assets and to exercise the responsibilities of the licensee, and shall not be subject to any control or direction by defendants. Defendants shall not retain any economic interest in the Divestiture Assets transferred to the Divestiture Trustee, apart from the right to receive the proceeds of the sale or other disposition of the Divestiture Assets.

L. The Divestiture Trustee shall operate the Divestiture Assets consistent with the Preservation of Assets Stipulation and Order and this Final Judgment, with control over operations, marketing, sales and Cellular One licensing. Defendants shall not attempt to influence the business decisions of the Divestiture Trustee concerning the operation and management of the Divestiture Assets, and shall not communicate with the Divestiture Trustee concerning divestiture of the Divestiture Assets or take any action to influence, interfere with, or impede the Divestiture Trustee's accomplishment of the divestitures required by this Final Judgment, except that defendants may communicate with the Divestiture Trustee to the extent necessary for defendants to comply with this Final Judgment and to provide the Divestiture Trustee, if requested to do so, with whatever resources or cooperation may be required to complete divestiture of the Divestiture Assets and to carry out the requirements of the Preservation of Assets Stipulation and Order and this Final Judgment. Except as provided in this Final Judgment and the Preservation of Assets Stipulation and Order, in no event shall defendants provide to, or receive from, the Divestiture Trustee, the mobile wireless telecommunications services business, or the Cellular One business under the Divestiture Trustee's control any non-public or competitively sensitive marketing, sales, pricing or other information relating to their respective mobile wireless telecommunications services businesses.

VI. Notice of Proposed Divestitures

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestitures required herein, shall notify plaintiff in writing of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from defendants, the proposed Acquirer or Acquirers, any other third party, or the Divestiture Trustee if applicable additional information concerning the proposed divestiture, the proposed Acquirer or Acquirers, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested from defendants, the proposed Acquirer or Acquirers, any third party, and the Divestiture Trustee, whichever is later, plaintiff shall provide written notice to defendants

and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under section V.F of this Final Judgment. Absent written notice that plaintiff does not object to the proposed Acquirer or upon objection by plaintiff, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V.F, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any divestiture made pursuant to Section IV or V of this Final Judgment.

VIII. Preservation of Assets

Until the divestitures required by this Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Preservation of Assets Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Section IV or V of this Final Judgment, defendants shall deliver to plaintiff an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by plaintiff, to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to plaintiff an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits provided pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestitures have been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted.

(1) Access during defendants' office hours to inspect and copy, or at plaintiff's option, to require defendants provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters, contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by plaintiff to any person other than an authorized representative of the executive branch of the United States or, pursuant to a customary protective order or waiver of confidentiality by defendants, the FCC, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then plaintiff shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire or least any part of the Divestiture Assets during the term of this Final Judgment provided however that (1) defendants shall not be precluded from entering commercially reasonable agreements, for a period not to exceed two (2) years from the date of the closing of the Transaction, with the purchaser(s) of the Wireless Business Divestiture Assets to obtain the right to use equipment that defendant Western Wireless used to support both in GSM roaming business and the provision of wireless services using other technological formats and (2) defendants shall not be precluded from entering into agreements with the purchaser of the Cellular One Group Assets to license those assets for use (a) outside the United States, and (b) for a period not to exceed one (1) year from the date of the closing of the Transaction, within the United States.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

United States of America, Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 8000, Washington, DC 20530, Plaintiff, v. ALLTEL Corporation, One Allied Drive, Little Rock, Arkansas 72202 and Western Wireless Corporation, 3650 131st Avenue SE, Suite 400, Bellevue, Washington 98006, Defendants;

Case Number 1:05CV01345
Judge: Royce C. Lamberth,
Deck Type: Antitrust,
Date Stamp: 07/06/2005.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the merger of two mobile wireless telecommunications service providers, ALLTEL Corporation (''ALLTEL'') and Western Wireless Corporation (''Western Wireless''), and to obtain other relief as appropriate. Plaintiff alleges as follows:

1. On January 9, 2005, ALLTEL entered into an agreement to acquire Western Wireless under which the two companies would combine their mobile wireless telecommunications service businesses. Plaintiff seeks to enjoin this transaction because it will substantially lessen competition for mobile wireless telecommunications services in several geographic markets where ALLTEL and Western Wireless are each other's most significant competitor.

2. ALLTEL provides mobile wireless telecommunications services in twenty-four (24) states serving approximately 8.8 million subscribers. Western Wireless provides mobile wireless telecommunications services in nineteen (19) states under the Cellular One service mark and in one (1) license area in Texas under the Western Wireless service mark; it has approximately 1.4 million subscribers. The combination of ALLTEL and Western Wireless will substantially lessen competition for mobile wireless telecommunications services in sixteen (16) geographic areas in three (3) states, Arkansas, Kansas and Nebraska, where currently both ALLTEL and Western Wireless operate. As a result of the proposed acquisition, residents of these mostly rural areas will face the likelihood of increased prices, diminished quality or quantity of services provided, and less investment in network improvements for these services.

1. Jurisdiction and Venue

3. This Complaint is filed by the United States under Section 15 of the Clayton Act, 15 U.S.C. 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

4. ALLTEL and Western Wireless are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has jurisdiction over this action pursuant to Sections 15 and 16 of the Clayton Act, 15 U.S.C. 25, 26 and 28 U.S.C. 1331, 1337.

5. The defendants have consented to personal jurisdiction and venue in this judicial district.

II. The Defendants and the Transaction

6. ALLTEL, with headquarters in Little Rock, Arkansas, is a corporation organized and existing under the laws of the state of Delaware. ALLTEL is the sixth largest provider of mobile wireless voice and data services in the United States by number of subscribers; it serves approximately 8.8 million customers. It provides mobile wireless telecommunications services in one hundred fifty-one (151) rural service areas and in ninety-two (92) metropolitan statistical areas located within twenty-four (24) states and roaming services to other mobile wireless providers who use the CDMA platform in these areas. ALLTEL provides local wireline telephone service to 3 million customers primarily located in rural areas in fifteen (15) states. In 2004, ALLTEL earned revenues of approximately $8.2 billion.

7. Western Wireless, with headquarters in Bellevue, Washington, is a corporation organized and existing under the laws of the state of Washington. Western Wireless is the ninth largest provider of mobile wireless voice and data services in the United States by number of subscribers; it serves approximately 1.4 million customers. It operates in eighty-eight (88) rural service areas and nineteen (19) metropolitan statistical areas located within nineteen (19) western states. Western Wireless also provides in its service areas roaming services to other providers who use CDMA, TDMA and GSM technology. Through its subsidiary, Western Wireless International, it provides communications services in seven (7) countries outside of the United States. Western Wireless owns the Cellular One Group, a general partnership that owns the Cellular One service mark and licenses use of the mark to other mobile wireless providers. In 2004, Western earned approximately $1.9 billion in revenues.

8. Pursuant to an agreement and Plan of Merger dated January 9, 2005, ALLTEL will acquire Western Wireless in a stock-and-cash transaction valued at approximately $6 billion. If this transaction is consummated, ALLTEL and Western Wireless combined would have approximately 10 million subscribers in the United States, with $10.1 billion in revenues and operations in thirty-three (33) states.

III. Trade and Commerce

A. Nature of Trade and Commerce

9. Mobile wireless telecommunications services allow customers to make and receive telephone calls and use data services using radio transmissions without being confined to a small area during the call or data session, and without the need for unobstructed line-of-sight to the radio tower. Mobility is highly prized by customers, as demonstrated by the more than 180 million people in the United States who own mobile wireless telephones. In 2004, revenues from the sale of mobile wireless services in the United States were over $100 billion. To meet this desire for mobility, mobile wireless telecommunications providers must deploy an extensive network of switches and radio transmitters and receivers, and interconnect this network with the networks of wireline carriers and with other wireless providers.

10. The first wireless voice systems were based on analog technology, now referred to as first-generation or ''IG'' technology. These analog systems were launched after the FCC issued the first licenses for mobile wireless telephone service: two cellular licenses (A-block and B-block) in each geographic area in the early to mid-1980s. The licenses are in the 800 MHz range of the radio spectrum, each license consists of 25 MHz of spectrum, and they are issued for each Metropolitan Statistical Area (''MSA'') and Rural Service Area (''RSA'') (collectively, ''Cellular Marketing Areas'' or ''CMAs''), with a total of 734 CMAs covering the entire United States. In 1982, one of the licenses was issued to the incumbent local exchange carrier in the market, and the other was issued by lottery to someone other than the incumbent.In the relevant geographic markets, ALLTEL and Western Wireless each own one of the cellular licenses.

11. In 1995, the FCC allocated and subsequently issued licenses for additional spectrum for the provision of Personal Communications Services (''PCS''), a category of services that includes mobile wireless telecommunications services comparable to those offered by cellular licensees. These licenses are in the 1.8

GHz range of the radio spectrum and are divided into six blocks: A, B, and C, which consists of 30 MHz each; and D, E, and F, which consist of 10 MHz each. Geographically, the A and B-block 30 MHz licenses are issued by Major Trading Areas (''MTAs''), and C, D, E, and F-block licenses are issued by Basic Trading Areas (''BTAs''), several of which comprise each MTA. MTAs and BTAs do not generally correspond to MSAs and RSAs. With the introduction of the PCS licenses, both cellular and PCS licensees began offering digital services, thereby increasing capacity, shrinking handsets, and extending battery life. In 1996, one provider, a specialized mobile radio (''SMR'' or ''dispatch'') spectrum licensee, began to use its SMR spectrum to offer mobile wireless telecommunications services comparable to those offered by other mobile wireless telecommunications services providers, in conjunction with its dispatch, or ''push-to-talk,'' service. Although there are a number of providers holding spectrum licenses in each areas of the country, not all providers have fully built out their networks throughout each license area. In particular, because of the characteristics of PCS spectrum, providers holding this type of spectrum have found it less attractive to build out in rural areas.

12. Today, more than 90 percent of all mobile wireless telecommunications services customers have digital service, and nearly all mobile wireless voice service has migrated to second-generation or ''2G'' digital technologies: TDMA (time division multiple access), GSM (global standard for mobile, a type of TDMA standard used by all carriers in Europe), and CDMA (code division multiple access). Mobile wireless telecommunications services providers have chosen to build their networks on these incompatible technologies and most have chosen CDMA or GSM, with TDMA have been orphaned by equipment vendors. (The SMR providers use a fourth incompatible technological standard better suited to the spectrum they own, and, as SMR licensees, they have no obligation to support a specific technology standard.) Even more advanced technologies (''2.5G'' and ''3G'') have begun to be deployed for voice and data.

B. Relevant Product Market

13. Mobile wireless telecommunications services is a relevant product market. Mobile wireless telecommunications services include both voice and data services provided over a radio network and allows customers to maintain their telephone calls or data sessions without wires, such as when traveling. There are no cost-effective alternatives to mobile wireless telecommunications services. Fixed wireless services are not mobile, and other wireless services have a limited range (*e.g.,* Wi-Fi); neither offers a viable alternative to mobile wireless telecommunications service. It is unlikely that a sufficient number of customers would switch away from mobile wireless telecommunications services to make a small but significant price increase in those services unprofitable. Mobile wireless telecommunications services is a relevant product market under section 7 of the Clayton Act, 15 U.S.C. 18.

C. Relevant Geographic Markets

14. The large majority of customers use mobile wireless telecommunications services in close proximity to their workplaces and homes. Thus, customers purchasing mobile wireless telecommunications services choose among mobile wireless telecommunications services providers that offer services where they are located and travel on a regular basis: home, work, other areas they commonly visit, and areas in between. The number and identity of mobile wireless telecommunications services providers varies among geographic areas, along with the quality of their service sand the breadth of their geographic coverage, all of which are significant factors in customers' purchasing decisions. Mobile wireless telecommunications services providers can and do offer different promotions, discounts, calling plans, and equipment subsidies in different geographic areas, effectively varying the price for customers by geographic area.

15. The United States comprises numerous local geographic markets for mobile wireless telecommunications services. The FCC has licensed a limited number of mobile wireless telecommunications services providers in each local area based upon the availability of radio spectrum. These FCC spectrum licensing areas often represent the core of the business and social sphere where customers face the same competitive choices for mobile wireless telecommunications services. The relevant geographic markets in which this transaction will substantially lessen competition in mobile wireless telecommunications services are effectively represent, but not defined, by FCC spectrum licensing areas.

16. The relevant geographic markets, under Section 7 of the Clayton Act, 15 U.S.C. 18, where the transaction will substantially lessen competition for mobile wireless telecommunications services are represented by the following FCC spectrum licensing areas which are all Rural Service Areas: Arkansas RSA–11 (CMA 334), Kansas RSA–3 (CMA 430), Kansas RSA–4 (CMA 431), Kansas RSA–8 (CMA 435), Kansas RSA–9 (CMA 436), Kansas RSA–10 (CMA 437), Kansas RSA-14 (CMA 441), Nebraska RSA–2 (CMA 534), Nebraska RSA–3 (CMA 535), Nebraska RSA–4 (CMA 536), Nebraska RSA–5 (CMA 537), Nebraska RSA–6 (CMA 538), Nebraska RSA–7 (CMA 539), Nebraska RSA–8 (CMA 540), Nebraska RSA–9 (CMA 541), Nebraska RSA–10 (CMA 542). It is unlikely that a sufficient number of customers would switch to mobile wireless telecommunications services providers in a different geographic market to make a small but significant price increase in the relevant geographic markets unprofitable for mobile wireless telecommunications services.

D. Anticompetitive Effects

1. Mobile Wireless Telecommunications Services

17. The companies' combined market shares for mobile wireless telecommunications services in the relevant markets described above, as measured in terms of subscribers, range from over 50 to nearly 100 percent. In each relevant geographic market, ALLTEL has the largest market share and, in all but four (4) RSAs, Western Wireless is the second-largest mobile wireless telecommunications services provider. In all of the relevant geographic markets, ALLTEL and Western Wireless own the only 800 MHz band cellular spectrum licenses, which are more efficient in serving rural areas than 1900 MHz band PCS spectrum. As a result of holding the cellular spectrum licenses and being early entrants into these markets, ALLTEL's and Western Wireless' networks provide greater depth and breadth of coverage than their competitors, which are operating on PCS spectrum in the relevant geographic markets, and thus are more attractive to consumers.

In addition, mobile wireless telecommunications services providers with partial coverage in a geographic area do not aggressively market their services in these markets because potential customers would use their wireless telephones primarily in areas where these providers have no network. In theory, these less-built-out providers could serve residents of the rural areas through roaming agreements, but as a practical matter when service is

provided on another carrier's network, the providers have to pay roaming charges to, and rely on, that provider to maintain the quality of the network. Because of these constraints, carriers with limited network coverage in an area are reluctant to market their services to residents of that area. Therefore, ALLTEL and Western Wireless are likely closer substitutes for each other than the other mobile wireless services providers who own only PCS spectrum in the relevant geographic markets.

18. The relevant geographic markets for mobile wireless services are highly concentrated. As measured by the Herfindahl-Hirschman Index (''HHI''), which is commonly employed in merger analysis and is defined and explained in Appendix A to this Complaint, concentration in these markets ranges from over 2100 to more than 8500, which is well above the 1800 threshold at which the Department considers a market to be highly concentrated. After ALLTEL's proposed acquisition of Western wireless is consummated, the HHIs in the relevant geographic markets will range from over 3400 to almost 9700, with increases in the HHI as a result of the merger ranging from over 1100 to over 4600, significantly beyond the thresholds at which the Department considers a transaction likely to cause competitive harm.

19. Competition between ALLTEL and Western Wireless in the relevant geographic markets has resulted in lower prices and higher quality in mobile wireless telecommunications services, than would otherwise have existed in these geographic markets. In these areas, consumers consider ALLTEL and Western Wireless to be the most attractive competitors because other providers' networks lack coverage or provide lower quality service. If ALLTEL's proposed acquisition of Western Wireless is consummated, the relevant geographic markets for mobile wireless telecommunications services will become substantially more concentrated, and the competition between ALLTEL and Western Wireless in mobile wireless telecommunications service will be eliminated in these markets. As a result, the loss of competition between ALLTEL and Western Wireless increases the likelihood of unilateral actions by the merged firm in the relevant geographic markets to increase prices, diminish the quality or quantity of services provided, and refrain from or delay making investments in network improvements. Therefore, ALLTEL's proposed acquisition of Western Wireless will likely result in substantially less competition in mobile wireless telecommunications services in the relevant geographic markets.

2. Entry

20. Entry by a new mobile wireless telecommunications services provider in the relevant geographic markets would be difficult, time-consuming, and expensive, requiring the acquisition of spectrum licenses and the build-out of a network. Expansion by providers who hold spectrum in these areas is also unlikely as the relevant geographic markets are rural service areas where the combined firm would own all of the available 800 MHz cellular spectrum. Due to propagation characteristics of 800 MHz cellular spectrum and 1900 MHz PCS spectrum, the 800 MHz signals can cover a substantially broader area than the 1900 MHz signals. The estimated coverage advantage of the 800 MHz cellular spectrum in rural areas ranges from two to as much as five times greater than PCS. In rural markets, this difference results in higher build-out costs for PCS networks than for cellular networks. The high costs of constructing PCS networks in rural markets combined with the relatively low population density makes it less likely that carriers that own PCS spectrum would build out in the relevant geographic markets. Therefore, new entry in response to a small but significant price increase for mobile wireless services by the merged firm in the relevant geographic markets would not be timely, likely, or sufficient to thwart the competitive harm resulting from ALLTEL's proposed acquisition of Western Wireless, if it were to be consummated.

IV. Violation Alleged

21. The effect of ALLTEL's proposed acquisition of Western Wireless, if it were to be consummated, may be substantially to lessen competition in interstate trade and commerce in the relevant geographic markets for mobile wireless telecommunications services, in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

22. Unless restrained, the transaction will likely have the following effects in mobile wireless telecommunications services in the relevant geographic markets, among others:

a. Actual and potential competition between ALLTEL and Western Wireless will be eliminated;

b. Competition in general will be lessened substantially;

c. Prices are likely to increase;

d. The quality and quantity of services are likely to decrease; and

e. incentives to improve wireless networks will be reduced.

V. Requested Relief

23. That ALLTEL's proposed acquisition of Western Wireless be adjudged to violate section 7 of the Clayton Act, 15 U.S.C. 18;

24. That defendants be permanently enjoined from and restrained from carrying out the Agreement and Plan of Merger, dated January 9, 2005, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to bring the wireless services businesses of ALLTEL and Western Wireless under common ownership or control;

25. That plaintiffs be awarded their costs of this action; and

26. That plaintiffs have such other relief as the Court may deem just and proper.

Dated: July 6, 2005.

Respectfully Submitted,

For Plaintiff United States of America:

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Acting Assistant Attorney General, Antitrust Division.

J. Bruce McDonald,

Deputy Assistant Attorney General, Antitrust Division.

J. Robert Kramer II,
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U.S. Department of Justice, City Center Building, 1401 H Street, NW., Suite 8000, Washington, DC 20530, (202) 514–5621, Facsimile: (202)514–6381.

Appendix A—Herfindahl-Hirschman Index

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). (**Note**: Throughout the Complaint, market share percentage have been rounded to the nearest whole number, but HHIs have been estimated using unrounded percentages in order to accurately reflect the concentration of the various markets.) The HHI takes into account the relative size distribution of the firms in

a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. *See* Horizontal Merger Guidelines ¶ 1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. *See id.*

United States of America, Plaintiff. v. ALLTEL Corporation and Western Wireless Corporation, Defendants.

Preservation of Assets Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Preservation of Assets Stipulation and Order:

A. ''Acquirer'' of ''Acquirers'' means the entity or entities to whom defendants divest the Divestiture Assets.

B. ''ALLTEL'' means defendant ALLTEL Corporation, a Delaware corporation with headquarters in Little Rock, Arkansas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Cellular One Group'' means the Delaware general partnership, with headquarters in Bellevue, Washington, engaged in the business of licensing and promoting the Cellular One service mark and certain related trademarks, service marks, and designs.

D. ''Cellular One Group Assets' means all legal and economic interests Western Wireless holds in the Cellular One Group. Cellular One Group Assets shall include all right, title and interest in trademarks, trade names, service marks, service names, designs, and intellectual property, all license agreements for use of the Cellular One mark, technical information, computer software and related documentation, and all records relating to the divestiture assets.

E. ''CMA'' means cellular market area which is used by the Federal Communications Commission (''FCC'') to define cellular license areas and which consists of Metropolitan Statistical Areas (''MSAs'') and Rural Service Areas (''RSAs'').

F. ''Divestiture Assets'' means the Wireless Business Divestiture Assets and the Cellular One Group Assets.

G. ''GSM'' means global system for mobile communications which is one of the standards used for the infrastructure of digital cellular service.

H. ''Multi-line Business Customer'' means a corporate or business customer that contracts with Western Wireless for mobile wireless services to provide multiple telephones to its employees or members whose services are provided pursuant to a contract with the corporate or business customer.

I. ''Transaction'' means the Agreement and Plan of Merger between ALLTEL and Western Wireless, dated January 9, 2005.

J. ''Western Wireless'' means defendant Western Wireless Corporation, incorporated in the state of Washington with headquarters in Bellevue, Washington, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

K. ''Wireless Business Divestiture Assets'' means, for each mobile wireless telecommunications business to be divested under this Final Judgment, all types of assets, tangible and intangible, used by defendants in the operation of the mobile wireless telecommunications businesses to be divested. ''Wireless Business Divestiture Assets'' shall be construed broadly to accomplish the complete divestitures of the entire business of Western Wireless in each of the following RSA license areas as required by the Final Judgment and to ensure that the divested mobile wireless telecommunications businesses remain viable, ongoing businesses:

(a) Arkansas RSA–11 (CMA 334);
(b) Kansas RSA–3 (CMA 430);
(c) Kansas RSA–4 (CMA 431);
(d) Kansas RSA–8 (CMA 435);
(e) Kansas RSA–9 (CMA 436);
(f) Kansas RSA–10 (CMA 437);
(g) Kansas RSA–14 (CMA 441);
(h) Nebraska RSA–2 (CMA 534);
(i) Nebraska RSA–3 (CMA 535);
(j) Nebraska RSA–4 (CMA 536);
(k) Nebraska RSA–5 (CMA 537);
(l) Nebraska RSA–6 (CMA 538);
(m) Nebraska RSA–7 (CMA 539);
(n) Nebraska RSA–8 (CMA 540);
(o) Nebraska RSA–9 (CMA 541); and
(p) Nebraska RSA–10 (CMA 542);

provided that ALLTEL may retain all of the PCS spectrum currently held by Western Wireless in each of these RSAs and provided that ALLTEL need not divest the assets used solely to operate Western Wireless' GSM roaming business, including GSM roaming contracts and equipment.

Wireless Busienss Divestiture Assets shall include, without limitation, all types of real and personal property, monies and financial instruments, equipment, inventory, office furniture, fixed assets and furnishings, supplies and materials, contracts, agreements, leases, commitments, spectrum licenses issued by the FCC and all other licenses, permits and authorizations, operational support systems, cell sites, network infrastructure, switches, customer support and billing systems, interfaces with other service providers, business and customer records and information, customer contracts, customer lists, credit records, accounts, and historic and current business plans which relate primarily to the wireless business being divested, as well as any patents, licenses, sub-licenses, trade secrets, know-how, drawings, blueprints, designs, technical and quality specifications and protocols, quality assurance and control procedures, manuals and other technical information defendants supply to their own employees, customers, suppliers, agents, or licensees, and trademarks, trade names and service marks or other intellectual property, including all intellectual property rights under third-party licenses that are capable of being transferred to an Acquirer either in their entirety, for assets described in (1) below, or through a license obtained through or from Western Wireless, for assets described in (2) below; provided that defendants shall only be required to divest Multi-line Business Customer contracts, if the primary business address for that customer is located within any of the sixteen (16) license areas described herein, and further, any subscribers who obtain mobile wireless telecommunications services through any such contract retained by defendants and who are located within the sixteen (16) geographic areas identified above, shall be given the option to terminate their relationship with defendants, without financial cost, within one year of the closing of the Transaction. Defendants shall provide written notice to these subscribers within forty-five (45) days after the closing of the Transaction of the option to terminate.

These divestitures of the Wireless Business Divestiture Assets shall be accomplished by:

(1) Transferring to the Acquirers the complete ownership and/or other rights to the assets (other than those assets used substantially in the operations of Western Wireless' overall wireless telecommunications services business which must be retained to continue the existing operations of the wireless properties that defendants are not required to divest, and that either are

not capable of being divided between the divested wireless businesses and those not divested, or are assets that the defendants and the Acquirer(s) agree, subject to approval of plaintiff, shall not be divided); and

(2) Granting to the Acquirer(s) an option to obtain a non-exclusive, transferable license from defendants for a reasonable period, subject to approval of plaintiff, at the election of an Acquirer to use any of Western Wireless' retained assets under paragraph (1) above, used in the operation of the wireless telecommunications services business being divested, so as to enable the Acquirer to continue to operate the divested mobile wireless telecommunications services business without impairment. Defendants shall identify in a schedule submitted to plaintiff and filed with the Court, as expeditiously as possible following the filing of the Complaint and in any event prior to any divestitures and before the approval by the Court of this Final Judgment, and intellectual property rights under third-party licenses that are used by the mobile wireless telecommunications services businesses being divested but that defendants could not transfer to an Acquirer entirely or by license without third-party consent, and the specific reasons why such consent is necessary and how such consent would be obtained for each asset.

II. Objectives

The Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of the Divestiture Assets for the purpose of preserving viable competitors in the provision of mobile wireless telecommunications services in order to remedy the effects that plaintiff alleges would otherwise result from ALLTEL's acquisition of Western Wireless. This Preservation of Assets Stipulation and Order ensures, prior to such divestitures, that competition is maintained during the pendency of the ordered divestitures, and that the Divestiture Assets remain ongoing business concerns and the Divestiture Assets remain economically viable. The Divestiture Assets will remain, as provided herein, preserved, independent and uninfluenced by defendants.

III. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, 15 U.S.C. 18.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a proposed Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that the plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Preservation of Assets Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) plaintiff has withdrawn its consent, as provided in Section IV.A above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. Management Trainee

A. Plaintiff nominates David S. Turetsky as Management Trustee in this case, and defendants have no objection to his immediate appointment by this Court. Accordingly, this Court appoints David S. Turetsky as Management Trustee to serve as manager of the Divestiture Assets until the Divestiture Assets are sold or transferred to a Divestiture Trustee pursuant to Section V of the proposed Final Judgment. Nothing in this Stipulation shall be interpreted to prevent the Management Trustee from becoming the Divestiture pursuant to Section V of the proposed Final Judgment.

B. Prior to the closing of the Transaction, defendants shall enter into a trust agreement with David S. Turetsky, subject to the approval of plaintiff in its sole discretion, that will grant the rights, powers, and authorities necessary to permit him to perform the duties and responsibilities of the Management Trustee pursuant to this Stipulation. The trust agreement shall enable him to assume all rights, powers, and authorities necessary to perform his duties and responsibilities, pursuant to this Stipulation and proposed Final Judgment and consistent with their purposes. David S. Turetsky or any other subsequently appointed Management Trustee shall serve as the cost and expense of defendants, on such terms and conditions as plaintiff approves, with a fee arrangement that is reasonable in light of the person's experience and responsibilities.

C. The Management Trustee will have the following powers and responsibilities with respect to the Divestiture Assets:

(1) The Management Trustee will have the power to manage the Divestiture Assets in the ordinary course of business consistent with this Stipulation. Only with the prior written approval of plaintiff, may the Management Trustee make any decision, take any action, or enter any transaction that is outside the ordinary course of business;

(2) The Management Trustee shall have a duty, consistent with the terms of this Stipulation and the proposed Final Judgment, to monitor the organization of the Divestiture Assets; manage the Divestiture Assets in order to maximize their value so as to permit expeditious divestitures in a manner consistent with the proposed Final Judgment; maintain the independence of the Divestiture Assets from defendants, control and operate the

Wireless Business Divestiture Assets to ensure that the Wireless Business Divestiture Assets remain an independent, ongoing, economically viable competitor to the other mobile wireless telecommunications services providers; manage the Cellular One Group Assets in a manner so as to maintain the business and value of the intellectual property including trademarks and service marks; and assure defendants' compliance with their obligations pursuant to this Stipulation and the proposed Final Judgment;

(3) The Management Trustee shall have the authority to retain, the cost and expense of defendants, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Management Trustee's duties and responsibilities;

(4) The Management Trustee and any consultants, accountants, attorneys, and any other person retained by the Management Trustee, shall have full and complete access to all personnel, books, records, documents, and facilities of the Divestiture Assets or to any other relevant information as the Management Trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the Divestiture Assets. Defendants shall develop such financial or other information as the Management Trustee may request and shall cooperate with the Management Trustee. Defendants shall take no action to interfere with or impede the Management Trustee's ability to monitor defendants' compliance with this Stipulation and the proposed Final Judgment or otherwise to perform his duties and responsibilities consistent with the terms of this Stipulation and the proposed Final Judgment;

(5) The Management Trustee will ensure that the Divestiture Sets shall be staffed with sufficient employees to maintain their viability and competitiveness. To the extent that any employee whose principal responsibilities relate to the Divestiture Assets leaves or has left the Divestiture Assets prior to divestiture of the Divestiture Assets, the Management Trustee may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees; and

(6) Thirty (30) days after the Management Trustee has been appointed by the Court, and every thirty (30) days thereafter until the Divestiture Assets are either transferred to an Acquirer or to the Divestiture Trustee, the Management Trustee shall report in writing to the plaintiff concerning the efforts to accomplish the purposes of this Stipulation and the proposed Final Judgment. Included within that report shall be the Management Trustee's assessment of the extent to which the Divestiture Assets are meeting (or exceeding) their projected goals as are reflected in existing or revised operating plans, budgets, projections or any other regularly prepared financial statements and the extent to which defendants are fulfilling their responsibilities under this Stipulation and the proposed Final Judgment.

D. The following limitations shall apply to the Management Trustee:

(1) The Management Trustee shall not be involved, in any way, in the operations of other businesses of defendants;

(2) The Management Trusteee shall have no financial interests affected by defendants' revenues, profits or profit margins, except that the Management Trustee's compensation for managing the Divestiture Assets may include economic incentives dependent on the financial performance of the Divestiture Assets provided that those incentives are consistent with the objectives of this Stipulation and the proposed Final Judgment and are approved by plaintiff; and

(3) The Management Trustee shall be prohibited from performing any further work for defendants for two (2) years after the close of the divestiture transactions.

E. Defendants and the Management Trustee will take all reasonable efforts to preserve the confidentiality of information that is material to the operation of either the Divestiture Assets or defendants' businesses. Defendants' personnel supplying services to the Divestiture Assets pursuant to this Stipulation must retain and maintain the confidentiality of any and all confidential information material to the Divestiture Assets. Except as permitted by this Stipulation and the proposed Final Judgment, such persons shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing the confidential information of the Divestiture Assets to or with any person employment involves any of defendants' businesses, except as necessary to fulfill the purposes of this Stipulation and the proposed Final Judgment.

F. If in the judgment of the Management Trustee, defendants fail to provide the services listed in Section VI of this Stipulation to the satisfaction of the Management Trustee, upon notification to defendants and approval by plaintiff, the Management Trustee may engage third parties unaffiliated with the defendants to provide those services for the Divestiture Assets, at the cost and expense of defendants, provided that defendants may have reasonable access to information to satisfy themselves that after the services have been provided, the Divestiture Assets are in compliance with all applicable laws, rules and regulations.

G. At the option of the Management Trustee, defendants may also provide other products and services, on an arms-length basis provided that Management Trustee is not obligated to obtain any other product or service from defendants and may acquire any such products or services from third parties unaffiliated with defendants.

H. If the Management Trustee ceases to act or fails to act diligently and consistently with the purposes of this Stipulation and the proposed Final Judgment, if the Management Trustee proposed by plaintiff is not approved by this Court or resigns, or if for any other reason the Management Trustee ceases to serve in his or her capacity as Management Trustee, the United States may select a substitute Management Trustee. In this event, plaintiff will identify to defendants the individual or entity it proposes to select as Management Trustee. Defendants must make any such objection to this selection within five (5) business days after plaintiff notifies defendants of the Management Trustee's selection. Upon application of the United States, the Court shall approve and appoint a substitute Management Trustee. Within five (5) business days of such appointment, defendants shall enter into a trust agreement with the Management Trustee subject to the approval of plaintiff in its sole discretion as described in Section V.B of this Stipulation.

VI. Preservation of Assets

Until the divestitures required by the proposed Final Judgment have been accomplished, except as otherwise approved in advance in writing by plaintiff:

A. Defendants and the Management Trustee shall preserve, maintain, and continue to support the Divestiture Assets, take all steps necessary to manage the Divestiture Assets in order to maximize their revenue, profitability and viability and permit expeditious divestitures in a manner consistent with this Stipulation and the proposed Final Judgment.

B. The Wireless Business Divestiture Assets shall be operated by the

Management Trustee as part of an independent, ongoing, economically viable competitive business to other mobile wireless telecommunications services providers operating in the same license area. The Cellular One Group Assets shall be managed by the Management Trustee so that the value of the Cellular One brand is maintained, and all obligations under existing licensing agreements are fulfilled, and these assets are maintained or increased in value. Defendants and the Management Trustee shall take all steps necessary to ensure that:

(1) The management, sales, and operations of the Divestiture Assets are independent from defendants' other operations; provided however, that at the request of the Divestiture Assets, defendants shall include the marketing, pricing and sales of the mobile wireless telecommunications services generated by the Wireless Business Divestiture Assets in the license areas served by the Wireless Business Divestiture Assets within its marketing, promotional, and service offerings, in the ordinary course of business, in any national, regional, and local marketing programs. The defendants shall not display advertising announcing or describing benefits of the Transaction in the sixteen (16) divestiture markets. Nothing in this Section shall prohibit the Divestiture Assets from developing his own reasonable marketing, sales, pricing or promotion offers, which shall be funded and supported by defendants;

(2) The Wireless Business Divestiture Assets are maintained by adhering to normal and planned repair, capital improvement, upgrade and maintenance schedules;

(3) The management of the Divestiture Assets will not be influenced by defendants;

(4) The books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning marketing, pricing or sales of mobile wireless telecommunications services or the Cellular One mark generated by the Divestiture Assets will by kept separate and apart from the defendants' other operations; and

(5) The management of the Divestiture Assets acts to maintain and increase the sales and revenues of the Divestiture Assets, and maintain, at a minimum, at previously approved levels for 2005 and 2006, whichever are higher, all promotional, advertising, sales, marketing, and technical support for the Divestiture Assets.

C. Defendants shall provide sufficient working capital and lines and sources of credit as deemed necessary by the Management Trustee to continue to maintain the Divestiture Assets consistent with this Stipulation.

D. Defendants shall resolve all outstanding obligations related to the Divestiture Assets including agent and employee compensation within thirty (30) days of closing the Transaction.

E. Except (1) as recommended by the Management Trustee and approved by plaintiff, or (2) as part of a divestiture approved by plaintiff in accordance with the terms of the proposed Final Judgment, defendants shall not remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Divestiture Assets outside the ordinary course of business.

F. The Management Trustee, with defendants' cooperation consistent with this Stipulation and the proposed Final Judgment, shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of the Divestiture Assets. As part of the defendants' cooperation, at least five (5) days prior to the closing of the Transaction, defendants will provide to the Management Trustee and plaintiff three (3) separate financial reports for the divestiture markets in each of Arkansas, Kansas, and Nebraska, and separately for each of the sixteen (16) divested RSAs, detailed management reports describing existing and future plans for human resources, marketing, network upgrades and capital expenditures. Defendants will produce these reports in a form and with content that is acceptable to the Management Trustee and plaintiff.

G. As part of the defendants' cooperation, at least five (5) days prior to the closing of the Transaction, defendants will provide all reports regularly prepared by defendant Western Wireless that measure sales activity in each of the sixteen (16) divestiture markets, including but not limited to the Daily Activity Report and the Activating Revenue Report, that are in a form and with content acceptable to the Management Trustee and plaintiff. If these reports cannot be produced for each of the sixteen (16) divestiture markets, these reports should cover the smallest geographic area that includes the divestiture markets as is technically feasible. If the Transaction has not closed within seven (7) days after the filing of the Complaint, on that day defendants will submit to plaintiff and the Management Trustee current copies of these reports.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets nor shall defendants take any action that would interfere with the ability of any Divestiture Trustee appointed pursuant to the proposed Final Judgment to operate and manage the Divestiture Assets or to complete the divestitures pursuant to the proposed Final Judgment to an Acquirer(s) acceptable to plaintiff.

I. Within seven (7) days of the filing of the Complaint or prior to the closing of the Transaction, whichever is sooner, defendants shall appoint (and notify plaintiff and the Management Trustee of their names and titles) sufficient employees for each of the Wireless Business Divestiture Assets and the Cellular One Group Assets, who are familiar with and have had responsibility for the management, operation, marketing, and sales of the Divestiture Assets, to assist the Management Trustee with his duties and responsibilities hereunder.

J. Except for employees (1) whose primary employment responsibilities relate to the Divestiture Assets, or (2) who are involved in providing support services to the Divestiture Assets pursuant to Sections V and VI of this Stipulation and Section V of the proposed Final Judgment, defendants shall not permit any other of their employees, officers, or directors to be involved in the operations of the Divestiture Assets.

K. Except as required by law in the course of (1) complying with this Stipulation and the proposed Final Judgment; (2) overseeing compliance with policies and standards concerning the safety, health, and environmental aspects of the operations of the Divestiture Assets and the integrity of their financial controls; (3) defending legal claims, investigations or enforcement actions threatened or brought against the Divestiture Assets; or (4) obtaining legal advice, defendants' employees (excluding employees (a) whose primary employment responsibilities relate to the Divestiture Assets, or (b) who are involved in providing support services to the Divestiture Assets pursuant to Sections V and VI of this Stipulation and Section V of the proposed Final Judgment) shall not receive, or have access to, or use any material confidential information, not in the public domain, of the Divestiture Assets. Defendants may receive aggregate financial information relating to the Divestiture Assets to the extent necessary to allow defendants to prepare the defendants' consolidated financial reports, tax returns, reports

required by securities laws, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

L. Defendants may offer a bonus or severance to employees whose primary employment responsibilities relate to the Divestiture Assets, that continue their employment until divestiture (in addition to any other bonus or severance to which the employees would otherwise be entitled).

M. Until the Divestiture Assets are divested to an Acquirer(s) acceptable to plaintiff, defendants shall provide to the Divestiture Assets, at no cost, support services needed to maintain the Divestiture Assets in the ordinary course of business, including but not limited to:

(1) Federal and state regulatory policy development and compliance;

(2) Human resources administrative services;

(3) Environmental, health and safety services, and developing corporate policies and insuring compliance with federal and state regulations and corporate policies;

(4) Preparation of tax returns;

(5) Financial accounting and reporting services;

(6) Audit services;

(7) Legal services;

(8) Routine network maintenance, repair, improvements, and upgrades;

(9) Switching, call completion, and other services necessary to allow subscribers to use mobile wireless services and complete calls;

(10) Billing, customer care and customer service related functions necessary to maintain the subscriber account and relationship;

(11) For each retail and indirect sales outlet, a sixty (60) day supply of inventory, including both handsets and accessories, branded as directed by the Management Trustee, based on each outlet's average sales for the prior two (2) months, and if the Management Trustee requests, ALLTEL shall make available in sufficient quantities, branded as directed by the Management Trustee, handsets and accessories, introduced by ALLTEL in similar markets that are compatible with the network in the sixteen (16) Divestiture Markets;

(12) The individual financial reports described in seciton VI.F shall be provided on a monthly basis; and

(13) The sales reports described in Section VI.G shall be provided on a daily basis.

N. Prior to the closing of the Transaction, defendants will notify plaintiff in writing of the steps defendants have taken to comply with this Section. If the Transaction has not closed within seven (7) days after the filing of the Complaint, on that day defendants will submit to plaintiff and the Management Trustee a detailed statement of how defendants will comply with Section VI.A prior to the closing of the Transaction, including but not limited to: (1) Marketing plans for the sale of mobile wireless telecommunications services by the mobile wireless business to be divested, including customer retention plans and promotions; (2) the designation of a management team who will have responsibility for and manage the Divestiture Assets prior to the closing of the Transaction, identifying any changes from pre-filing staffing; (3) plans for retention of employees and payment of retention bonuses to employees whose primary duties related to the mobile wireless business to be divested; and (4) plans for network maintenance, repair improvements, and upgrades of the Wireless Divestiture Assets.

O. This Preservation of Assets Stipulation and Order shall remain in effect until consummation of the divestitures required by the proposed Final Judgment or until further order of the Court.

Dated: July 6, 2005.

Respectively submitted.

For Plaintiff United States

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For Defendant ALLTEL Corporation

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For Defendant Western Wireless Corporation

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Order

It is so ordered by the Court, this__day of__, 2005.

United States District Judge.

[FR Doc. 05–15020 Filed 5–8–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; United States v. Federation of Physicians and Dentists, et al.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Southern District of Ohio in *United States* v. *Federation of Physicians and Dentists, et al.*, Civil Case No. 1:05–cv–431. The proposed Final Judgment is subject to approval by the Court after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), including expiration of the statutory 60-day public comment period.

On June 24, 2005, the United States filed a Complaint alleging that the Federation of Physicians and Dentists (''Federation''), Dr. Michael Karram, Dr. Warren Metherd, and Dr. James Wendel conspired with other OB-GYN members, to increase fees paid by commercial insurers to Federation members in violation of Sherman Act section 1.

To help restore competition, the proposed Final Judgment filed with the Complaint will enjoin Dr. Karram, Dr. Metherd, and Dr. Wendel (''the Settling Physicians'') from encouraging, facilitating, or participating in any agreement among competing physicians pertaining to any contract term, negotiations with any health care payer, or the provision of consulting, financial, legal, or negotiating services concerning any payer contract. The Settling Physicians are also not permitted to use the Federation for contracting and negotiation services, such as messenger services. The proposed Final Judgment also prohibits certain communications between any Settling Physician and any competing physician.

A Competitive Impact Statement, filed by the United States, describes the Complaint, the proposed Final Judgment, and the remedies available to private litigants. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 215 North, 325 Seventh Street, NW. 20530 (telephone: 202/514–2692), and at the Office of the Clerk of the United States District Court for the Southern District of Ohio, Western Division, Potter Stewart U.S.

Courthouse, Room 103, 100 East Fifth Street, Cincinnati, Ohio 45202.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mark J. Botti, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20250 (Telephone 202/307–0001).

J. Robert Kramer II,

Director of Operations, United States Department of Justice, Antitrust Division.

United States District Court for the Southern District of Ohio, Western Division

United States of America, Plaintiff v. Federation of Physicians and Dentists, et al., Defendants

Civil No. 1:05CV431.
Chief Judge Beckwith.
United States Magistrate Judge Hogan.

Plaintiff's Competitive-Impact Statement Concerning the Proposed Final Judgment as to Setting Physician Defendants

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment as to Settling Physician Defendants (''Final Judgment''). The proposed Final Judgment was lodged with the Court on June 24, 2005, for eventual entry in this civil antitrust proceeding, following the parties' compliance with the APPA, and, if the Court determines, pursuant to the APPA, that the proposed Final Judgment is in the public interest.

I. Nature and Purpose of the Proceeding

The plaintiff filed this civil antitrust Complaint on June 24, 2005, in the United States District Court for the Southern District of Ohio, Western Division, alleging that Drs. Warren Metherd, Michael Karram, and James Wendel (''the Settling Physician Defendants''), obstetrician-gynecologist physicians (''OB–GYNs'') practicing in Cincinnati, Ohio, participated in a conspiracy that has unreasonably restrained interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. As alleged in the Complaint, this agreement has artificially raised fees paid by health insurers to OB–GYNs in the Cincinnati area that are ultimately borne by employers and their employees.

The plaintiff and the Settling Physician Defendants have stipulated that the proposed Final Judgment may be entered upon the Court's determinations that it serves the public interest and that there is no just reason to delay its entry while the litigation involving the two non-settling defendants proceeds. Entry of the proposed Final Judgment would terminate this action against the Settling Physician Defendants, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment, and to punish violations of it.

II. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

The Complaint in this action includes the following allegations. In the spring of 2002, the Settling Physician Defendants joined the Federation of Physician and Dentists (''Federation''), a membership organization of physicians and dentists, headquartered in Tallahassee, Florida. The Federation's membership includes economically independent physicians in private practice in many states, including Ohio. The Federation offers such member physicians assistance in negotiating fees and other terms in their contracts with health care insurers.

Cincinnati OB–GYNs became interested in joining the Federation primarily to negotiate higher fees from health care insurers. The Settling Physician Defendants assisted the Federation in recruiting other Cincinnati-area OB–GYNs as members. By June, 2002, the membership of the Federation had grown to include a large majority of competing OB–GYN physicians in the Cincinnati area.

With substantial participation by the Settling Physician Defendants, the Federation coordinated and helped implement its members' concerted demanded to insurers for higher fees and related terms, accompanied by threats of contract terminations. From September, 2002, through the fall of 2003, the Settling Physician Defendants communicated with Federation employees, each other, and other Cincinnati-area OB–GYN Federation members to assist the Federation in coordinating members' contract negotiations with health care insurers. The Settling Physician Defendants' communications included assisting the Federation in developing a strategy for the Federation to intensify members' pressure on health insurers to renegotiate their contracts, apprising each other and other physicians about their own practice group's negotiations, working primarily through the Federation to inform Federation members about steps to take to coordinate their negotiations, and leading a campaign for Federation members to endorse insurers that agreed to meet all Federation members' contract demands.

The Settling Physician Defendants' and their conspirators' collusion caused Cincinnati-area health care insurers to raise fees paid to Federation members OB–GYNs above the levels that would likely have resulted if Federation members had negotiated competitively with those insurers. As a result of the Settling Physician Defendants' and their conspirators' conduct, the three largest Cincinnati-area health care insurers were each forced to increase fees paid to most Federation members OB–GYNs by approximately 15–20% starting July 1, 2004, followed by cumulative increases of 20–25%, starting January 1, 2004, and 25–30%, effective January 1, 2005. The Settling Physician Defendants' and their conspirators' conduct also caused other insurers to raise the fees they paid to Federation members OB–GYNs.

III. Explanation of the Proposed Final Judgment

A. Relief To Be Obtained

The proposed Final Judgment prohibits the Settling Physician Defendants from encouraging, facilitating, or participating in any agreement or understanding among competing physicians about any contract term, about the manner in which those physicians will negotiate or deal with any health care payer, or about the use of any person or organization that provides consulting, financial, legal, or negotiating services concerning any payer contract. The proposed Final Judgment also enjoins the Settling Physician Defendants from using Defendant Federation of Physicians and Dentists (''Federation'') for any messenger, financial, legal, consulting, or negotiating service concerning any payer contract or contract.

The proposed Final Judgment also prohibits each Settling Physician Defendant from communicating with any competing physician about his or his practice group's view or position concerning the negotiation or acceptability of any proposed or existing payer contract or contract term, including his or his medical practice group's negotiating or contracting status with any payer. Each Settling Physician Defendant is also enjoined from communicating with any competing

physician about (1) any proposed or existing term of any payer contract that affects the fees that the Settling Physician Defendant or his medical practice group contracts for, or accepts from (or considers contracting for, or accepting from) any payer, (2) the duration, amendment, or termination of the payer contract; (3) utilization reviews and pre-certification; or (4) the manner of resolving disputes between the participating physician or group and the payer.

Subject to the injunctive provisions of the proposed Final Judgment, the Settling Physician Defendants may discuss with any competing physician any medical issues relating to the treatment of a specific patient and may participate in activities of any medical society. The proposed Final Judgment also does not limit the Settling Physician Defendants' advocacy or discussion concerning legislative, judicial, or regulatory actions in accordance with doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), and its progeny. The proposed Final Judgment also allows the Settling Physician Defendants to respond to communications necessary to participate in lawful activities by clinically or financially integrated physician network joint ventures and multi-provider networks, as those terms are used in Statements 8 and 9 of the 1996 Statement of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep. (CCH) ¶ 13,153 (''Health Care Policy Statements'').

For a period of ten years following the date of entry of the Final Judgment, each Settling Physician Defendant must certify to the United States annually whether he and his agents have complied with the provisions of the Final Judgment.

B. Anticipated Effects of the Relief To Be Obtained on Competition

The proposed Final Judgment seeks to help restore lost competition, as alleged in the Complaint, and to help prevent recurrence of the alleged violation by enjoining the Settling Physician Defendants from conspiring to increase fees for their services and engaging in conduct that may facilitate such a conspiracy. The proposed Final Judgment seeks to achieve these objectives, in part, by prohibiting the Settling Physician Defendants from engaging in the types of concerted action that allegedly enabled Federation member OB–GYNs to coordinate their negotiations with health care payers. The prevention of coordinated negotiations should reestablish competition between many of the independent, participating Federation member OB–GYNs who coordinated their payer negotiations through the Federation. Such competition will allow purchasers of OB–GYN physician services to negotiate competitive contract terms with Cincinnati-area OB–GYN physicians, instead of being forced to pay the higher rates that have allegedly resulted from the alleged coordination of payer negotiations by the majority of Cincinnati-area OB–GYN physicians, who were members of the Federation. To help avoid recurrence of the alleged violation, the proposed Final Judgment also prohibits the Settling Physician Defendants from using the Defendant Federation or any other person or organization to coordinate contract negotiations with payers and from communicating with competing physicians about competively sensitive contract terms and about contract negotiations and contract status.

IV. Remedies Available to Potential Private Litigants Damaged by the Alleged Violation if the Proposed Final Judgment is Entered

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), entry of the proposed Final Judgment also would have no prima facie effect in any subsequent lawsuits that may be brought against the Settling Physician Defendants involving their alleged conduct in this action.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the entry of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments received during this period, and it remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with this Court and published in the **Federal Register**. Written comments should be submitted to: Mark J. Botti, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment Actually Considered by the United States

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the Settling Physician Defendants. The United States is satisfied, however, that the prohibitions contained in the proposed Final Judgment will more quickly help achieve the primary objective of a trial on the merits—helping to reestablish competition among Federation member OB–GYNs and to prevent recurrence of the alleged violation.

VII. Standard or Review Under the APPA of the Proposed Final Judgment

After the sixty (60)-day comment period and compliance with the provisions of the APPA, if the United States has not withdrawn its consent to the proposed Final Judgment, it will move for entry of the proposed Final Judgment in accordance with Fed. R. Civ. P. 54(b) and the APPA. Persons considering commenting on the proposed Final Judgment are advised that, in determining, under the APPA, whether entry of the proposed Final Judgment is ''in the public interest,'' the Court shall consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the

consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A)–(B).

As these statutory provisions suggest, the APPA requires the Court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995). In determining whether the proposed judgment is in the public interest, ''[n]othing in [the APPA] shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene,'' 15 U.S.C. 16(e)(2), ''which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). This caveat is also consistent with the deferential review of consent decrees under the APPA. See *United States* v. *Microsoft*, 56 F.3d at 1460–62; *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July __, 2005.

Respectfully submitted,

For Plaintiff United States of America:

Gregory G. Lockhart,

United States Attorney.

Gerald F. Kaminski,

Assistant United States Attorney.

Bar No. 0012532.

Office of the United States Attorney, 221 E. 4th Street, Suite 400, Cincinnati, Ohio 45202, (513) 684–3711.

Steven Kramer, John Lohrer, Paul Torzilli,

Attorneys, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530. (202) 307–0997, steven.kramer@usdoj.gov.

Certificate of Service

I hereby certify that on July __, 2005, copies of the foregoing Plaintiff's Competitive-Impact Statement Concerning the Final Judgment as to Settling Physician Defendants were served by facsimile and first-class regular U.S. mail, postage prepaid, to:

Michael E. DeFrank, Esq., Hemmer Pangburn DeFrank PLLC, Suite 200, 250 Grandview Drive, Fort Mitchell, KY 41017, Fax: 859–578–38679, Attorney for Defendant Dr. James Wendel.

G. Jack Donson, Jr., Esq., Taft, Stettinius & Hollander, 425 Walnut Street, Suite 1800, Cincinnati, Ohio 45202, Fax: 513–381–0205, Attorney for Defendant Dr. Michael Karram.

Jeffrey M. Johnston, Esq., 37 North Orange Avenue, Suite 500, Orlando, FL 32801, Fax: 407–926–2453, Attorney for Defendant Dr. Warren Metherd.

Lynda Odenkirk, 43 Burwell Street, New Haven, CT 06513, Fax: 203–284–0624.

Federation of Physicians and Dentists, c/o Jack Seddon, Executive Director, 1310 Cross Creek Circle, Suite C2, Tallahassee, FL 32301, Fax: 850–942–6722.

Paul J. Torzilla,

Attorney, United States Department of Justice.

United States District Court for the District of Southern Ohio Western Division

United States of America, Plaintiff, vs. The Federation of Physicians and Dentists, et al., Defendants

Civil Action No. 1:05–cv–431.

Final Judgment as to Settling Physician Defendants

Whereas, Plaintiff, the United States of America, filed its Complaint on June 24, 2005, alleging that the setting physician Defendants Dr. Warren Metherd, Dr. Michael Karram, and Dr. James Wendel, participated in agreements in violation of Section 1 of the Sherman Act, and the Plaintiff and the settling physician Defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against, or any admission by the settling physician Defendants that the law has been violated as alleged in such Complaint, or that the facts alleged in such complaint, other than the jurisdictional facts, are true;

And whereas the settling physician Defendants agree to be bound by the provisions of this Final Judgment, pending its approval by this Court;

And whereas, the essence of this Final Judgment is to restore lost competition, as alleged in the Complaint, and to enjoin the settling physician Defendants from conspiring to increase fees for the provision of obstetrical and gynecological services;

And whereas, the United States requires the settling physician Defendants to agree to certain procedures and prohibitions for the purposes of preventing recurrence of the alleged violation and restoring the loss of competition alleged in the Complaint;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of Plaintiff and the settling physician Defendants, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and over the United States and the settling physician Defendants in this action. The Complaint states a claim upon which relief may be granted against the settling physician Defendants under Section 1 of the Sherman Act, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

(A) ''Communicate'' means to discuss, disclose, transfer, disseminate, or exchange information or opinion, formally or informally, directly or indirectly, in any manner;

(B) ''Competing physician'' means, in relation to each settling physician Defendant, any obstetrician-gynecologist in any separate, private medical practice, other than the settling physician's own practice, in any of the following counties: Boone and Kenton in Kentucky, and Hamilton and Butler in Ohio.

(C) ''Messenger service'' means, in relation to Defendant Federation of Physicians and Dentists or its successors, communicating to a payer any information the Federation receives from a member physician or communicating to a member physician any information the Federation receives from a payer;

(D) ''Payer'' menas any person that purchases or pays for all or part of a physician's services for itself or any other person and includes but is not limited to independent practice associations, individuals, health insurance companies, health maintenance organizations, preferred provider organizations, and employers;

(E) ''Payer contract'' means a contract between a payer and a physician by which that physician agrees to provide physician services to persons designated by the payer;

(F) ''Person'' means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity; and

(G) ''Settling physician Defendants'' means Defendants Dr. Warren Metherd,

Dr. Michael Karram, and Dr. James Wendel, who have consented to entry of this Final Judgment, and all persons acting as agents on behalf of any settling physician Defendant.

III. Applicability

This Final Judgment applies to the settling physician Defendants and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

The settling physician Defendants each are enjoined from, in any manner, directly or indirectly:

(A) Encouraging, facilitating, entering into, or participating in any actual or potential agreement or understanding between or among competing physicians about any fee or other payer contract term with any payer or group of payers, including the acceptability or negotiation of any fee or other payer contract term with any payer or group of payers;

(B) Encouraging, facilitating, entering into, or participating in any actual or potential agreement or understanding between or among competing physicians about the manner in which those physicians will negotiate or deal with any payer or group of payers, including participating in or terminating any payer contract;

(C) Encouraging, facilitating, entering into, or participating in any actual or potential agreement or understanding between or among competing physicians about the use of any person or organization that provides any consulting, financial, legal, or negotiating services concerning any payer contract, or that in any way communicates with any payer;

(D) Using Defendant Federation of Physicians and Dentists for any messenger, financial, legal, consulting, or negotiating service concerning any payer contract or contract term; or

(E) Communicating with any competing physician about:

(1) The actual or possible view, intention or position of each settling physician Defendant or his medical practice group, or any competing physician concerning the negotiation or acceptability of any proposed or existing payer contract or contract term, including his or his medical practice group's negotiating or contracting status with any payer, or

(2) Any proposed or existing term of any payer contract that affects:

(a) The amount of fees or payment, however determined, that the settling physician Defendant or his medical practice group charges, contracts for, or accepts from or considers charging, contracting for, or accepting from any payer for providing physician services;

(b) The duration, amendment, or termination of the payer contracts;

(c) Utilization review and pre-certification; or

(d) The manner of resolving disputes between the participating physician or group and the payer.

V. Permitted Conduct

(A) Subject to the prohibitions of Section IV of this Final Judgment, the settling physician Defendants:

(1) May discuss with any competing physician any medical issues relating to the treatment of a specific patient; and

(2) May participate in activities of any medical society; and

(B) Nothing in this Final Judgment shall prohibit settling physician Defendants from:

(1) Advocating or discussing, in accordance with the Noerr-Pennington doctrine, legislative, judicial, or regulatory actions, or other governmental policies or actions; or

(2) Responding to communications necessary to participate in lawful activities by clinically or financially integrated physician network joint ventures and multi-provider networks, as those terms are used in Statements 8 and 9 of the 1996 Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep. (CCH) ¶ 13,153 (''Health Care Policy Statements'').

VI. Certification

For a period of ten years following the date of entry of this Final Judgment, each settling physician Defendant shall certify to the United States annually on the anniversary date of the entry of this Final Judgment whether he and his agents have complied with the provisions of this Final Judgment.

VII. Compliance Inspection

(A) For the purposes of determining or securing compliance with this Final Judgment or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time, duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to each settling physician Defendant, be permitted:

(1) Access during each settling physician Defendant's regular business hours to inspect and copy, or, at the United States' option, to require that each settling physician Defendant provide copies of all books, ledgers, accounts, records, and documents in his possession, custody, or control, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, each settling physician Defendant, who may have counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of each settling physician Defendant.

(B) Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, each settling physician Defendant shall submit written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be requested.

(C) No information of documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) When a settling Physician Defendant furnishes information or documents to the United States, if the Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give the Defendant ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which such Defendant is not a party.

VIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment, but no other person, to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

X. Public Interest Determination

Entry of this Final Judgment is in the public interest.

United States District Judge

Certification of Service

I hereby certify that on June 24, 2005, copies of the foregoing Final Judgment as to Settling Physician Defendants were served by facsimile and first-class regular U.S. mail, postage prepaid to:

Michael E. DeFrank, Esq., Hemmer Pangburn DeFrank PLLC, Suite 200, 250 Grandview Drive, Fort Mitchell, KY 41017, Fax: 859–344–1188, Attorney for Defendant Dr. James Wendel.

G. Jack Donson, Jr., Esq., Taft, Stettinius & Hollander, 425 Walnut Street, Suite 1800, Cincinnati, Ohio 45202, Fax: 513–381–0205, Attorney for Defendant Dr. Michael Karram.

Jeffrey M. Johnston, Esq., 37 North Orange Avenue, Suite 500, Orlando, FL 32801, Fax: 407–926–2452, Attorney for Defendant Dr. Warren Metherd.

Mary Beth Fitzgibbons, Fitsgibbons & Pfister P.L., 20 South Rose Avenue, Suite 6, Kissimmee, FL 34741, Fax: 407–343–1677, Attorney for Defendant Federation of Physicians and Dentists, Attorney for Defendant Lynda Odenkirk.

Paul J. Torzilli,

Attorney, United States Department of Justice.

United States District Court for the Southern District of Ohio, Western Division

United States of America, Plaintiff, vs., Federation of Physicians and Dentists, Lynda Odenkirk, Warren Metherd, Michael Karram, and James Wendel, Defendants

Civil Action No. 1:05–cv–431.
Filed June 24, 2005.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this action for equitable and other relief against Defendants: Federation of Physicians and Dentists (''Federation''), Federation employee Lynda Odenkirk, and Federation members Warren Metherd, M.D., Michael Karram, M.D., and James Wendel, M.D., to restrain Defendants' violations of section 1 of the Sherman Act in concert with the Federation's other Cincinnati-area obstetrician and gynecologist (''OB–GYN'') members.

I. Introduction

1. In concert with approximately 120 OB–GYN Federation members located in the Cincinnati area (''Federation members''), Defendants participated in a conspiracy to increase fees paid by health care insurers to Federation members. The Defendant physicians and other competing Federation members joined the Federation to use its services to coordinate the renegotiation of their contracts with Cincinnati-area healthcare insurers. The Federation, with substantial assistance from the Defendant physicians, coordinated and helped implement its members' concerted demands to insurers for higher fees and related terms, accompanied by threats of contract terminations.

2. Defendants' and their conspirators' collusion caused Cincinnati-area health care insurers to raise fees paid to Federation members above the levels that would likely have resulted if Federation members had negotiated competitively with those insurers. As a result of Defendants' and other Federation members' conduct, the three largest Cincinnati-area health care insurers were each forced to increase fees paid to most Federation members by approximately 15–20% starting July 1, 2003, followed by cumulative increases of 20–25%, starting January 1, 2004, and 25–30%, effective January 1, 2005. Defendants' concerted conduct also caused other insurers to raise the fees they paid to Federation members.

3. The United States, through this suit, asks this Court to declare Defendants' conduct illegal and to enter injunctive relief to prevent further injury to consumers in the Greater Cincinnati area and elsewhere.

II. Defendants

4. The Federation is a membership organization comprising mostly physicians and dentists, and is headquartered in Tallahassee, Florida. The Federation's physician membership includes economically independent, competing physicians in private practice in localities in many states, including Cincinnati, Ohio. The Federation offers these independent physicians assistance in negotiating fees and other terms in their contracts with health care insurers.

5. Lynda Odenkirk has been employed in Wallingford, Connecticut, by the Federation since 1997 as a Regional Director and Contract Analyst. Ms. Odenkirk worked with Cincinnati-area Federation members from May, 2002, through at least 2004.

6. Warren Metherd, M.D., is an OB–GYN presently in a solo practice in Cincinnati.

7. Michael Karram, M.D., is an OB–GYN practicing in Cincinnati and is the Chief Executive Officer of Seven Hills Women's Health Centers, a practice comprising several groups totaling 22 OB–GYNs in Cincinnati.

8. James Wendel, M.D., is an OB–GYN practicing in Cincinnati and is the Chief Executive Officer of Mount Auburn Obstetrics and Gynecologic Associates, Inc., group practice of nine OB–GYNs in Cincinnati.

III. Jurisdiction and Venue

9. The United States brings this action to prevent and restrain Defendants' recurring violations of Section 1 of the Sherman Act. The Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. 4 and 28 U.S.C. 1331 and 1337.

10. During 2002 and 2003, the Federation's Cincinnati OB–GYN Chapter enrolled as paid members over 120 OB–GYN physicians, most practicing in the Southern District of Ohio and some in nearby northern Kentucky communities. The Federation and Ms. Odenkirk have transacted business and committed acts in furtherance of the conspiracy in the Southern District of Ohio. Drs. Metherd, Karram, and Wendel each provide OB–GYN services in the Southern District of Ohio. Consequently, this Court has personal jurisdiction over Defendants, and venue is proper in this District pursuant to 28 U.S.C. 1391(b)(2).

IV. Conspirators

11. Various persons, not named as defendants in this action, have participated as conspirators with Defendants in the offense alleged and have performed acts and made statements in furtherance of the alleged conspiracy.

V. Effects on Interstate Commerce

12. The activities of the Defendants that are the subject of this Complaint are within the flow of, and have substantially affected, interstate trade and commerce.

13. Federal representatives have traveled across state lines to meet with Federation members and also have communicated with them by mail, e-mail and telephone across state lines. Federation members have communicated with Federation representatives and have remitted their Federation membership dues across state lines. Some Federation members have also traveled from Kentucky to Ohio to attend Federation meetings and have communicated with other Federation members across the Ohio-Kentucky state line.

14. Federation members have treated patients who live across state lines, and Federal members have also purchased

equipment and supplies that were shipped across state line.

15. Health care insurers operating in the Cincinnati area remit substantial payments across state lines in Federation members. Health care insurers' payments to Federation members affect the reimbursements paid to insurers by self-insurers by self-insured employers, whose plans they administer, and also affect the premiums for health care insurance those insurers charge other employers. Many of the affected employers sell products and services in interstate commerce. The reimbursements and premiums those health care insurers receive from employers for administration or coverage of the expenses of their employees' health care needs, including OB–GYN services, represent a cost of production for those employers that affects the prices at which these firms' products are sold in interstate commerce.

VI. Cincinnati Area Health Care Insurers and OB–GYNS

16. At least six major health care insurers provide coverage in the Cincinnati area: WellPoint Health Networks, which during the events at issue here was named Anthem, Inc. (''Anthem''), Humana Inc. (''Humana'' or ''ChoiceCare''), United HealthCare Insurance Company (''United''), Cigna Corp. (''Cigna''), Aetna U.S. Healthcare Inc. (''Aetna''), and Medical Mutual of Ohio (''Medical Mutual'' or ''MMO'').

17. Anthem, Humana and United, through administration and insurance of health care benefits, are the three largest private health insurers operating in the Greater Cincinnati area. On the basis of market share, Medical Mutual, Aetna, and cigna each insures and administers a smaller, but still significant, share of privately financed health coverage in the Greater Cincinnati area. The remainder of the privately financed health insurance coverage market in the Greater Cincinnati area consists of a large number of insurers, each with a small share.

18. All of the major health care insurers operating in the Cincinnati area offer a variety of insurance plans to employers and their employees, including ''managed care'' plans such as health-maintenance organizations and preferred provider organizations. To offer such plans, an insurer typically contracts with participating providers, including physicians and hospitals, to form a provider network (or panel). Among other things, such contracts establish the fees that the providers will accept as payment in full for providing covered medical care to the insurer's subscribers. All of the major Cincinnati-area health care insurers consider it necessary to include in their provider panels a substantial percentage of OB–GYN physicians, who practice in the Cincinnati area to make their health care plans marketable to area employers and their employees. Before the formation of the alleged conspiracy, Federation member groups competed with each other, in their willingness to accept an insurer's proposed fee levels and other contractual terms, to be included in these insurers' provider panels.

VII. Defendants' Unlawful Activities

19. In the spring of 2002, Cincinnati OB–GYNs became interested in joining the Federation primarily to band together to negotiate higher fees from health care insurers. Through a series of meetings with and communications to Cincinnati-area OB–GYNs during the spring, the Federation-assisted by some local OB–GYNs, including Defendants Metherd, Karram, and Wendel-recruited Cincinnati-area OB–GYNs as Federation members and laid the foundation for their coordinated negotiating positions seeking higher fees from major Cincinnati health care insurers. At an initial membership recruitment meeting on April 17, 2002, a featured presentation by Jack Seddon, the Federation's Executive Director, focused on the need for a majority of area OB–GYNs practices to use the Federation's contract negotiation services to obtain increased fees from insurers.

20. Ms. Odenkirk, the Federation employee with primary responsibility for dealing with Federation members in Cincinnati, attended a second recruitment meeting on May 7, 2002. At this meeting, the OB–GYNs in attendance decided they needed a 60–70% participation rate in the Federation by OB–GYN physicians in the Cincinnati area for their activities as Federation members to have an impact on area insurance companies. By the end of May 2002, about 75–80% of actively practicing, Cincinnati-area OB–GYNs had opted to join the Federation.

21. On June 10, 2002, the Cincinnati-area OB–GYN Federation chapter held its organizational meeting, which was attended by representatives from many area OB–GYN practices. At the meeting Jack Seddon, the Federation's Executive Director, told the Federation members that, although the Federation could legally represent only individual physicians, all physicians must remember that they are part the Federation when making any business decisions regarding a contract. He also explained that, although the Federation could not directly recommend, through its Negotiation Assistance Program, whether Federation members should accept or reject a given provider contract, physicians would be given enough information to allow them to decide whether or not to sign a contract. At the June 10 meeting, Mr. Seddon also explained that Federation members could encourage other member physicians to use the Federation's Negotiation Assistance Program rather than negotiate on their own without Federation involvement.

22. In June and July 2002, Ms. Odenkirk, in consultation with some Federation members, established the order, or the ''game plan,'' by which she would review and coordinate their dealings with the first five health care insurers contracts: Anthem, ChoiceCare, United, Aetna, and Medical Mutual.

23. The Federation mailed a newsletter dated September 4, 2002, to all Federation member practices, notifying them that the Federation had reviewed their current Anthem contract. Accompanying the newsletter was the Federation's contract analysis and a set of proposed changes. An accompanying memorandum addressed to Cincinnati OB–GYN members from Ms. Odenkirk advised members that her contract analysis and proposed alternative language could be used to open negotiations with Anthem.

24. The September 4, 2002, newsletter also encouraged Federation members to use the Federation's ''extremely valuable service'' of acting as their third-party messenger and as a consultant, touted as providing the ''advantage of a nationally experienced consultant who can certainly look out for their best interests when negotiating with insurance plan executives.'' The newsletter suggested that those members dissatisfied with their Anthem contracts, as outlined in the accompanying contract analysis, should copy an enclosed sample ''third party messenger'' letter onto their practice's letterhead to open a dialogue with Anthem. The sample letter advised Anthem that the submitting practice had ''several items of concern'' regarding its current Anthem contract including ''contract language for various clauses and reimbursements rates'' and appraised Anthem that ''the purpose of this letter is to open negotiations with Anthem regarding the provider agreement.'' The sample letter further informed Anthem that the practice had decided to used the Federation as a ''third party messenger'' to facilitate negotiations and that the Federation would be contacting Anthem to open a dialogue. The sample letter also contained a thinly veiled warning that

the practice might resort to contract termination if its concerns were not addressed and was understood as such as Anthem.

25. Following Ms. Odenkirk's September 4, 2002, communications regarding the Anthem contract, most Federation member physicians practice groups copied the sample letter onto their own letterhead, signed it, and sent it to Anthem.

26. The Federation mailed a newsletter dated September 30, 2002, to all Federation member practices, informing them that there had been a significant response to the September 4, 2002, Anthem contract analysis and that many members had opted to use the ''full services'' of the Federation.

27. Starting on October 11, 2002, Ms. Odenkirk followed up on the Federation members' letters to Anthem. She notified Anthem that the Federation would be facilitating Federation members' discussion of their Anthem contract. For each such practice, Ms. Odenkirk sent Anthem a substantively identical letter enclosing a proposed amendment to the contracts ''that addresses some of their concerns.'' The set of proposed amendments was essentially the same set that Ms. Odenkirk had forwarded on September 4, 2002, to all Federation members in connection with her review of the Anthem contract.

28. Besides reporting to Federation members' on their response to Anthem, the September 30, 2002, Federation newsletter also focused on another insurer. The newsletter explained to Federation members that the Federation had reviewed their current ChoiceCare contract. The newsletter also included a sample letter to inform ChoiceCare that the Federation would be representing the medical practice as a third-party messenger. The process of negotiating with ChoiceCare then began and tracked the pattern of Federation coordination of negotiations with Anthem.

29. The Federation mailed a newsletter dated October 31, 2002, to all Federation member practices, explaining that the Federation had reviewed the contract of yet another insurer: United. The newsletter also included a sample letter to inform United that the Federation would be representing the medical practice as a third-party messenger. The process of negotiations with United then began and tracked the pattern of Federation coordination that occurred in negotiations with Anthem and ChoiceCare.

30. The October 31, 2002, newsletter also noted that 39 OB–GYN practices had joined the local Federation chapter. The newsletter recapped members' status with Anthem, noting that the Federation had initiated contact with Anthem, on behalf of those practices that had submitted third-party messenger letters to Anthem, and that the Federation had received a very significant response from the local chapter practices that had sent Anthem a third-party messenger letter. The newsletter also reported to Federation members that a significant proportion of them had provided e-mail addresses to participate in a ''Critical Alert'' mass e-mailing system developed by the Federation ''to avoid any situation where a member might miss critical information from the Federation.''

31. On November 1, 2002, the day after the October 31, 2002, newsletter, Ms. Odenkirk e-mailed a ''Critical Federation Alert'' to member practices. After updating all member practices on the status of matters involving United, Humana and Anthem, she wrote:

> All members are again reminded of their reason for joining the local chapter of the Federation. The overall purpose of the Federation is to allow member physicians to deal with the insurance industry on an equal basis. While the Federation cannot recommend that physicians sign or not sign a given provider agreement, the Federation can advise a member when they are being presented with a bad contract.

32. By letters dated November 14, 2002, sent to each practice, Anthem responded to the prior correspondence it had received from the practice and the Federation. The letters expressed Anthem's willingness to meet with the practices individually to discuss the concerns raised. Around the same period, Humana communicated to Federation members its preference to deal directly with each practice, rather than with the Federation representing the practices.

33. On November 15, 2002, Ms. Odenkirk spoke by telephone with Anthem representatives. Ms. Odenkirk told the Anthem employees that she represented a large number of OB–GYN practices in the Cincinnati area. Anthem told Ms. Odenkirk they would meet and correspond directly with individual practices. Though noting during the conversation that each practice would need to speak for itself, Ms. Odenkirk stated generally that the physicians would be seeking higher fees at 160% of Medicare levels.

34. Following her telephone conversation with Anthem, Ms. Odenkirk proceeded to coordinate Federation practices, ''individual'' dealings with Anthem, Humana, and United. She e-mailed a ''Critical Federation Alert'' on November 19, 2002, to each practice, addressed to the attention of ''Office Manager.'' The Alert informed each practice that the Federation had, in its role as a third-party messenger, notified Anthem of the practice's desire to initiate negotiations regarding the current Provider Agreement, and Advised Anthem that the practice had designated the Federation to represent it and act as its consultant in this process. The Alert then informed member practices they had two options: negotiate directly with Anthem (noting that if this option were selected the practice was encouraged to forward all communication from Anthem to the Federation), or advise Anthem that the practice wished to have the Federation speak on its behalf.

35. Responding promptly, as requested, to Ms. Odenkirk's November 19, 2002, Critical Federal Alert, most Federation member practices notified the Federal in writing that they wanted the Federation to speak on their behalf as their third-party messenger for contract negotiations with Anthem.

36. On Saturday morning, December 14, 2002, Ms. Odenkirk and most Federation members attended a membership meeting. The meeting was called amid apprehension among Federation members that large Federation member groups might make individual deals with insurers without regard to the interests of small Federation groups and solo practitioners. Federation members' discussion at the meeting informed the strategy that Ms. Odenkirk and the Defendant physicians developed for the Federation to coordinate Federation members' contract negotiations with Anthem, ChoiceCare, and United. The strategy employed the Federation's collective knowledge and consultation with Federation members as the ''key'' to ensuring that small groups were not ''left behind'' in negotiation with insurers.

37. Following up promptly on the sense of the December 14 meeting, Dr. Metherd, in coordination with Drs. Wendel and Karram, prepared a draft of a letter for Ms. Odenkirk to send to Federation members. The letter suggested that Federation members again send letters to Anthem demanding higher fees and contract amendments. Reviewing a redraft of the letter by Ms. Odenkirk on December 17, 2003, Dr. Wendel e-mailed Dr. Metherd: ''Have reviewed the letter and changes from Lynda [Odenkirk], I also think that we need to also send similar letters to [C]hoice[C]are and [U]nited. It[']s time to carpet bomb them with these letters and demand responses in a timely fashion. This may be a way for the

[F]ederation to help to facilitate the process.''

38. On December 20, 2002, Ms. Odenkirk sent to all Federation member practices the final version of the letter implementing the coordinated strategy developed from the December 14 membership meeting. The letter reviewed the status of the Federation's dealings with Anthem on members' behalf to discuss ''problems in the provider agreement.'' The letter apprised Federation members that Anthem had ''become recalcitrant'' toward the Federation's attempts to attend meetings on behalf of multiple physician groups and that ''[c]onsequently, the Federation [wa]s recommending another tactic by which you may negotiate with Anthem. '' The letter sought to provide Federation members ''with a clear set of guidelines * * * that w[ould] hopefully lead to a productive set of discussions.'' The ''guidelines'' set forth a number of steps for member groups to follow, which the Federation touted as ''the means by which you are most likely to achieve your goals.'' The letter also noted: ''If this tactic is UNSUCCESSFUL in achieving a contract with Anthem that meets your concerns, then the Federation will so notify you that you are continuing to work under a bad contract and that you are now left with two options. You may: (1) Continue to work under this bad contract or (2) Terminate the contract.''

39. Beginning in January 2003, and following up on the steps Ms. Odenkirk had outlined in her December 20, 2002, letter to Federation practices, most Federation member practices sent substantively identical letters to Anthem enclosing proposed contractual changes styled as ''necessary to achieve an equitable business relationship between Anthem and this OB/GYN practice.'' The letters sought a response from Anthem within two weeks of receipt and advised that ''all responses from Anthem will be forwarded to the Federation of Physicians and Dentists for review, interpretation and consultation.'' The letters closed with a slightly adapted version of the thinly veiled threat of termination first raised in the wave of September and October 2002 third-party messenger letters sent by Federation member practices to Anthem: ''This practice truly desires to avoid any interruption of obstetrical and gynecological services to Anthem's customers. Such a circumstance can be avoided by a meaningful and productive written response from Anthem regarding the issues raised herein no later than the aforementioned date.''

40. Proceeding over the next several months, Federation member practices—in close coordination with the Federation and with some additional direct coordination among Drs. Karram, Wendel, and Metherd—negotiated contracts with Anthem that provided for a substantial increase in fees. While targeting Anthem initially, the Federation, with encouragement and assistance from the Defendant physicians, also coordinated member groups' efforts to pressure ChoiceCare and United to renegotiate their contracts.

41. Implementing Federation members' similar strategy toward ChoiceCare, Ms. Odenkirk sent to ChoiceCare letters dated January 27–31, 2003, on behalf of 30 member practices. The letters reviewed the history of Humana's discussions with each practice, and included each practice's desired fee amounts. The letters asked for a response by February 14, 2003, and notified Humana that the practice ''still intends to forward any and all responses from Humana to the Federation of Physicians and Dentists for review, interpretation and consultation, as they have every right to do.'' Each letter again noted, as had the practices' third-party messenger letters sent to Humana in the fall of 2002, that a service interruption could be avoided by Humana's prompt and meaningful written response.

42. From December 2002, through March 2003, Dr. Karram's and Dr. Wendel's large OB–GYM groups spearheaded Federation member groups' attempts to renegotiate their contracts with Anthem and Humana. By a letter dated March 4, 2003, Humana proposed to Dr. Wendel's group a 30-month contract increasing fee levels substantially, in stages, over existing fees. According to the proposal, the terms were discussed and agreed upon in a telephone conversation on March 4. The next day, Dr. Wendel's office faxed Humana's proposal to Ms. Odenkirk.

43. On March 7, 2003, Ms. Odenkirk sent by e-mail and regular mail a Critical Federation Alert that had been prepared by Dr. Metherd in consultation with Drs. Karram and Wendel and edited and approved by Ms. Odenkirk and Mr. Seddon. The Alert encouraged Federation members to meet as soon as possible with Anthem and Humana to discuss proposed contract changes because the companies ''seem to legitimately desire discussions.'' Accompanying the Alert were negotiations guidelines to use in meetings, including advice to tell the health plan ''that you are seeking a fair contract both in language and reimbursements'' The guidelines also suggested to members, in part, that

> (3) You may explain to the health plan that you are, or will be, reviewing all of your major contracts and negotiating fairer terms for all, and that you are not just focusing on any one particular health plan. One particular concern a health plan may have is that they will be 'out front' if they were, for instance, to increase reimbursements thereby placing them at a disadvantage with their competitors in their markets.

44. As negotiations progressed, Ms. Odenkirk became active in advising groups how to proceed. Dr. Metherd also coordinated with Dr. Wendel and other physicians regarding the status of Federation members' negotiations with Anthem.

45. On April 1, 2003, Dr. Metherd e-mailed to Ms. Odenkirk and Mr. Seddon proposed additions to a draft Critical Federation Alert that Dr. Metherd had begun drafting with them in mid-March. Dr. Metherd proposed adding two paragraphs to a draft he had received from Mr. Seddon and explained the reason for his additions:

> It is becoming extremely important to somehow inform the smaller groups and solo practitioners that the large groups are not achieving favorable contracts at the expense of the small groups. * * * It's also important to somehow explain that the physicians are not going to get 170–180% of Medicare and that 30–35% is a more realistic number. Finally, from my personal discussions with the insurance companies, the members need to emphasize that all major plans are going to be looked at by the physicians. This seems to be critical for the insurance companies to hear.

46. By mid-April 2003, ChoiceCard had reached agreement with several of the larger Federation member groups. ChoiceCare continued making offers of varying fee amounts to other groups, which, in turn, forwarded them to, or discussed them with, Ms. Odenkirk to obtain her thoughts. In April 16, 2003, e-mail, Dr. Metherd updated Ms. Odenkirk and suggested how she should advise the smaller Federation member groups regarding ChoiceCare:

> Since you know what everyone is getting we need you to make sure that the small groups are pushing to end up in reasonable proximity (5% for example) to the larger groups in regards to reimbursements. The larger groups need to know that they can utilize [the Federation's] guidelines that we sent out on April 3 * * * as a way to pressure ChoiceCare to minimize variations in their reimbursements.
>
> Since you are the only one who, as the third party messenger, can know all the facts, it is imperative that you use the knowledge to push all of us in the same direction. * * * It is absolutely critical that one segment of the Federation here not feel that it has gained a significant advantage or suffered a

significant disadvantage at another's expense * * * especially as we will soon be moving onto United, Aetna, etc.

47. By May 1, 2003, Anthem had sent to all Federation members a contract amendment raising fees over a three-year period to 120% of Medicare fees, as of July, 2003; 125% as of January, 2004; and 130%, as of January, 2005.

48. By early May 2003, the large OB–GYN practice groups shifted their focus to United Healthcare. At a May 8 meeting with United, called by Dr. Wendel to discuss OB–GYN fees in Cincinnati, Dr. Wendel informed United that his group had been able to negotiate new deals with the other two top payers in Cincinnati. During the meeting, Dr. Wendel threatened that his group would terminate its contract if United did not offer it a satisfactory deal. At a meeting on the same day with United, Dr. Karram conveyed a similar message on behalf of his group.

49. Dr. Metherd communicated several times in May 2003 with Drs. Karram and Wendel concerning his negotiations on fees with ChoiceCare. On May 12, 2003, Dr. Metherd responded to ChoiceCare and attempted to leverage Federation members' contract renegotiations, with Anthem and suggested that ChoiceCare would face a boycott if it did not meet his and other OB–GYN's fee demands.

50. On May 11, 2003, Dr. Metherd sent an e-mail to Drs. Karram, Wendel:

> As per our discussions on Friday [May 9], I think we need to do some ''campaigning'' so to speak. We need to educate the members and encourage them to do four things.
>
> (1) They need to accept the contract from Anthem. While not perfect, it's actually pretty good and Lynda [Odenkirk] also feels the same based on my discussions with her this week. Apparently she is quite surprised that we have done as well as we have. * * *
>
> (2) They need to negotiate with ChoiceCare. * * *
>
> (3) Everyone needs to do the above so we can all move onto United next especially given the promising discussions that you have just had.
>
> (4) Finally, membership dues for the Federation are here and we need to convince the members that this is worth doing again this next year. * * *

51. Prompted by Dr. Metherd, on May 16, 2003, Ms. Odenkirk sent to essentially all Cincinnati Federation members a ''Federation Alert—Update.'' Ms. Odenkirk's Alert opined that the revised Anthem contract was ''as good as it's going to get at this point in time'' and suggesting it was ready to be signed. Ms. Odenkirk's Federation Alert also posed the Anthem contract to Federation members as a ''benchmark to follow'' when negotiating with other comparable health plans.

52. On May 20, 2003, Dr. Metherd sent to Federation members a proposal to endorse a ''large insurance company'' that had recently provided a contract with ''physician-friendly'' changes. Dr. Metherd explained that the other insurers could also be endorsed if they offered similar contracts and expressed the hope that ''this would then offer all companies an incentive to work with member physicians to achieve physician-friendly agreements.'' The proposal also noted, ''This concept has been reviewed and approved by the Federation leadership.''

53. At a May 28, 2003, meeting with United representatives, Dr. Metherd threatened to terminate his contract with United if it did not offer him satisfactory terms. After the meeting, he sent an e-mail to a United representative to emphasize the need for United to ''offer an acceptable contract to all members'' and complete fee negotiations promptly if it wished to participate in the ''endorsement'' program that had also been discussed at the meeting.

54. By May 30, 2003, United had met with about six Federation member groups. Each group conveyed that they wanted essentially the same deal and would terminate their contracts if they did not get it.

55. On May 29, 2003, Dr. Metherd sent an e-mail to all Federation members requesting their attention to ''some extremely important issues,'' including the need for doctors to keep the Federation informed of their negotiation status with various insurers. On May 29, Dr. Karram e-mailed Ms. Odenkirk and stated, ''I agree with Warren. We need to get everyone moving faster and to become more persistent otherwise they will not get increases in 03. I am sure that is what [ChoiceCare] is doing. Just think of the money they will save if they keep delaying people till 04.'' Dr. Karram's e-mail also asked Ms. Odenkirk: ''Are we ready to move on to the next player. I think that is Medical Mutual of Ohio.''

56. During June and July 2003, Ms. Odenkirk continued to advise Federation members concerning their contract negotiations with ChoiceCare, United, and, to a lesser extent, Anthem.

57. By letters dated June 13, 2003, Ms. Odenkirk sent to United proposed contractual amendments for nearly all Federation member groups. On June 17, 2003, she apprised the groups of the communications to United on their behalf. In a July 9, 2003, Federation Alert, Ms. Odenkirk suggested that all Federation members persist in negotiations with United and let United ''know that you have been able to achieve a significantly better agreement with one of their competitors, and are currently in discussions with another competitor, so if they want to remain competitive they need to answer you.'' She reiterated essentially the same message to Federation members in an August 1, 2003, Critical Federation Alert. By November 24, 2003, United had signed contracts, calling for substantially increased reimbursements, with 33 OB–GYN practice groups or solo practitioners, representing the vast majority of Federation member physicians.

58. On June 23, 2003, ChoiceCare representatives met with Drs. Karram, Metherd, and Wendel to learn more about the ''endorsement campaign'' Federation OB–GYNs were planning. Dr. Metherd described the endorsement as both public and private support of those managed-care organizations that had met the OB–GYN's established minimum fee levels. No physician articulated any criterion for being included in the endorsement other than meeting their fee demands, despite repeated questions about any other criteria. All three physicians confirmed that all physicians affiliated with the Federation would have to receive fees at or above the fee threshold to receive the endorsement.

59. On august 10, 2003, Dr. Metherd sent an e-mail survey to Federation member practices, inquiring as to the status of negotiations with their top three insurance companies. On September 12, 2003, Dr. Metherd faxed the results of his August 10 e-mail survey to Ms. Odenkirk. The results included the status of negotiations with their top three insurance companies for each of the 31 (out of 43) practices that responded.

60. In a September 18, 2003, memo addressed to Cincinnati area members, Ms. Odenkirk advised members that

> Cincinnati OB/GYNs have been discussing their issues with several health plans and have been reaching successful outcomes. Therefore, I continue to encourage you to hav[e] dialogues with various health plans. I am in the process [o]f reviewing the Aetna and Medical Mutual of Ohio (''MMO'') agreements, so if you're interested in opening a dialogue with either of these companies, please feel free to use the enclosed sample third party letters.

The enclosed sample letters, addressed to Aetna and Medical Mutual, appointed the Federation as the practice's third-party messenger, raised concerns about contract language and fees, and contained the usual language threatening contract termination.

61. At an October 7, 2003, Federation membership meeting, which Ms.

Odenkirk attended, both Dr. Wendel and Dr. Metherd announced to competing physicians that they had terminated their respective unfavorable contracts with Aetna because of Aetna's refusal to discuss the contracts.

62. In an October 17, 2003, Critical Federation Alert, Ms. Odenkirk updated members on the status of negotiations with Aetna and Medical Mutual. The Alert evaluated Aetna's new fee schedule as ''NOT 'reasonable for the Cincinnati market' '' and gave Federation members specific instructions on how to respond to Aetna's and Medical Mutual's fee proposals.

63. On October 21, 2003, Dr. Metherd e-mailed the entire Cincinnati membership to inform them that his practice had terminated Aetna. Although written under the pretense only of informing OB–GYNs not to refer Aetna patients to him, Dr. Metherd prefaced his message with an account of his reason for termination, decrying Aetna's fees as ''significantly lower than the current market level in the Cincinnati-Northern Kentucky area'' and Aetna's refusal to renegotiate his contract.

64. On October 29, 2003, Dr. Metherd e-mailed Lynda Odenkirk, reporting on strategizing at a meeting that day of the recently formed local Federation Chapter Executive Committee, with copies to the Executive Committee, which included Drs. Karram and Wendel:

> The meeting went well * * * we're still waiting to see whether and how Aetna responds to Seven Hills. Thus far no one else is getting any attention from them and, apparently, they are not being all that friendly with Seven Hills. We'll just have to wait and see * * * all of us at the meeting are aware of the goals of the entire Federation and will, hopefully, not forget them. [Dr. Wendel] and I are hoping everyone will react to Aetna as we had to [terminating their contracts] * * * time will tell. As for endorsing United * * * the message back to them is that they still haven't provided ''fair and equitable'' contracting (*i.e.,* the language issues) and that they will receive no endorsement as a result. They will be told this by Dr. Karram, and, that, if they do better in 2005 when we come back to them, then, perhaps they will be endorsed. (all ellipses in original)

65. In an October 29, 2003, memo to Cincinnati area members, Ms. Odenkirk noted that a new fee schedule from Cigna represented a reduction in rates, and, in her opinion, did not meet the notice requirements in the members' contracts with Cigna. Ms. Odenkirk's memo included an attached sample letter, addressed to Cigna, which not only raised the concerns noted in her memo, but also appointed the Federation as the practice's third-party messenger.

66. On November 5, 2003, Ms. Odenkirk prepared a sample letter for Federation members to send Aetna regarding its revised fee schedule. The sample letter advised Aetna that the sender had ''recently negotiated far better reimbursements with several of your competitors, which has significantly changed the Cincinnati market. Therefore we find that your fee schedule is not reasonable for this area.''

67. Dr. Metherd commented to Ms. Odenkirk on her sample letter to Aenta, in a November 5, 2003, e-mail, which he copied to the Cincinnati Chapter Executive Committee:

> The letter looks good * * * Both [another physician] and [Dr.] Wendel are making overtures to Aetna as I did in order to judge Aetna's reaction. Before we put this out there, let's see what they hear as well. * * * If Aetna responds to [another physician] and [Dr.] Wendel with a willingness to consider a proposal as they did with me, then we can encourage current Aetna providers (and those of us that just recently terminated) to renew contact with them via both phone and your letter.

68. On November 7, 2003, Lynda Odenkirk e-mailed a Critical Federation Alert updating Federation members on the status of negotiations with Medical Mutual, Cigna, and Aetna. Ms. Odenkirk's Alert reported about ''multiple terminations of the Aetna agreement by Cincinnati-Northern Kentucky OB/GYN physicians'' and that Aetna had now indicated a willingness to negotiate with area OB–GYNs. She strongly encouraged Federation members—even those that had noticed termination of their Aetna contracts—to negotiate with Aetna. Ms. Odenkirk also advised Federation members that Medical Mutual had been advised that part of its fee schedule offer was ''unacceptable.''

69. On November 17, 2003, Medical Mutual mailed proposed agreements offering substantially increased fees to nearly all Federation member practices. On November 19, 2003, Ms. Odenkirk e-mailed a Critical Federation Alert that informed Federation members that Medical Mutual's new ''proposal is, for all points and purposes, fair and reasonable, as it is now in line with agreements you've recently negotiated with other companies.'' By early 2004, most of the Federation member practices had signed and returned the contracts.

70. Ms. Odenkirk's November 19, 2003, Critical Federation Alert also gave Federation members specific instructions to persist in negotiations with Aetna, noting that its fee schedule was ''considerably below'' current levels. In the same November 19, 2003, Critical Federation Alert, Ms. Odenkirk instructed members that ''[b]y now you should have sent your third party letter to CIGNA'' and added that members should use with Cigna all of the points mentioned concerning Aetna. The Alert also included a general comment regarding the smaller insurers in the area, such as Aetna, Cigna, and Medical Mutual: ''Consequently, you should make these calls and make it plainly known to each that you will NOT settle for anything less than a 'fair and equitable' contract from each. Moreover, you are in such a position with the bigger companies that you NO LONGER have to accept UNFAIR contracts from these smaller companies.''

71. Coordinated by the Federation, using the Anthem agreement as a benchmark, as Ms. Odenkirk had urged, and using threats of terminating their services, Federation members were able to force ChoiceCare, United, and Medical Mutual to offer all Federation OB–GYN practices new contracts at fees and terms substantially equivalent to those in their Anthem contracts.

72. Most of the contracts between Federation member OB–GYNs and the major insurers run through, at least, the end of 2005. The Federation continues to have Cincinnati-area member OB–GYNs. Although some OB–GYNs have discontinued their membership in the Federation, the Cincinnati chapter of the Federation continues to exist and is available to coordinate another round of collectively negotiated contracts when the current contracts approach expiration.

VIII. Violation Alleged

73. Beginning at least as early as April, 2002, and continuing to date, Defendants and their conspirators have engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. This offense is likely to continue and recur unless the relief requested is granted.

74. The combination and conspiracy consisted of an understanding and concert of action among Defendants and their conspirators that the Federation's Cincinnati Chapter members would coordinate their negotiations with health care insurance companies operating in the Cincinnati area to enable the collective negotiation of higher fees from these health care insurers.

75. For the purpose of forming and effectuating this combination and

conspiracy, Defendants and their conspirators did the following things, among others:

(a) Successfully recruited as members of the Federation a high percentage of competing OB–GYNs practicing in the Cincinnati area.

(b) Designated the Federation to represent most Federation members in their fee negotiations with Anthem, Humana, United, Medical Mutual, Aetna, and Cigna;

(c) Reached an understanding to coordinate their negotiations through the Federation; and

(d) In coordination with the Federation demanded new, substantially higher fees from each insurer while threatening termination of their contracts if satisfactory results were not obtained.

76. This combination and conspiracy has had the following effects, among others:

(a) Price competition among independent and competing OB–GYNs in the Cincinnati area who became Federation members has been retrained;

(b) Health care insurance companies in the Cincinnati area and their subscribers have been denied the benefits of free and open competition in the purchase of OB–GYN services in the Cincinnati area; and

(c) Self insured employers and their employees have paid significantly higher prices for OB–GYN services in the Cincinnati area than they would have paid in the absence of this restraint of trade.

IX. Request for Relief

77. To remedy these illegal acts, the United States of America requests that the Court:

(a) Adjudge and decree that Defendants entered into an unlawful contract, combination, or conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1;

(b) Enjoin the Defendant Federation and its members, officers, agents, servants, employees and attorneys and their successors, the individual physician Defendants, and all other persons acting or claiming to act in active concert or participation with one or more of them, from continuing, maintaining, or renewing in any manner, directly or indirectly, the conduct alleged herein or from engaging in any other conduct, combination, conspiracy, agreement, understanding, plan, program, or other arrangement having the same effect as the alleged violations or that otherwise violates Section 1 of the Sherman Act, 15 U.S.C. 1, through price fixing of medical services, collective negotiation on behalf of competing independent physicians or physician groups, or group boycotts of the purchasers of health care services;

(c) Enjoin the Federation and any Federation representative from representing or providing consulting services of any kind to any medical practice group, or any self-employed physician; and

(d) Award to plaintiff its costs of this action and such other and further relief as may be appropriate and as the Court may deem just and proper.

Dated: June 24, 2005.

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Certificate of Service

I hereby certify that on June 24, 2005, copies of the foregoing Complaint were served by facsimile and first-class regular U.S. mail, postage prepaid, to:

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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Additional notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael McDonald, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* August 26, 2005.

Time: 8:30 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for EDSITEment in Peer Review, submitted to the Division of

Education Programs at the July 30, 2005 deadline.

Michael McDonald,

Acting Advisory Committee Management Officer.

[FR Doc. 05–15175 Filed 8–1–05; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 70 FR 20937 and one comment was received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimption, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov.*

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Comment: On April 22, 2005, we published in the **Federal Register** (70 FR 20937) a 60-day notice of our intent to request renewal of this information collection authority from OMB. In that notice, we solicited public comments for 60 days ending June 21, 2005. One comment was received from the public notice. The comment came from B. Sachau of Floram Park, NJ., via e-mail on April 30, 2005. Ms. Sachau had no specific suggestions for altering the data collection, other than to express a desire for it to end.

Response: NSF believes that because the comment does not pertain to the collection of information or the required forms for which NSF is seeking OMB approval, NSF is proceeding with the clearance request.

Title of Collection: Cross-Project Evaluation of The National Science Foundation's Local Systemic Change Through Teacher Enhancement Program (LSC).

OMB Approval Number: 3145–0161.

Abstract: The National Science Foundation (NSF) requests a three-year extension for evaluation and data collection (*e.g.,* surveys and interviews) from participants in projects funded by the Local Systemic Change (LSC) through Teacher Enhancement (TE) program. This recurring study or ''Cross-Project Evaluation'' was most recently approved through July 2005 (OMB 345–0161). The LSC program is a large-scale effort to modify the nature of teacher in-service training (also called professional development) provided to science and mathematics teachers in a large number of school districts across the United States. NSF provided each individual project with a grant(s) of up to $6 million.

Data collection from the NSF-funded LSC projects has been going on for a long number of years. The surveys and interview protocols are part of a longitudinal data collection used for program-wide monitoring and evaluation of the remaining LSC projects. The universe of LSC projects the last time this collection was renewed was 72. The current universe for this study of LSC projects is 15. NSF does not anticipating making new project awards under the LSC program. As in the past each of the projects will administer teacher and principal questionnaires (surveys) at appropriate times during the school year based on each the evaluation's design.

Horizon Research, Inc. maintains survey responses in a database designed to provide information and reports on LSC projects for individual project accountability and for overall assessment to help NSF judge program effectiveness. Horizon's data analysis and reports are useful both to the projects themselves for self-assessments and to the NSF in order to help to measure the LSC program's performance. In particular, NSF uses these data to respond to requests from Committees of Visitors, Congress and the Office of Management and Budget, particularly as related to the Government Performance and Results Act (GPRA) and the Program Effectiveness Rating Tool (PART).

Horizon's reports to NSF deal with the characteristics and performance of the LSC program and include tables and charts generated from the database. The LSC study's broad questions addressed by data analysis include (but are not limited to):

What is the impact of the LSC projects on science and mathematics curriculum, instruction, and assessment? How do participant reports of instructional practice change over the course of the LSC projects? How do participant reports of assessment practice change over the course of the projects? How do teacher and principal beliefs about effective science and mathematics instruction change over the course of the NSF-funding for the projects? What is the overall quality of the professional development activities? How do participants rate various aspects of professional development experiences provided by the projects? What is the extent of teacher involvement in these projects?

Respondents: Individuals or households, and not-for-profit institutions.

Number of Respondents: 5650.

Burden on the Public: 1870 hours.

Dated: July 27, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05–15225 Filed 8–1–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 396, ''Certification of Medical Examination by Facility Licensee''.

2. *Current OMB approval number:* 3150–0024.

3. *How often the collection is required:* Upon application for an initial operator license, every six years for the renewal of operator or senior operator license, and upon notices of disability.

4. *Who is required or asked to report:* Facility licensees who are tasked with certifying the medical fitness of an applicant or licensee.

5. *The number of annual respondents:* 137.

6. *The number of hours needed annually to complete the requirement or request:* 758 (288 hours for reporting (.25 hours per response) and 470 hours for recordkeeping (3.4 hours per recordkeeper)).

7. *Abstract:* NRC Form 396 is used to transmit information to the NRC regarding the medical condition of applicants for initial operator licenses or renewal of operator licenses and for the maintenance of medical records for all licensed operators. The information is used to determine whether the physical condition and general health of applicants for operator licensees is such that the applicant would not be expected to cause operational errors and endanger public health and safety.

Submit, by October 3, 2005, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo Shelton (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *infocollects@nrc.gov.*

Dated in Rockville, Maryland, this27th day of July 2005.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E5–4104 Filed 8–1–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

Exelon Generation Company, LLC, PSEG Nuclear LLC, Peach Bottom Atomic Power Station, Units 2 and 3; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under title 10 of the Code of Federal Regulations (10 CFR), section 50.80 approving the transfer of Facility Operating Licenses Nos. DPR–44 and DPR–56 for the Peach Bottom Atomic Power Station, Units 2 and 3, to the extent currently held by PSEG Nuclear LLC with respect to its ownership interests in the plants to Exelon Generation Company, LLC. Exelon Generation Company, LLC, is the licensed operator of Peach Bottom Atomic Power Station, Units 2 and 3. PSEG Nuclear LLC and Exelon Generation Company, LLC, currently each own 50 percent of Peach Bottom Atomic Power Station, Units 2 and 3. The transfer of PSEG Nuclear's ownership interests to Exelon Generation Company, LLC, is part of the proposed merger of PSEG Nuclear LLC's indirect parent corporation, Public Service Enterprise Group into Exelon Corporation, the indirect parent company of Exelon Generation Company, LLC. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer.

According to an application for approval filed by Exelon Generation Company, LLC, on behalf of itself and PSEG Nuclear LLC, Exelon Generation Company, LLC, would own 100 percent of the facility following approval of the proposed license transfers. There would be no change with regard to Exelon Generation Company, LLC's, operation of Peach Bottom Atomic Power Station, Units 2 and 3. No physical changes to the Peach Bottom Atomic Power Station, Units 2 and 3, facility or operational changes are being proposed in the application.

The proposed amendments would replace references to PSEG Nuclear LLC in the license with references to Exelon Generation Company, LLC, as necessary, to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no

significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days of the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

Requests for a hearing and petitions for leave to intervene should be served upon Thomas S. O'Neill, Vice President and Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, Illinois 60555, telephone 630–657–3770, fax 630–657–4335, and e-mail *thomas.oneill@exeloncorp.com*; Jeffrie J. Keenan, Esq., PSEG Nuclear LLC, P.O. Box 236, N–21, Hancocks Bridge, New Jersey 08038, telephone 856–339–5429, fax 856–339–1234, and e-mail *jeff.keenan@pseg.com*; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*; and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days after the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated March 3, 2005, (ML050670664) available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated in Rockville, Maryland this 26th day of July 2005.

For the Nuclear Regulatory Commission.

George F. Wunder,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4102 Filed 8–1–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412]

FirstEnergy Nuclear Operating Company, Beaver Valley Power Station, Unit Nos. 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the direct transfer of Facility Operating Licenses Nos. DPR–66 and NPF–73 for the Beaver Valley Power Station, Unit Nos. 1 (BVPS 1) and 2 (BVPS 2), respectively, to the extent held by Ohio Edison Company (Ohio Edison) regarding its non-leased interests in BVPS 2, the Cleveland Electric Illuminating Company (Cleveland Electric) and the Toledo Edison Company (Toledo Edison). The transfer would be to FirstEnergy Nuclear Generation Corporation (FENGenCo). The Commission is further considering amending the licenses for administrative purposes to reflect the proposed transfer.

According to an application for approval dated June 1, 2005, as supplemented by letter dated July 15, 2005, filed by FirstEnergy Nuclear Operating Company (FENOC), on behalf of Ohio Edison, Cleveland Electric, Toledo Edison and FENGenCo, FENGenCo would assume Ohio Edison's 35 percent undivided ownership interest in BVPS 1 and 20.22 percent undivided ownership interest in BVPS 2, Cleveland Electric's 24.47 percent undivided ownership interest in BVPS 2, and Toledo Edison's 1.65 percent undivided ownership interest in BVPS 2 following approval of the proposed license transfers. FENOC, currently the licensed operator of BVPS 1 and BVPS 2, would remain so and continue to be responsible for the operation and maintenance of BVPS 1 and BVPS 2. Ohio Edison's 21.66 percent leased interest in BVPS 2 and Toledo Edison's 18.26 percent leased interest in BVPS 2 would not be changed. No physical changes to the BVPS 1 and BVPS 2 facilities or operational changes are being proposed in the application.

The proposed conforming amendments would delete references to Ohio Edison from the license of BVPS 1 and references to Cleveland Electric from the license of BVPS 2, and add references to FENGenCo to licenses of both BVPS 1 and BVPS 2, as appropriate.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the direct transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C, ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(I)–(viii).

Requests for a hearing and petitions for leave to intervene should be served upon David W. Jankins, Esq., FirstEnergy Corp., 76 South Main Street, Mail Stop A–Go–18, Akron, OH 44308, tel: (330) 384–5037, and e-mail: *djenkins@firstenergycorp.com*; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated June 1, 2005, and the supplemental letter dated July 15, 2005, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 27th day of July 2005.

For the Nuclear Regulatory Commission.

William A. Macon, Jr.,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4095 Filed 8–1–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

FirstEnergy Nuclear Operating Company, Davis-Besse Nuclear Power Station, Unit No. 1; Notice of Consideration of Approval of Transfer of Facility Operating License and Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. NPF–3 for the Davis-Besse Nuclear Power Station, Unit No. 1 (Davis-Besse), to the extent held by the Cleveland Electric Illuminating Company (Cleveland Electric) and the Toledo Edison Company (Toledo Edison). The transfer would be to FirstEnergy Nuclear Generation Corporation (FENGenCo). The Commission is further considering amending the license, which contains antitrust license conditions, to reflect the proposed transfer.

According to an application for approval dated June 1, 2005, as supplemented by letter dated July 15, 2005, filed by FirstEnergy Nuclear Operating Company (FENOC), on behalf of Cleveland Electric, Toledo Edison and FENGenCo, FENGenCo would assume Cleveland Electric's 51.38 percent undivided ownership interest in Davis-Besse and Toledo Edison's 48.62 percent undivided ownership interest in Davis-Besse following approval of the proposed license transfers. FENOC, currently the licensed operator of Davis-Besse, would remain so and continue to be responsible for the operation and maintenance of Davis-Besse. No physical changes to the Davis-Besse facility or operational changes are being proposed in the application.

The proposed conforming amendment generally would replace references to Cleveland Electric and Toledo Electric

in the licenses with references to FENGenCo, as appropriate, to reflect the proposed transfer of the license. With regard to the antitrust conditions in the license, the application proposes changes such that FENGenCo would be subject to the conditions, and would be responsible for any actions of FENOC that contravene the antitrust conditions. In addition, the antitrust conditions would note that Cleveland Electric and Toledo Edison are no longer licensees for Davis-Besse. As non-licensees, Cleveland Electric and Toledo Edison would no longer be subject to the antitrust conditions contained in the Davis-Besse license.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the direct transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in subpart C, ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

Requests for a hearing and petitions for leave to intervene should be served upon David W. Jankins, Esq., FirstEnergy Corp., 76 South Main Street, Mail Stop A-Go-18, Akron, OH 44308, tel: (330) 384–5037, and e-mail: *djenkins@firstenergycorp.com*; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated June 1, 2005, and the supplemental letter dated July 15, 2005, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated in Rockville, Maryland this 27th day of July 2005.

For the Nuclear Regulatory Commission.

William A. Macon, Jr.,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4096 Filed 8–1–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412]

FirstEnergy Nuclear Operating Company, Beaver Valley Power Station, Unit Nos. 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the direct transfer of Facility Operating Licenses Nos. DPR–66 and NPF–73 for the Beaver Valley Power Station, Unit Nos. 1 (BVPS 1) and 2 (BVPS 2), respectively, to the extent held by Pennsylvania Power Company (Penn Power). The transfer would be to FirstEnergy Nuclear Generation Corporation (FENGenCo). The Commission is further considering amending the licenses for administrative purposes to reflect the proposed transfer.

According to an application for approval dated May 18, 2005, as supplemented by letter dated July 15, 2005, filed by FirstEnergy Nuclear Operating Company (FENOC) on behalf

of Penn Power and FENGenCo, FENGenCo would assume Penn Power's 65 percent undivided ownership interest in BVPS 1 and 13.74 percent undivided ownership interest in BVPS 2 following approval of the proposed license transfers. FENOC, currently the licensed operator of BVPS 1 and BVPS 2, would remain so and continue to be responsible for the operation and maintenance of BVPS 1 and BVPS 2. No physical changes to the BVPS 1 and BVPS 2 facilities or operational changes are being proposed in the application.

The proposed conforming amendments would replace references to Penn Power in the licenses with references to FENGenCo, as appropriate.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the direct transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C, ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

Requests for a hearing and petitions for leave to intervene should be served upon David W. Jankins, Esq., FirstEnergy Corp., 76 South Main Street, Mail Stop A-Go-18, Akron, OH 44308, tel: (330) 384–5037, and e-mail: *djenkins@firstenergycorp.com;* the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated May 18, 2005, and the supplemental letter dated July 15, 2005, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated in Rockville, Maryland this 27th day of July 2005.

For the Nuclear Regulatory Commission.

William A. Macon, Jr.,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4098 Filed 8–1–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

FirstEnergy Nuclear Operating Company, Perry Nuclear Power Plant, Unit No. 1; Notice of Consideration of Approval of Transfer of Facility Operating License and Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. NPF–58 for the Perry Nuclear Power Plant, Unit No. 1 (Perry), to the extent held by OES Nuclear, Inc. (OES Nuclear), the Cleveland Electric Illuminating Company (Cleveland Electric) and the Toledo Edison Company (Toledo Edison). The transfer would be to FirstEnergy Nuclear Generation Corporation (FENGenCo). The Commission is further considering amending the licenses for administrative purposes to reflect the proposed transfer.

According to an application for approval dated June 1, 2005, as supplemented by letter dated July 15, 2005, filed by FirstEnergy Nuclear

Operating Company (FENOC), on behalf of OES Nuclear, Cleveland Electric, Toledo Edison and FENGenCo, FENGenCo would assume OES Nuclear's 17.42 percent undivided ownership interest in Perry, Cleveland Electric's 44.85 percent undivided ownership interest in Perry and Toledo Edison's 19.91 percent undivided ownership interest in Perry following approval of the proposed license transfers. FENOC, currently the licensed operator of Perry, would remain so and continue to be responsible for the operation and maintenance of Perry. Ohio Edison's 12.58 percent leased interest in Perry would not be changed. No physical changes to the Perry facility or operational changes are being proposed in the application.

The proposed conforming amendment generally would replace references to OES Nuclear, Cleveland Electric and Toledo Electric in the license with references to FENGenCo, as appropriate, to reflect the proposed transfer of the license. With regard to the antitrust conditions in the license, the application proposes changes such that FENGenCo would be subject to the antitrust conditions, and would be responsible for any actions of FENOC that contravene the antitrust conditions. Once removed from the license, OES Nuclear, Cleveland Electric and Toledo Electric as non-licensees would no longer be subject to the antitrust conditions contained in the Perry license.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the direct transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C, ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

Requests for a hearing and petitions for leave to intervene should be served upon David W. Jankins, Esq., FirstEnergy Corp., 76 South Main Street, Mail Stop A–Go–18, Akron, OH 44308, tel: (330) 384–5037, and e-mail: *djenkins@firstenergycorp.com*; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated June 1, 2005, and the supplemental letter dated July 15, 2005, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 27th day of July 2005.

For the Nuclear Regulatory Commission.

William A. Macon, Jr.,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4099 Filed 8–1–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

FirstEnergy Nuclear Operating Company, Perry Nuclear Power Plant, Unit No. 1; Notice of Consideration of Approval of Transfer of Facility Operating License And Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is

considering the issuance of orders under 10 CFR 50.80 approving the transfer of Facility Operating License No. NPF–58 for the Perry Nuclear Power Plant, Unit No. 1 (Perry), to the extent held by Pennsylvania Power Company (Penn Power). The transfer would be to FirstEnergy Nuclear Generation Corporation (FENGenCo). The Commission is further considering amending the licenses for administrative purposes to reflect the proposed transfer.

According to an application for approval date May 18, 2005, as supplemented by letter dated July 15, 2005, filed by FirstEnergy Nuclear Operating Company (FENOC), on behalf of Penn Power and FENGenCo, FENGenCo would assume Penn Power's 5.24 percent undivided ownership interest in Perry following approval of the proposed license transfer. FENOC, currently the licensed operator of Perry, would remain so and continue to be responsible for the operation and maintenance of Perry. No physical changes to the Perry facility or operational changes are being proposed in the application.

The proposed conforming amendment generally would replace references to Penn Power in the license with references to FENGenCo, as appropriate, to reflect the proposed transfer of the license. With regard to the antitrust conditions in the license, the application proposes changes such that FENGenCo would be subject to the antitrust conditions, while Penn Power would be removed from and thus no longer be subject to the antitrust conditions contained in the Perry license.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the direct transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C, ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

Requests for a hearing and petitions for leave to intervene should be served upon David W. Jankins, Esq., FirstEnergy Corp., 76 South Main Street, Mail Stop A–Go–18, Akron, OH 44308, tel: (330) 384–5037, and e-mail: *djenkins@firstenergycorp.com*; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated May 18, 2005, and the supplemental letter dated July 15, 2005, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to*pdr@nrc.gov.*

Dated in Rockville, Maryland this 27th day of July 2005.

For the Nuclear Regulatory Commission.

William A. Macon, Jr.,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4100 Filed 8–1–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–36974]

Notice of License Request for Pa'ina Hawaii, LLC, Irradiator in Honolulu, HI and Opportunity To Request a Hearing

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of consideration of a new license request and opportunity to request a hearing.

DATES: A request for a hearing must be filed by October 3, 2005.

FOR FURTHER INFORMATION CONTACT: Jack E. Whitten, Chief, Nuclear Materials Licensing Branch, Division of Nuclear Materials Safety, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas, 76011, telephone (817) 860–8197, fax (817) 860–8263: or by e-mail: *jew1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or Commission) received on June 27, 2005, from Pa'ina Hawaii, LLC, a Hawaiian owned company, an application to build and operate a commercial pool type industrial irradiator in Honolulu, Hawaii, near the Honolulu International Airport. This commercial irradiator will irradiate fresh fruit and vegetables bound for the mainland from the Hawaiian Islands, cosmetics, and pharmaceutical products. The irradiator will also be used by the applicant to conduct research and development projects, and irradiate a wide range of other materials as specifically approved by the NRC on a case-by-case basis.

The NRC staff has begun its technical review of the irradiator application. Review of the application focuses on the safety, physical security, and emergency preparedness aspects of radioactive material used in the irradiator in addition to its design and complementing radiation safety program as they apply to the safety of employees, the public, and the environment. Note that other federal agencies, such as the U.S. Food and Drug Administration (FDA) and U.S. Department of Agriculture (USDA), are responsible for determining the food types and products used for human consumption that may be safely irradiated. In addition to satisfying NRC regulations, Pa'ina Hawaii, LLC, must also comply with all applicable Federal, State of Hawaii, and municipal regulations.

Before approving the proposed license, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. An environmental assessment for this licensing action is not required, since this action is categorically excluded under the provisions of 10 CFR 51.22(c)(14)(vii).

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on a license application. In accordance with the general requirements in subpart C of 10 CFR part 2,[1] ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302 (a), a request for a hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications;

2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention Rulemakings and Adjudications Staff between 7:45 a.m. and 4:15 p.m., Federal workdays;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov;* or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302(b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, by delivery to Pa'ina Hawaii, LLC, P.O. Box 30542, Honolulu, Hawaii 96820; and,

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *ogcmailcenter@nrc.gov.*

The formal requirements for documents are contained in 10 CFR 2.304(b), (c), (d), and (e), and must be met. However, in accordance with 10 CFR 2.304(f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304(b), (c), and (d), if an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304(b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed within 60 days of the date of publication of this **Federal Register** notice.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address and telephone number of the requestor;

2. The nature of the requestor's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requestor's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requestor's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to

[1] The references to 10 CFR part 2 in this notice refer to the amendments to the NRC Rules of Practice, 69 FR 2182 (January 14, 2004), codified at 10 CFR part 2.

support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the requestor/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application that the requestor/petitioner disputes and the supporting reasons for each dispute, or, if the requestor/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requestor's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application or other supporting documents filed by the applicant, or otherwise available to the petitioner. Contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Requestors/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requestors/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requestor/petitioner that wishes to adopt a contention proposed by another requestor/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requestor/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents currently on file include the Pa'ina Hawaii, LLC, License Application dated June 23, 2005 (ADAMS Accession No. ML052060372). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room (PDR) Reference staff by telephone at (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Documents related to this action not specifically referenced in this Notice may not be electronically available and/or may not be publicly available. Persons who have an interest in reviewing these documents should submit a request to NRC under the Freedom of Information Act (FOIA). Instructions for submitting a FOIA request can be found on the NRC's Web site at *http://www.nrc.gov/reading-rm/foia/foia-privacy.html*.

Dated in Arlington, Texas this 26th day of July, 2005.

For the Nuclear Regulatory Commission.

Jack E. Whitten,

Chief, Nuclear Materials Licensing Branch, Division of Nuclear Materials Safety, Region IV.

[FR Doc. E5–4105 Filed 8–1–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

PSEG Nuclear LLC, Salem Nuclear Generating Station, Unit Nos. 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The Nuclear Regulatory Commission (NRC or the Commission) is considering the issuance of an order under Title 10 of the Code of Federal Regulations (10 CFR) Section 50.80 approving the transfer of Facility Operating License Nos. DPR–70 and DPR–75 for the Salem Nuclear Generating Station, Unit Nos. 1 and 2 (Salem), respectively, to the extent currently held by PSEG Nuclear LLC (PSEG) to Exelon Generation Company, LLC (Exelon). PSEG is the licensed operator of Salem. PSEG and Exelon currently own 57.41 percent and 42.59 percent, respectively, of Salem. The transfer of PSEG's ownership interests and operating authority to Exelon is part of the proposed merger of PSEG's parent corporation, Public Service Enterprise Group, into Exelon Corporation, the indirect parent company of Exelon. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer.

According to an application for approval filed by PSEG, Exelon would assume title to PSEG's interest in the facility following approval of the proposed license transfers, while retaining its current ownership interests, such that Exelon would own 100 percent of Salem, and would become responsible for the operation, maintenance, and eventual decommissioning of Salem. No physical changes to the Salem facility or operational changes are being proposed in the application.

The proposed amendments would delete references to PSEG, or replace references to PSEG in the licenses with references to Exelon, as appropriate, to reflect the proposed transfer. Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the

license transfer application, are discussed below.

Within 20 days of the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

Requests for a hearing and petitions for leave to intervene should be served, pursuant to 10 CFR 2.302 and 2.305, upon Thomas S. O'Neill, Vice President and Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, Illinois 60555, telephone 630-657-3770, fax 630-657-4335, and e-mail *thomas.oneill@exeloncorp.com*; Jeffrie J. Keenan, Esq., PSEG Nuclear LLC, P. O. Box 236, N–21, Hancocks Bridge, New Jersey 08038, telephone 856-339-5429, fax 856-339-1234, and e-mail *jeff.keenan@pseg.com*; the General Counsel, NRC, Washington, DC 20555-0001, e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*; and the Secretary of the Commission, NRC, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held, and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days after the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, NRC, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated March 4, 2005, (ML050750110) available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 26th day of July 2005.

For the Nuclear Regulatory Commission.

Stewart N. Bailey,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4101 Filed 8–1–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–354]

PSEG Nuclear LLC, Hope Creek Generating Station; Notice of Consideration of Approval of Transfer of Facility Operating License and Conforming Amendment and Opportunity for a Hearing

The Nuclear Regulatory Commission (NRC or the Commission) is considering the issuance of an order under title 10 of the Code of Federal Regulations (10 CFR) section 50.80 approving the transfer of Facility Operating License No. NPF–57 for the Hope Creek Generating Station (Hope Creek) currently held by PSEG Nuclear LLC (PSEG), as owner and licensed operator of Hope Creek to Exelon Generation Company, LLC (Exelon). The transfer of PSEG's ownership interests and operating authority to Exelon is part of the proposed merger of PSEG's parent corporation, Public Service Enterprise Group, into Exelon Corporation, the indirect parent company of Exelon. The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

According to an application for approval filed by PSEG, Exelon would assume title to the facility following approval of the proposed license transfer, and would be responsible for the operation, maintenance, and eventual decommissioning of Hope Creek. No physical changes to the Hope Creek facility or operational changes are being proposed in the application.

The proposed amendment would replace references to PSEG in the license with references to Exelon to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days of the date of publication of this notice, any person

whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(I)–(viii).

Requests for a hearing and petitions for leave to intervene should be served, pursuant to 10 CFR 2.302 and 2.305, upon Thomas S. O'Neill, Vice President and Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, Illinois 60555, telephone 630–657–3770, fax 630–657–4335, and e-mail *thomas.oneill@exeloncorp.com*; Jeffrie J. Keenan, Esq., PSEG Nuclear LLC, P.O. Box 236, –21, Hancocks Bridge, New Jersey 08038, telephone 856–339–5429, fax 856–339–7–1234, and e-mail *jeff.keenan@pseg.com*; the General Counsel, NRC, Washington, DC 20555-0001 e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*; and the Secretary of the Commission, NRC, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held, and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days after the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, NRC, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated March 4, 2005, (ML050750110), available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 26th day of July 2005.

For the Nuclear Regulatory Commission.

Stewart N. Bailey,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4103 Filed 8–1–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission

DATE: Weeks of August 1, 8, 15, 22, 29, and September 5, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of August 1, 2005

Thursday, August 4, 2005

1:30 p.m. Affirmation Session (Public Meeting) (Tentative).

Week of August 8, 2005—Tentative

There are no meetings scheduled for the Week of August 8, 2005.

a. Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), Docket Nos. 50–336–LR and 50–423–LR (Tentative).

Week of August 15, 2005—Tentative

Tuesday, August 16, 2005

10 a.m. Meeting with the Organization of Agreement States (OAS) and the Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Shawn Smith, 301–415–2620).

This meeting will be webcast live at the Web address—*http://www/nrc.gov.*

1 p.m. Discussion of Security Issues (Closed-Ex. 3—9).

Week of August 22, 2005—Tentative

There are no meetings scheduled for the Week of August 22, 2005.

Week of August 29, 2005—Tentative

There are no meetings scheduled for the Week of August 29, 2005.

Week of September 5, 2005—Tentative

Wednesday, September 7, 2005

9:30 a.m. Discussion of Security Issues (Closed—Ex. 1).

1:30 p.m. Discussion of Security Issues (Closed—Ex. 3).

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Gamberoni, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555. (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: July 28, 2005.

Sandy Joosten,

Office of the Secretary.

[FR Doc. 05–15283 Filed 7–29–05; 11:08 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 8, 2005, to July 21, 2005. The last biweekly notice was published on July 19, 2005 (70 FR 41442).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of

which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina and Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: July 7, 2005.

Description of amendment request: The amendments would revise Technical Specification 3.9.1, ''Boron Concentration,'' to clarify the technical requirements for boron concentration when the refueling canal and the refueling cavity are not connected to the reactor coolant system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would implementation of the changes proposed in this LAR [License Amendment Request] involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This LAR clarifies Technical Specification [TS] 3.9.1 regarding the applicability of boron concentration limits when the refueling canal and refueling cavity are not connected to the reactor coolant system [RCS]. When the refueling canal and the refueling cavity are isolated from the RCS, no potential path for boron dilution of the RCS exists, thus there is no significant increase in the probability of an accident that has been previously evaluated, nor would there be a significant increase in the consequences of an accident that has been previously evaluated.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The change proposed in this LAR clarifies the applicability of TS 3.9.1 when the refueling canal and refueling cavity are not connected to the reactor coolant system. When the refueling canal and the refueling cavity are isolated from the RCS, no potential path for boron dilution of the RCS exists, thus there is no means to initiate an accident that is new or different from any accident that has been previously evaluated.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The change proposed in this LAR only clarifies the applicability of TS 3.9.1 when the refueling canal and the refueling cavity are not connected to the reactor coolant system. [TS 3.9.1 limits the boron concentrations of the reactor coolant system], the refueling canal, and the refueling cavity to ensure that the reactor remains subcritical during Mode 6 plant conditions. However, when the refueling canal and the refueling cavity are isolated from the reactor coolant system, no potential for boron dilution of the RCS exists. Therefore, in this condition it is not necessary to place a limit on the boron concentration in the refueling canal and the refueling cavity, thus there is no significant reduction in a margin of safety since no specific boron limits are being changed.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Evangelos C. Marinos.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: January 31, 2005.

Description of amendment request: Entergy Operations, Inc. (EOI) has requested a change which would revise

the requirements associated with the Arkansas Nuclear One, Unit 2 (ANO–2) containment overcurrent protection devices. EOI proposes to amend Operating License NPF–6 to eliminate Technical Specifications (TSs) section 3.8.2.5, ELECTRICAL POWER SYSTEMS-Containment Penetration Conductor Overcurrent Protection Devices. The proposed change would relocate the requirements for containment penetration conductor overcurrent protective devices to the Technical Requirements Manual (TRM).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to relocate the requirements for containment penetration conductor overcurrent protective devices from Technical Specifications to the TRM will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. Operation of the containment penetration conductor overcurrent protective devices is not an accident initiator and can not cause an accident. Whether the requirements for the containment penetration conductor overcurrent protective devices are located in Technical Specifications or the TRM will have no effect on the probability or consequences of any accident previously evaluated.

Therefore, the removal of overcurrent protection devices from the TS does *not* involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes to relocate the requirements from Technical Specifications to the TRM will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. The proposed changes will not introduce any new failure modes that could result in a new accident. Also, the response of the plant and the operators following the design basis accidents is unaffected by the changes.

Therefore, this change does *not* create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed changes will relocate the requirements for containment penetration conductor overcurrent protective devices from Technical Specifications to the TRM. Any future changes to the relocated requirements will be in accordance with 10 CFR 50.59 and approved station procedures. The proposed changes will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. In addition, the relocated requirements do not meet any of the 10 CFR 50.36c(2)(ii) criteria on items for which Technical Specifications must be established.

Therefore, this change does *not* involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Section Chief: David Terao.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket No. 50–278, Peach Bottom Atomic Power Station, Unit 3, York and Lancaster Counties, Pennsylvania

Date of application for amendment: July 6, 2005.

Description of amendment request: The proposed changes extend the use of the Peach Bottom Atomic Power Station, Unit 3, pressure-temperature (P–T) limits specified in the Technical Specifications (TSs) from 22 to 32 effective full power years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The proposed changes to the technical specifications to extend the use of the existing pressure-temperature (P–T) limits does not affect the operation or configuration of any plant equipment. Thus, no new accident initiators are created by this change. The proposed P–T limits are based on the projected reactor vessel neutron fluence at 32 effective full power years (EFPY) of operation. A bounding calculation of reactor vessel 32 EFPY fast neutron fluence has been completed for Peach Bottom Atomic Power Station (PBAPS), Unit 3, using the methodology described in a General Electric (GE) Company Licensing Topical Report (LTR), which adheres to the guidance in Regulatory Guide 1.190, ''Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence.'' The three-dimensional spatial distribution of neutron flux was modeled by combining the results of two separate two-dimensional neutron transport calculations. The latest available cross section libraries for the important components of Boiling Water Reactor (BWR) neutron flux calculations, *i.e.,* oxygen, hydrogen and individual iron isotopes, were included. The resulting reactor vessel fast neutron fluence value was then used in concert with the American Society of Mechanical Engineers (ASME), Boiler and Pressure Vessel Code (Code), Section XI, Case –640 and ASME Code, Section XI, Appendix G, paragraph G–2214.1 to develop updated P–T curves. A comparison of the updated P–T curves with the existing PBAPS, Unit 3 curves indicates that the existing curves are bounding through 32 EFPY. This provides sufficient assurance that the PBAPS, Unit 3, reactor vessel will be operated in a manner that will protect it from brittle fracture under all operating conditions.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed changes to the technical specifications to extend the use of the existing P–T limits do not affect the operation or configuration of any plant equipment. The proposed P–T limits will remain valid and conservative throughout the proposed extension.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No. The proposed changes extend the use of the existing P–T limits. The proposed P–T limits are based on the projected reactor vessel neutron fluence at 32 EFPY of operation. A bounding calculation of reactor vessel 32 EFPY fast neutron fluence has been completed for PBAPS, Unit 3, using the NRC approved methodology in a GE LTR, which adheres to the guidance in Regulatory Guide 1.190. The three-dimensional spatial distribution of neutron flux was modeled by combining the results of two separate two-dimensional neutron transport calculations. The latest available cross section libraries for the important components of BWR neutron flux calculations, i.e., oxygen, hydrogen and individual iron isotopes, were included. The resulting reactor vessel fast neutron fluence value was then used in concert with ASME Code Case –640 and ASME Code, Section XI, Appendix G, paragraph G–2214.1 to develop updated P–T curves. A comparison of the updated P–T curves with the existing PBAPS, Unit 3 curves indicates that the existing curves are bounding through 32 EFPY. This provides sufficient margin such that the PBAPS, Unit 3, reactor vessel will be operated in a manner that will protect it from brittle fracture under all operating conditions.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Thomas S. O'Neill, Associate and General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Darrell J. Roberts.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 1, 2005.

Description of amendment request: The proposed change will amend the design and licensing basis of the Fort Calhoun Station, Unit 1, by revising the updated safety analysis report (USAR) to describe an existing Emergency Operating Procedure (EOP) operator action to isolate steam generator blowdown within 15 minutes of reactor trip during a loss of main feedwater event.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the USAR clarifies reliance on operator action which has been utilized since implementation of the EOPs. It does not affect an accident initiator previously evaluated in the USAR or Technical Specifications and will not prevent safety systems from performing their accident mitigating function as discussed in the USAR or Technical Specifications.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change provides clarification to the existing USAR accident analysis of record. The change does not modify or install any safety related equipment. It does not alter any design or licensing basis assumptions and does not alter any operating procedures other than the explicit specification [of] the time constraint of the 15 minutes. Presently the action is included in EOP–00 without a time constraint.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change provides clarification to the USAR section 14.10.1 and has no effect on safety margins.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Daniel S. Collins, Acting.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: July 4, 2005.

Description of amendment request: The proposed changes would extend the allowed outage time for Technical Specification (TS) 3/4.7.4, ''Essential Cooling Water System,'' and the associated TSs for those systems supported by Essential Cooling Water, from 7 days to 14 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Since only one train of components is affected by the condition and single failure is not considered while a plant is in an LCO [Limiting Condition for Operation] ACTION, the operable ESF [Engineered Safety Feature] trains are adequate to maintain the plant's design basis. Thus, this condition will not alter assumptions relative to the mitigation of an accident or transient event.

Considering compensatory action and risks involved in a plant shutdown, STPNOC [STP Nuclear Operating Company] has determined that there is no significant risk associated with extending the Allowed Outage Time for the Essential Cooling Water System and the systems it supports for an additional 7 days. Additionally, the proposed change to remove the one-time note from TS 3.7.4 is considered an administrative change and does not impact the probability or consequences of any accident previously evaluated.

Based on this evaluation, there is no significant increase in the probability or consequence of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

This proposed change only extends an Allowed Outage Time and will not physically alter the plant. No new or different type of equipment will be installed by this action. The changes in methods governing normal plant operation are consistent with current safety analysis assumptions. No change to the system[s] as evaluated in the South Texas Project safety analysis is proposed. The proposed change to remove the one-time note from TS 3.7.4 is considered an administrative change and does not create the possibility of a new or different kind of accident previously evaluated.

Therefore, this proposed change[does not] create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Considering compensatory action and risks involved in a plant shutdown, STPNOC has determined that there is no significant risk associated with extending the Allowed Outage Time for the Essential Cooling Water System and the systems it supports for an additional 7 days.

Based on the availability of redundant systems, the compensatory actions that will be taken, and the extremely low probability of an accident that could not be mitigated by the available systems, STPNOC concludes that there is no significant reduction in the margin of safety. The proposed change to remove the one-time note from TS 3.7.4 is considered an administrative change and does not impact any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: David Terao.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: July 4, 2005.

Description of amendment request: The proposed change to Technical Specification 4.0.5 would add a reference to the NRC-approved

exemption of selected pumps, valves, and other components from special treatment requirements. As an editorial change, references to Title 10, Code of Federal Regulations (10 CFR) Part 50, Section 50.55a(f) and

10 CFR Part 50, Section 50.55a(f)(6)(i) would be added to the paragraph for inservice testing, similar to the existing references for inservice inspection. In addition, ''inservice testing'' and ''inservice inspection'' would be reordered for consistency with the sequence of the regulations in 10 CFR Part 50, Section 50.55a.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. Including the reference to the exemption in the Technical Specifications establishes consistency between the surveillance requirements for inservice inspection and testing and the exemption as approved by the NRC. There are no changes in the inspection and testing procedures as a result of adding the reference because the exemption already removes low safety significance and non-risk significant components from the requirements for special treatment. The proposed changes are administrative in nature and do not have a significant adverse effect on plant operation or personnel safety. Consequently, the changes will not affect the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. Including the reference to the exemption in the Technical Specifications establishes consistency between the surveillance requirements for inservice inspection and testing and the exemption as approved by the NRC. There are no changes in the inspection and testing procedures as a result of adding the reference because the exemption already removes low safety significance and non-risk significant components from the requirements for special treatment. The proposed changes are administrative in nature and do not have a significant adverse effect on plant operation or personnel safety. Consequently, the changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. Including the reference to the exemption in the Technical Specifications establishes consistency between the surveillance requirements for inservice inspection and testing and the exemption as approved by the NRC. There are no changes in the inspection and testing procedures as a result of adding the reference because the exemption already removes low safety significance and non-risk significant components from the requirements for special treatment. The proposed changes are administrative in nature and do not have a significant adverse effect on plant operation or personnel safety. Consequently, the changes do not significantly reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: David Terao.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Tennessee Valley Authority, Docket No. 50–259 , Browns Ferry Nuclear Plant, Unit 1, Limestone County, Alabama

Date of application for amendments: June 28, 2004, as supplemented February 23 and April 25, 2005.

Description of amendments request: The proposed amendment would change the operating license to increase the maximum authorized power level from 3293 megawatts thermal (MWt) to 3952 MWt; an increase of approximately 20 percent. The amendment would also change the licensing bases and any associated Technical Specifications for containment overpressure, the maximum ultimate heat sink temperature, and the upper bound peak cladding temperature.

Date of publication of individual notice in the **Federal Register:** July 11, 2005 (70 FR 39803).

Expiration date of individual notice: August 10, 2005 (Public comments) and September 9, 2005 (Hearing requests).

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of application for amendments: June 25, 2004, as supplemented February 23 and April 25, 2005.

Description of amendments request: The proposed amendments would change the operating licences to increase the maximum authorized power level from 3458 megawatts thermal (MWt) to 3952 MWt; an increase of approximately 15 percent. The amendment would also change the licensing bases and any associated Technical Specifications for containment overpressure.

Date of publication of individual notice in the **Federal Register**: July 12, 2005 (70 FR 40064).

Expiration date of individual notice: August 11, 2005 (Public comments) and September 12, 2005 (Hearing requests).

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has

made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: March 25, 2005, as supplemented on June 10, 2005.

Brief description of amendment: The amendment revised Section 3.7, ''Auxiliary Electrical Power,'' of the Technical Specifications to reflect the capability upgrade of one of the offsite power supply lines from 69 kilovolts (KV) to 230 KV.

Date of Issuance: July 14, 2005.

Effective date: July 14, 2005 and shall be implemented as soon as the upgraded offsite supply line is placed in service.

Amendment No.: 256.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 12, 2005 (70 FR 19113).

The June 10, 2005, letter provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 14, 2005.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: October 15, 2004.

Brief description of amendment: This amendment revises Technical Specifications by extending the inspection interval for reactor coolant pump flywheels to 20 years.

Date of issuance: June 21, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 119.

Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register***: March 1, 2005 (70 FR 9988).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 21, 2005.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: February 14, 2005.

Brief description of amendments: The amendments revised the Technical Specification Surveillance Requirement 3.3.7.1 to extend the frequency of the channel functional test for the Engineered Safeguards Protective System digital actuation logic channels from once every 31 days to once every 92 days.

Date of Issuance: May 19, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 345, 347 and 346.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: March 15, 2005 (70 FR 12745).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 19, 2005.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: March 14, 2005.

Brief description of amendments: The amendments deleted Technical Specification 5.5.4, ''Post Accident Sampling.''

Date of Issuance: July 12, 2005.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment Nos.: 346, 348, and 347.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: May 10, 2005 (70 FR 24649)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 12, 2005.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: December 17, 2004.

Brief description of amendment: The proposed change revises the air lock surveillance test acceptance criteria to be consistent with the NRC approved Industry Technical Specification Task Force (TSTF) change to the Standard Technical Specifications TSTF–52, entitled, ''Implement 10 CFR [Part] 50, Appendix J, Option B.'' By letter dated April 6, 1998, the NRC Staff issued amendment number 135 to the Grand Gulf Nuclear Station license permitting the implementation of the containment leak rate testing provisions of 10 CFR Part 50, Appendix J, Option B.

Date of issuance: July 12, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No: 168.

Facility Operating License No. NPF–29: The amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register***: February 1, 2005 (70 FR 5242).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 12, 2005.

No significant hazards consideration comments received: No.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: February 4, 2004, as supplemented by letter dated March 16, 2005.

Description of amendment request: The amendment modified the Seabrook Station Technical Specification (TS) Index; TS Table 3.3–10, ''Accident Monitoring Instrumentation''; TS Table 4.4–2, ''Steam Generator Tube Inspection''; TS 6.0, ''Administrative Controls''; and Appendix B to Facility Operating License (FOL) No. NPF–86, ''Environmental Protection Plan''.

Date of issuance: July 18, 2005.

Effective date: As of its date of issuance, and shall be implemented within 90 days.

Amendment No.: 104.

Facility Operating License No. NPF–86: The amendment revised the TSs and Appendix B to the FOL.

*Date of initial notice in **Federal Register***: March 2, 2004 (69 FR 9861). The March 16, 2005, supplement provided clarifying information that did not change the scope of the proposed amendment as described in the original notice of proposed action published in the **Federal Register**, and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 18, 2005.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: June 29, 2004, as supplemented by letter dated June 14, 2005.

Brief description of amendments: The proposed changes revise the Technical Specifications (TSs) to implement the following miscellaneous TS changes: Revise TS 2.2.5 Safety Limit Violations Licensee Event Report reporting period from 30 days to 60 days; revise 3.4.3.1.2 Pressurizer Heatup/Cooldown Limits Surveillance Requirements frequency to reflect pressurizer spray cyclic limits being governed by the temperature differentials between the spray nozzle and the spray line; revise TS 5.5.2.11 Steam Generator Tube Surveillance requirements to correct typographical errors; remove TS 5.5.2.14 Configuration Risk Management Program in accordance with **Federal Register** Notice Vol. 64, No. 137 (64 FR 38551, July 19, 1999); and revise TS 5.7.1.5 Core Operating Limits Report (COLR) to delete revision numbers and dates from the referenced documents in this section, consistent with the NRC approved industry Technical Specifications Task Force (TSTF) Standard Technical Specifications Traveler number TSTF–363, ''Revise Topical Report References in ITS (Improved Technical Specifications) 5.6.5 COLR.''

Date of issuance: July 19, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 197, 188.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register***: August 3, 2004 (69 FR 46588). The supplemental letter dated June 14, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 19, 2005.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: October 13, 2004.

Brief description of amendments: The amendments revise Technical Specification (TS) 5.6.5b by adding two topical reports (TRs) into the list of approved analytical methods used to determine the core operating limits, deleting four TRs for analytical methods no longer used to determine the core operating limits, and sequentially renumbering the remaining approved analytical methods in TS 5.6.5b.

Date of issuance: July 13, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 119, 119.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register***: December 21, 2004 (69 FR 76495).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 13, 2005.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendment: July 1, 2004, as supplemented by letters dated and October 28, 2004, and November 16, 2004.

Brief description of amendment: These amendments revise the reactor coolant pressure and temperature limits, low-temperature overpressure protection system (LTOPS) setpoint values, and LTOPS enable temperatures that are valid for 50.3 effective full-power years (EFPY) and 52.3 EFPY of operation for North Anna, Units 1 and 2, respectively.

Date of issuance: July 8, 2005.

Effective date: As of the date of issuance and shall be implemented within 6 months from the date of issuance.

Amendment Nos.: 242 and 223.

Renewed Facility Operating License Nos. NPF–4 and NPF–7: Amendments change the Technical Specifications.

*Date of initial notice in **Federal Register***: August 31, 2004 (69 FR 53114). The supplements dated October 28, 2004, and November 16, 2004, contained clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 8, 2005.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: November 4, 2004, as supplemented on February 21 and June 2, 2005.

Brief Description of amendments: These amendments revise the Technical Specifications (TS) to delete the Inservice Inspection (ISI) and Inservice Testing (IST) requirements in TS 4.0.5; relocate the IST requirements to the administrative section of the TS as a program; revise the TS to reference the IST program instead of TS 4.0.5; delete the individual TS references to the ISI program; and add a TS Bases Control Program to the TS Administrative Controls section.

Date of issuance: July 15, 2005.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment Nos.: 243 and 242.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the Technical Specifications.

*Date of initial notice in **Federal Register***: February 15, 2005 (70 FR 7771). The February 21 and June 2, 2005, supplements contained clarifying information only and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 15, 2005.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 25th day of July 2005.

For the Nuclear Regulatory Commission

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4067 Filed 8–1–05; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[EA–05–006]

In the Matter of Certain Licensees Authorized To Possess and Transfer Items Containing Radioactive Material Quantities of Concern; Order Imposing Additional Security Measures (Effective Immediately)

I.

The Licensees identified in Attachment A [1] to this Order, hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) or an Agreement State, in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR parts 30, 32, 70 and 71, or equivalent Agreement State regulations. The licenses authorize them to possess and transfer items containing radioactive material quantities of concern. This Order is being issued to all such Licensees who may transport radioactive material quantities of concern under the NRC's authority to protect the common defense and security, which has not been relinquished to the Agreement States. The Orders require compliance with specific additional security measures to enhance the security for transport of certain radioactive material quantities of concern.

II.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to Licensees in order to strengthen Licensees' capabilities and readiness to respond to a potential attack on this regulated activity. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of the current security measures. In addition, the Commission commenced a comprehensive review of its safeguards and security programs and requirements.

As a result of its initial consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain security measures are required to be implemented by Licensees as prudent, interim measures to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, as set forth in Attachment B [2] of this Order, on all Licensees identified in Attachment A of this Order. These additional security measures, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. These additional security measures will remain in effect until the Commission determines otherwise.

The Commission recognizes that Licensees may have already initiated many of the measures set forth in Attachment B to this Order in response to previously issued Safeguards and Threat Advisories or on their own. It is also recognized that some measures may not be possible or necessary for all shipments of radioactive material quantities of concern, or may need to be tailored to accommodate the Licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe transport of radioactive material quantities of concern.

Although the security measures implemented by Licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of common defense and security, in light of the continuing threat environment, the Commission concludes that the security measures must be embodied in an Order, consistent with the established regulatory framework. The Commission has determined that the security measures contained in Attachment B of this Order contains Safeguards Information and will not be released to the public as per Order entitled, ''Issuance of Order Imposing Requirements for Protecting Certain Safeguards Information,'' issued on November 5, 2004. To provide assurance that Licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all licensees identified in Attachment A to this Order shall implement the requirements identified in Attachment B to this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health and safety require that this Order be immediately effective.

III.

Accordingly, pursuant to Sections 53, 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 30, 32, 70 and 71, *it is hereby ordered*, effective immediately, that all licensees identified in attachment a to this order shall comply with the following:

A. All Licensees shall, notwithstanding the provisions of any Commission or Agreement State regulation or license to the contrary, comply with the requirements described in Attachment B to this Order. The Licensees shall immediately start implementation of the requirements in Attachment B to the Order and shall complete implementation by January 17, 2006, or before the licensee's next shipment after the 180 day implementation period of this Order. This Order supersedes the additional transportation security measures prescribed in the Manufacturer and Distributor Order issued January 12, 2004.

B.1. All Licensees shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachment B, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission or Agreement State regulation or its license. The notification shall provide the Licensees' justification for seeking relief from or variation of any specific requirement.

2. Any Licensee that considers that implementation of any of the requirements described in Attachment B to this Order would adversely impact the safe transport of radioactive material quantities of concern must notify the Commission, within twenty (20) days of

[1] Attachment A contains sensitive unclassified information and will not be released to the public.

[2] Attachment B contains Safeguards Information and will not be released to the public.

this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment B requirement in question, or a schedule for modifying the activity to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. All Licensees shall report to the Commission when they have achieved full compliance with the requirements described in Attachment B.D. Notwithstanding any provisions of the Commission's or an Agreement State's regulations to the contrary, all measures implemented or actions taken in response to this order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B.1, B.2, and C above shall be submitted to the Document Control Desk, ATTN: Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee submittals that contain sensitive security related information shall be properly marked and handled in accordance with Licensees' Safeguards Information or Safeguards Information—Modified Handling program.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV.

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, to the Office of Enforcement at the same address, to the Regional Administrator for NRC Region I, II, III, or IV, at the respective addresses specified in Appendix A to 10 CFR part 73, appropriate for the specific facility, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 19th day of July 2005.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–4108 Filed 8–1–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos: (Redacted), License Nos: (Redacted), EA (Redacted)]

In the Matter of Certain Power Reactor Licensees and Research, Reactor Licensees Who Transport Spent Nuclear Fuel; Order Modifying License (Effective Immediately)

I.

The licensees identified in Attachment 1 to this Order have been issued a specific license by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing the possession of spent nuclear fuel and a general license authorizing the transportation of spent nuclear fuel [in a transportation package approved by the Commission] in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR parts 50 and 71. Commission regulations for the shipment of spent nuclear fuel at 10 CFR 73.37(a) require these licensees to maintain a physical protection system that meets the requirements contained in 10 CFR 73.37(b), (c), (d), and (e).

II.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility or regulated activity. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of

its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 of this Order, on all licensees identified in Attachment 1 of this Order.[1] These additional security requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued Safeguards and Threat Advisories or on their own. It is also recognized that some measures may not be possible or necessary for all shipments of spent nuclear fuel, or may need to be tailored to accommodate the licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe transport of spent nuclear fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of common defense and security, in light of the current threat environment, the Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all licenses identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, and in light of the common defense and security matters identified above which warrant the issuance of this Order, the Commission finds that the public health, safety, and interest require that this Order be immediately effective.

III.

Accordingly, pursuant to Sections 53, 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 50 and 71, *it is hereby ordered,* effective immediately, that all licenses identified in Attachment 1 to this order are modified as follows:

A. All licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the licensee's security plan. The licensees shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by August 25, 2005, unless otherwise specified in Attachment 2, or before the first shipment after July 25, 2005, whichever is earlier.

B.1. All licensees shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee's justification for seeking relief from or variation of any specific requirement.

2. Any licensee that considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact the safe transport of spent fuel must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the activity to address the adverse safety condition. If neither approach is appropriate, the licensee must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C.1. All licensees shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 2.

2. All licensees shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding any provisions of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B1, B2, C1, and C2 above, shall be submitted to the NRC to the attention of the Director, Office of Nuclear Reactor Regulation under 10 CFR 50.4. In addition, licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

IV.

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555–0001. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific

[1] Attachments 1 and 2 contain SAFEGUARDS INFORMATION and will not be released to the public.

facility; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101 or by e-mail to *hearingdocket@nrc.gov,* and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(I), the licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 25th day of July 2005.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4097 Filed 8–1–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–12282 Correction]

Issuer Delisting; Notice of Application of Corrpro Companies, Inc. To Withdraw Its Common Stock, No Par Value, From Listing and Registration on the American Stock Exchange LLC

July 26, 2005.

On June 29, 2005, Corrpro Companies, Inc., an Ohio corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, no par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex''). On July 21, 2005, the Commission issued a ''Notice of Application of Corrpro Companies, Inc. to Withdraw its Common Stock, no par value, from Listing and Registration on the American Stock Exchange LLC (''Notice'')''.

Page one, paragraph two of the Notice states that, ''On April 14, 2005, the Board of Directors (''Board'') of the Issuer approved resolutions to withdraw the Security from listing and registration on Amex.'' The correct date is June 27, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4094 Filed 8–1–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–28004]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

July 27, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 22, 2005, to the Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 22, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

PNM Resources, Inc., et al. (70–10280)

PNM Resources, Inc. (''PNM Resources''), a registered holding company, PNMR Services Company (''Services''), a wholly-owned service company subsidiary of PNM Resources, and Public Service Company of New Mexico (''PNM''), a public utility company subsidiary of PNM Resources, all located at Alvarado Square (MS–0920), Albuquerque, New Mexico 87158 and Texas-New Mexico Power Company (''TNMP''), an electric public utility subsidiary of PNM Resources, 4100 International Plaza, Fort Worth, Texas 76109 (collectively, ''Applicants''), have filed an application-declaration (''Application'') under sections 9, 10 and 13(b) of the Act and rules 54, 88, 90, 91 and 93 under the Act.

I. Background

PNM Resources is a holding company that has recently registered under the Act.[1] Prior to June 6, 2005, PNM Resource's active subsidiaries included PNM, Avistar Inc. (''Avistar''), a nonutility company engaged in developing and marketing power system technologies, and PNMR Development and Management Corporation (''PNMR Development''), a company engaged in contract administration concerning the Luna Energy power generation project.

[1] PNM Resources filed a notice of registration under the Act on December 30, 2004. In *PNM Resources, Inc.,* Holding Co. Act Release No. 27934 (December 30, 2004), PNM Resources committed to file this application to qualify its service company under rule 88 within thirty days of registration; the Application was filed January 28, 2005.

On June 6, 2005, the Commission issued an order (the ''Acquisition Order'') authorizing PNM Resources to acquire all of the voting securities of TNP Enterprises, Inc. (''TNP Enterprises''), a public utility holding company then-claiming exemption by rule 2 under the Act.[2] The Acquisition Order authorized Services to provide services to TNP Enterprises and its active subsidiaries. The Acquisition Order also authorized transferring shared services employees and their functions from subsidiaries of TNP Enterprises to Services. As of June 6, 2005, the active subsidiaries of TNP Enterprises included TNMP, FCP Enterprises, Inc., a Delaware corporation, and an intermediate subsidiary parent of First Choice Power Special Purpose, L.P. (''First Choice''), and First Choice, an energy-marketer.[3] The recipients of such services are referenced herein as ''Service Recipients.''

II. Current Requests

Applicants seek authorization for the continued operation of Services and for it to continue to provide services, at cost in accordance with the Commission's regulations, to PNM Resources and to PNM Resources' other active subsidiaries: PNM, Avistar, Inc., PNMR Development,[4] TNMP, FCP Enterprises, Inc. and First Choice. These services are to be provided in accordance with rules 90 and 91 under the Act. As of January 1, 2005, PNM Resources ceased providing services, which required personnel, to its affiliates and only retained its lessor and sub-lessor interest in office and office-related properties used in its subsidiaries operations. Services has entered into an administrative services agreement between PNM Resources and Services (''Services Agreement'').[5] Services requests authorization to provide services pursuant to rules 90 and 91 to authorized affiliate Service Recipients on terms substantially identical to the Services Agreement. PNM and Avistar have consented to the amendment and assignment from PNM Resources to Services of their previously existing service agreements so as to conform to the terms of the Services Agreement and enable PNM Resources to cease rendering affiliate services.

Applicants request authority under section 13(b) of the Act for TNMP to sublease and provide access to its existing offices and related facilities owned or leased by it at cost to Services and to First Choice. TNMP's leasehold interests were obtained by TNMP prior to the acquisition of TNP Enterprises by PNM Resources. Before the acquisition, TNMP provided certain shared services to First Choice and TNPE Enterprises. Prior to the acquisition, employees occupied TNMP's leased offices and related facilities which are leased from a non-affiliate. In connection with the acquisition closing, the services agreements between TNMP and First Choice and between TNMP and TNP Enterprises were terminated, and the new services agreements initiated with Services. The office space used by the discrete group of ''shared services'' employees at the TNMP office building will continue to be associated with those employees (who will not need to move physically), and the cost associated with the space specific to First Choice will be directly assigned to First Choice. In light of the transfer of shared services employees from TNMP to Services, TNMP requests authority to lease such offices and related facilities at cost to Services, and authority for Services to provide access at cost to a portion of such offices and related facilities to First Choice.

PNM Resources requests authority to continue its practice of subleasing insubstantial space in its Alvarado Square office building to certain non-affiliates. PNM Resources subleases insubstantial space in its Alvarado Square office building to several non-affiliated tenants that are engaged in businesses that pertain to the functions of the complex.

Applicants further request that the Commission authorize reporting under rule 93 that is consistent with the form of accounts required by rate regulatory agencies, including Federal Power Act Form 1, to the extent there is a conflict between such accounts and those prescribed pursuant to 17 CFR part 256. Applicants are not requesting relief from rule 94. Services' accounting and cost allocation methods and procedures are structured so as to comply with the Commission's standards for service companies in registered holding company systems. Services' billing system will use the ''Uniform System of Accounts for Mutual Service Companies,'' established by the Commission for holding company systems. Services will utilize the chart of accounts specified in the Federal Energy Regulatory Commission's (''FERC'') Uniform System of Accounts for Public Utilities and Licensees (18 CFR 101).

Finally, PNM requests authority to provide generating plant operating dispatch services to its affiliates at cost in compliance with rules 90 and 91. Specifically, PNM requests authority to provide joint dispatch services to its affiliates in connection with PNM's generation resources and affiliate generation resources at cost. PNM Resources' dispatch center supports its control area function and will be predominantly used to support PNM plant dispatch and related transactions. PNM provides electrical control services from much of New Mexico, including the services area of PNM and TNMP in New Mexico.

III. Description of Services

Services' capitalization consists of 1,000 shares of common stock, no par value. It is anticipated that Services will finance its business through working capital, equipment and assets contributed by PNM Resources and issuance of debt securities exempted under rule 52(b) to associate companies or unaffiliated parties or otherwise authorized by the Act, rules and Commission orders. PNM Resources has contributed to Services certain physical property and contract rights as are necessary for Services to succeed to the services function previously performed by PNM Resources. PNM Resources has contributed $5 million cash to Services.[6] Approximately six hundred employees have transferred to the payroll of Services from PNM Resources and its affiliates. In order to provide substantially the same services as were previously provided by PNM Resources, Services has entered into leases and subleases with PNM Resources to occupy essentially the same office space that PNM Resources used for corporate support services at rates established at cost. Applicants state that this

[2] Holding Co. Act Release No. 27979 (June 1, 2005). TNP Enterprises has since filed a notification of registration under the Act.

[3] First Choice is a Texas limited partnership and a bankruptcy remote special purpose entity certificated retail electric (''REP'') provider in Texas to which the original REP certificate of First Choice Power was transferred pursuant to an Order of the Public Utility Commission of Texas. A new certificate was granted to First Choice Power, Inc., which is now First Choice Power, L.P., also a subsidiary of TNP Enterprises and FCP Enterprises, Inc. These entities are collectively called ''First Choice.''

[4] PNMR Development is engaged in contract administration concerning the Luna Energy power generation project. *PNM Resources,* Holding Co. Act Release No. 27934 (December 30, 2004) describes the Luna energy project and authorizes the formation of subsidiaries for project development purposes.

[5] The only service function that will remain at PNM Resources is the provision by it of access to offices to Services and PNM. Otherwise, Services proposes to provide its Serviced Recipients with all administrative, management, and support services as described in the Application.

[6] PNM Resources further intends to loan funds to Services at the effective cost of capital as authorized by rule 52(b).

arrangement avoids the transactional costs that would otherwise be incurred in transferring property rights.

Applicants commit that no material change in the organization of Services, the type and character of the companies to be serviced, the methods of allocating cost to Service Recipients, or in the scope or character of the services to be rendered subject to section 13 of the Act, or any rule or order under the Act, shall be made unless and until Services shall first have given the Commission written notice of the proposed change not less than 60 days prior to the proposed effectiveness of any such change. If, upon the receipt of any such notice, the Commission shall notify Services within the 60-day period that a question exists as to whether the proposed change is consistent with the provisions of section 13 of the Act, or of any rule under the Act, or Commission order, then the proposed change shall not become effective unless and until Services shall have filed with the Commission an appropriate declaration regarding such proposed change and the Commission shall have permitted such declaration to become effective.

Applicants have determined that the existing methods of allocating costs presented in the Services Agreement are consistent with those approved by the NMPRC on June 28, 2001. Under these cost allocations, the costs for services will be assigned to the companies that cause or benefit from those services. All charges for service shall be distributed among Service Recipients, to the extent possible, based on direct assignment. Costs which cannot be directly charged will be allocated using an appropriate cost allocation methodology that will take into account the cost causation of the type of service to be allocated. The application of a specific allocation method will be determined based upon principles of cost responsibility traditionally applied in electric and gas utility accounting and regulation such that each functional area supported by Services bears a fair share of fixed costs in addition to paying the variable costs associated with specific activities. Charges for all services provided by Services to its Service Recipients under the Service Agreements will be on an ''at cost'' basis as determined under rules 90 and 91 of the Act.

AGL Resources Inc. (70–10304)

AGL Resources Inc. (''AGL''), Ten Peachtree Place, Suite 1000, Atlanta, Georgia 30309, a registered holding company has filed an application-declaration under sections 6(a), 7, 9(a), 10, 11 and 12(b) of the Act.

Generally, AGL requests authority to organize and finance one or more direct or indirect subsidiaries to engage in certain gas- and energy-related nonutility businesses in Canada, Mexico and/or the United States.

I. Background

AGL distributes natural gas to more than 2.2 million end-use customers through public-utility company subsidiaries organized in Georgia (Atlanta Gas Light Company), Tennessee (Chattanooga Gas Company), Virginia (Virginia Natural Gas Inc. and Virginia Gas Distribution Company) and New Jersey (Pivotal Utility Holdings, Inc.). Pivotal Utility Holdings owns and operates utility facilities in New Jersey, Florida and Maryland through the following divisions: Elizabethtown Gas, Florida City Gas, and Elkton Gas.

AGL is also involved in various energy- and gas-related nonutility businesses, including: retail natural gas marketing to end-use customers in Georgia; natural gas asset management and related logistics activities for its own utilities as well as for other non-affiliated companies; operation of high deliverability underground natural gas storage; and construction and operation of telecommunications conduit and fiber infrastructure within select metropolitan areas. The common stock of AGL is listed on the New York Stock Exchange.

Through various subsidiaries, Sequent, LLC (''Sequent''), an indirect, wholly-owned subsidiary company of AGL, is engaged in the optimization of natural gas assets, gas transportation and storage, producer and peaking services and the wholesale marketing of natural gas. Sequent's asset optimization business focuses on capturing value from idle or underutilized natural gas assets, which are typically amassed by companies via investments in, or contractual rights to, natural gas transportation and storage facilities. Margins are typically created in this business by participating in transactions that balance the needs of varying markets and time horizons. Sequent provides its customers with natural gas from the major producing regions and market hubs primarily in the Eastern and Mid-Continental United States. Sequent also purchases transportation and storage capacity to meet its delivery requirements and customer obligations in the marketplace. Sequent's customers benefit from its logistics expertise and ability to deliver natural gas at prices that are advantageous relative to the other alternatives available to its end-use customers.

II. Requests for Authority

AGL requests authority to acquire interests in energy- and gas-related nonutility businesses operating in Canada, Mexico and/or the U.S (''Foreign Nonutility Businesses'').[7] Typically, these investments would be made through one or more direct or indirect subsidiaries of Sequent and funded by acquisitions of equity and debt securities of Foreign Nonutility Businesses, borrowings from AGL's nonutility money pool by Foreign Nonutility Businesses, and guarantees. AGL would limit its direct and indirect investments in Foreign Nonutility Businesses to an aggregate amount not to exceed $300 million (''Investment Limit'') in the form of equity, debt and guarantees, including nonutility money pool borrowings, through September 31, 2008 (''Authorization Period''). AGL's public utility subsidiary companies would not directly or indirectly acquire any Foreign Nonutility Businesses and they would not provide funding for, extend credit to, or guarantee the obligations of, Foreign Nonutility Businesses.

The specific nonutility businesses in which AGL seeks authorization to invest include: (1) Energy management services and other energy conservation related businesses; (2) the maintenance and monitoring of utility equipment; (3) the provision of utility related or derived software and services; (4) engineering, consulting and technical services, operations and maintenance services; (5) brokering and marketing of natural gas, electricity and other energy commodities and providing incidental related services, such as fuel management, storage and procurement; and (6) oil and gas exploration, development, production, gathering, transportation, storage, processing and marketing activities, and related or incidental activities. AGL does not seek authority to acquire any assets that would cause any subsidiary to be or become an ''electric-utility company'' or ''gas-utility company,'' as those terms are defined in sections 2(a)(3) and 2(a)(4) of the Act.

AGL requests authority for all Foreign Nonutility Businesses to participate as borrowers and lenders in the nonutility money pool authorized by Commission order dated April 1, 2004 (Holding Co. Act Release No. 27828). Participation in the nonutility money pool would include unsecured short-term borrowing, contributing surplus funds,

[7] Investments in gas- and energy-related businesses that may be acquired under rule 58 would be subject to the investment limits under that rule, not the limit described below.

and lending and extending credit to other nonutility money pool participants.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4110 Filed 8–1–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52124; File No. SR–FICC–2005–09]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Collecting of Fees for Services Provided by Other Entities

July 26, 2005.

I. Introduction

On May 3, 2005, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2005–09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on June 13, 2005.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change amends FICC's rules to allow FICC to collect fees for services provided by unregulated subsidiaries of The Depository Trust and Clearing Corporation (''DTCC'' and by other entities. FICC is a subsidiary of DTCC. Members of FICC and their affiliates may from time to time utilize the services of DTCC subsidiaries that are not registered as clearing agencies with the Commission. Such subsidiaries include Global Asset Solutions LLC and DTCC Deriv/Serv LLC. In addition, members of FICC and their affiliates may utilize the services of other third parties. FICC has determined that it would be more efficient and less costly if the fees that members agree to pay for such services were collected by FICC rather than through independent billing mechanisms that would otherwise have to be established by each subsidiary of DTCC and third party that is not a registered clearing agency.

FICC's rules currently allow for fee collection arrangements with respect to collection of fees from members. The proposed rule change further clarifies this practice and facilitates collection of fees with respect to affiliates of members.[3] FICC will enter into appropriate agreements with such subsidiaries and others regarding the collection of fees.

III. Discussion

Section 17A(a)(1)(B) of the Act provides that inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.[4] Although the services provided by unregulated DTCC subsidiaries and by other third parties are not core clearance and settlement services, they are related to the clearance and settlement operations of FICC and of its members. By streamlining the fee collection process for these services so that FICC's members will pay these fees to FICC as a part of their normal monthly FICC bills, the proposed rule change should help to improve efficiency in the operations of FICC members and thereby should remove unnecessary cost for FICC members and for the persons (*i.e.,* the DTCC subsidiaries and the other entities providing services to FICC members) facilitating transactions by and acting on behalf of investors. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of section 17A of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–FICC–2005–09) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4112 Filed 8–1–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52133; File No. SR–NASD–2005–068]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Regarding a New Order Type for the Pre-Market Trading Session

July 27, 2005.

On May 25, 2005, the National Association of Securities Dealers, Inc., through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] to establish a new order type for Nasdaq-listed securities called the Total Good-till-Canceled order, which would be eligible for execution during the pre-market trading session and would be processed precisely as the Good-till-Canceled order. The proposed rule change was published for comment in the **Federal Register** on June 23, 2005.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,[4] the requirements of Section 15A of the Act,[5] in general, and Section 15A(b)(6) of the Act,[6] in particular, which requires, among other things, that the rules of a national securities association be designed to facilitate transactions in securities and to remove impediments to and perfect the mechanism of a free and open

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 51789, (June 6, 2005), 70 FR 34169.

[3] FICC currently has such fee collection arrangements with The Bond Market Association (''TMBA'') pursuant to specific rules provisions. FICC continues to collect fees on behalf of TBMA; however, pursuant to this filing, the existing rules provisions which govern the TBMA arrangement will be replaced with broader language intended to cover all such fee collection arrangements entered into by FICC.

[4] 15 U.S.C. 78q–1(a)(A)(B).

[5] 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. 51859 (June 16, 2005), 70 FR 36428.

[4] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78*o*–3(b)(6).

market. In proposing to establish the new order type, Nasdaq seeks to provide market participants with more choices, thereby permitting them to represent their trading interest more completely than is currently possible on Nasdaq. The depth and liquidity of the market on Nasdaq could increase as a result of the enhanced interest and competition, which in turn could promote greater competition among market centers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NASD–2005–068) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4109 Filed 8–1–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52125; File No. SR–OCC–2005–09]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to OCC's Data Distribution Service

July 26, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 24, 2005, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. 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 purpose of the proposed rule change is to adopt a new DDS Supplement to support the conversion of OCC's data distribution service (''DDS'')[2] to the technology used by OCC's new clearing system, ENCORE.

[1] 15 U.S.C. 78s(b)(1).

[2] OCC offers certain ancillary services to clearing members that are not set forth in OCC's By-laws and Rules. Examples of such services include different channels by which clearing members may elect to receive data processed by OCC or to communicate instructions to OCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

An OCC clearing member may subscribe to DDS in order to receive in a machine readable format a copy of data processed by OCC that is proprietary to that clearing member (*e.g.*, position and post-trade entries) and that is ''non-proprietary'' (*i.e.*, data not specific to the clearing member) produced by OCC, including series, prices, and other information. A subscribing clearing member may instruct OCC to provide data to its managing clearing member or to its service bureau. Parties that are not clearing members may also subscribe to DDS in order to receive certain non-proprietary data. Data provided as a part of ENCORE DDS is organized into different ''message types'' that a subscriber may elect to receive.

ENCORE DDS has been developed to provide a secure, flexible framework for distributing messages to subscribers pursuant to their elections.[4] As is the case today, ENCORE DDS subscribers will be permitted to choose whether to access messages from OCC servers or to directly receive message transmissions from OCC. Subscribers may elect to receive messages on a real time basis (a new DDS offering) and/or on a batch basis (a current DDS offering) although not all message types will be made available under both methods.[5] For subscribers electing to receive DDS on a real time basis, an ''end of day'' message will alert them not to expect any further information from OCC for that day. ENCORE DDS will be available to subscribers through leased lines, the internet, or both. OCC will support the current DDS format and the ENCORE DDS format during a transition period.

The DDS Supplement is structured to fit within OCC's existing framework for the Agreement for OCC Services and will replace the current form supplement between clearing members and OCC.[6] The DDS Supplement's provisions are generally self-explanatory, and they are intended to describe the respective responsibilities of OCC and the subscribing clearing member. Section 1 describes DDS and, if applicable, permits a clearing member to direct OCC to deliver messages to the clearing member's managing clearing member or service bureau, as applicable. Section 2 sets forth criteria associated with subscribing to DDS. Sections 3 through 5 set forth further responsibilities of the parties including limitations on warranties, liability,[7] and indemnification. Section 6 contains general terms regarding survival of certain provisions. Annex I provides an overview of message types offered as a part of ENCORE DDS. Annex II is a form which permits a clearing member to provide contact information regarding its managing clearing member and a certification of the managing clearing member with respect to DDS. Annex III is a comparable form for service bureaus.

OCC believes that the proposed change is consistent with Section 17A of the Act because ENCORE DDS provides a more efficient and effective means to furnish machine readable clearing-related data to clearing members. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

[3] The Commission has modified parts of these statements.

[4] Fees charged for DDS to clearing members and non-clearing members (as set forth in OCC's Schedule of Fees) will not be changed at this time.

[5] For example, price messages currently are expected to be only offered on a batch basis.

[6] The DDS Supplement to be entered into between OCC and clearing members subscribing to DDS is attached to the filing of proposed rule change as Exhibit 5.

[7] The limitation of liability provision contained in the DDS Supplement is based on the comparable provisions of the Supplement for Internet Access, which was approved by the Commission in Securities Exchange Act Release No. 46152 (July 1, 2002) 67 FR 45166 (July 8, 2002) [File No. SR–OCC–2001–09]. OCC has filed a proposed rule change with the Commission to establish a standard of care by which any potential liability of OCC to its clearing members would be judged [File No. SR–OCC–2003–13]. If approved, that proposed rule change would amend supplements to the Agreement for OCC Services to the extent a standard of care is established therein to reference the standard as it would be set forth in OCC's By-laws.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(4) [9] promulgated thereunder because the proposal effects a change in an existing service of OCC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–OCC–2005–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0609.

All submissions should refer to File Number SR–OCC–2005–09. 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com.*

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–OCC–2005–09 and should be submitted on or before August 23, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4111 Filed 8–1–05; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(4).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5145]

Culturally Significant Objects Imported for Exhibition Determinations: ''Style and Status: Imperial Costumes From Ottoman Turkey''

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 ''Style and Status: Imperial Costumes from Ottoman Turkey,'' 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 Arthur M. Sackler Gallery, Smithsonian Institution, Washington, DC, from on or about October 29, 2005 to on or about January 22, 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 Wolodymyr R. Sulzynsky, the Office of the Legal Adviser, Department of State, (telephone: 202–453–8050). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 26, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–15215 Filed 8–1–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Delegation of Authority No. 281]

Delegation by the Secretary of State to the Director General of the Foreign Service and Director of Human Resources of Authorities Normally Vested in the Under Secretary for Management

By virtue of the authority vested in me as Secretary of State by the laws of the United States, including Section 1 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2651a), I hereby delegate to W. Robert Pearson, to the extent authorized by law, all authorities vested in the Under Secretary for Management, including all authorities vested in the Secretary of State or head of agency that have been or may be delegated or re-delegated to the Under Secretary for Management.

Any authorities covered by this delegation may also be exercised by the Secretary of State or the Deputy Secretary of State.

Any act, executive order, regulation, or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation, or procedure as amended from time to time.

This delegation shall enter into effect upon signature and shall expire upon the appointment and entry upon duty of a new Under Secretary for Management.

Any re-delegation of authority by the Under Secretary for Management now in effect shall remain in effect.

This delegation of authority shall be published in the **Federal Register**.

Dated: June 6, 2005.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. 05–15214 Filed 8–1–05; 8:45 am]

BILLING CODE 4710–10–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: TVA will convene a meeting of the Regional Resource Stewardship Council (Regional Council) to obtain views and advice on the topic of TVA's draft recreation strategy. Under the TVA Act, TVA is charged with the proper use and conservation of natural resources for the purpose of fostering the orderly and proper physical, economic and social development of the Tennessee Valley region. The Regional Council was established to advise TVA on its natural resource stewardship activities. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (FACA).

The meeting agenda includes the following:

(1) Overview of water quality partnerships.

(2) Reservoir releases improvement program.

(3) Water quality improvement efforts of the Izaak Walton League.

(4) Clean marina efforts on Fontana Reservoir.

(5) Water quality improvement efforts of the Hiwassee River Watershed Coalition and Little River Water Quality Forum.

(6) TVA's draft recreation strategy.

(7) Public comments on the topic of TVA's recreation strategy.

(8) Council discussion and advice on TVA's recreation strategy.

The Regional Council will hear opinions and views of citizens by providing a public comments session. The public comment session will be held from 9:30 to 10:30 a.m. e.d.t. on Wednesday, August 24, 2005. Citizens who wish to express views and opinions on the topic of TVA's recreation strategy may do so during the Public Comment portion of the agenda. Public Comments participation is available on a first-come, first-served basis. Speakers addressing the Regional Council are requested to limit their remarks to no more than 5 minutes. Persons wishing to speak are requested to register at the door and are then called on by the Regional Council Chair during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902.

DATES: The meeting will be held on Tuesday, August 23, 2005, from 8 a.m. to 5 p.m. and on Wednesday, August 24, 2005, from 8 a.m. to 1 p.m. eastern daylight time.

ADDRESSES: The meeting will be held in the auditorium at the Tennessee Valley Authority headquarters, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Sandra L. Hill, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902 (865) 632–2333.

Dated: July 27, 2005.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 05–15193 Filed 8–1–05; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Impact Statement (EIS)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Initiation of Public and Agency Scoping for the Hawai'i Volcanoes National Park Air Tour Management Plan.

SUMMARY: The Federal Aviation Administration (FAA), in cooperation with the National Park Service (NPS), began development of an Air Tour Management Plan (ATMP) and associated Environmental Assessment (EA) for Hawai'i Volcanoes National Park in February 2003. The ATMP is being established pursuant to the National Parks Air Tour Management Act of 2000 (Pub. L. 106–181) and its implementing regulations contained in Title 14, Code of Federal Regulations, Part 136, National Parks Air Tour Management. The objective of the ATMP is to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural resources, cultural resources, and visitor experiences of Hawai'i Volcanoes National Park.

The FAA and NPS have now decided to proceed with development of an Environmental Impact Statement (EIS) for this project. This decision is based on information received through the EA scoping process, the environmental analysis completed by the Agencies to date, the consideration of preliminary ATMP alternatives, and through consultations conducted pursuant to Section 106 of the National Historic Preservation Act.

By this notice the FAA and NPS are initiating a 30-day scoping period for this EIS. The FAA and NPS are now inviting the public, agencies, and other interested parties to provide written comments, suggestions, and input regarding the scope of issues and the identification of significant issues to be addressed in the Environmental Impact Statement (EIS). Comments previously submitted in response to the EA scoping will not need to be resubmitted, as they will be considered as part of the EIS process and record. No additional scoping meetings are scheduled.

DATES: The 45-day scoping comment period will commence upon publication of this Notice. Please submit any written response you may have within 45 days from the date of this Notice or no later than September 15, 2005.

ADDRESSES: Please address your written comments to: Docket Management System, Doc No. FAA–2005–21938, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001.

You must identify the docket number FAA–2005–21938 at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard. You may review the public docket containing comments in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address.

You may also submit comments and review public dockets on the Internet at *http://dms.dot.gov*. Comments previously received in response to the EA scoping may also be reviewed at this

Web site under Docket No. FAA–2004–17174.

FOR FURTHER INFORMATION CONTACT: Brian Armstrong, Air Tour Management Plan Program Manager, Executive Resource Staff, AWP–4, Federal Aviation Administration, Western-Pacific Region. Mailing address: P.O. Box 92007, Los Angeles, California 90009–2007. Telephone: (310) 725–3818. Street address: 15000 Aviation Boulevard, Lawndale, California 90261. E-mail: *Brian.Armstrong@faa.gov.* Park specific information can be obtained from Cindy Orlando, Superintendent, Hawai'i Volcanoes National Park, P.O. Box 52, Volcanoes, HI 96718. Telephone: (808) 985–6025. E-mail: *Cindy_Orlando@nps.gov.*

SUPPLEMENTARY INFORMATION: In developing an ATMP and any associated rulemaking actions, the FAA is required to comply with the National Environmental Policy Act of 1969 (NEPA), which calls on Federal agencies to consider environmental issues as part of their decision making process. For the purposes of compliance with NEPA on this project, the FAA is the Lead Agency and the NPS is a Cooperating Agency. The ATMP Program Office and the NPS Natural Sounds Program Office are responsible for the overall implementation of the ATMP Program. Brian Armstrong is the FAA's principal program manager responsible for all parts of the EIS and performance of required consultation regarding cultural and historic resources and endangered and threatened species. For the park, Superintendent Cindy Orlando is responsible for park operations and management and for recommending the draft and final EIS and Record of Decision to the Pacific West Regional Director.

The EIS is being prepared in accordance with FAA Order 1050.1E, *Environmental Impacts:* Policies and Procedures, and NPS Director's Order # 12: Conservation Planning, Environmental Impact Analysis, and Decision-making, and NPS Management Policies. The FAA is now inviting the public, agencies, and other interested parties to provide written comments, suggestions, and input regarding: (1) The scope, issues, and concerns related to the development of the ATMP for Hawai'i Volcanoes National Park; (2) the scope of issues and the identification of significant issues regarding commercial air tours and their potential impacts to be addressed in the environmental process; (3) the potential effects of commercial air tours on natural resources, cultural resources, and the visitor experience; (4) preliminary ATMP alternatives; and, (5) past, present, and reasonably foreseeable future actions which, when considered with ATMP alternatives, may result in significant cumulative impacts. The FAA requests that comments be as specific as possible in response to actions that are being proposed under this notice.

Scoping documents that describe the Hawai'i Volcanoes National Park ATMP project in greater detail and the preliminary ATMP alternatives under consideration are available at the following locations:

- FAA Air Tour Management Plan Program Web site, *http://www.atmp.faa.gov/Hawaii_Volcanoes.htm*
- Hawai'i Volcanoes National Park, 1 Crater Rim Road, Hawaii National Park, HI 96718
- National Park Service, Pacific Islands Network, 300 Ala Moana Ave., Box 50165, Honolulu, HI 96850
- Hawai'i State Library, Hawai'i Documents Center—478 South King Street, Honolulu, HI 96813
- Bond Memorial Public Library—3903 Akoni Pule Hwy, Kapaau, HI 96755
- Hilo Public Library—300 Waianuenue Avenue, Hilo, HI 96720
- Holualoa Public Library—76–5936 Mamalahoa Highway, Holualoa, HI 96725
- Honoka'a Public Library—45–3380 Mamane Street, Bldg. #3, Honoka'a, HI 96727
- Kailua-Kona Public Library—75–138 Hualalai Road, Kailua-Kona, HI 96740
- Kea'au Public Library—16–571 Kea'au-Pahoa Road, Kea'au, HI 96749
- Kealakekua Public Library—Mamalahoa Hwy, Kealakekua, HI 96750
- Laupahoehoe Public Library—35–2065 Old Mamalahoa Hwy, Laupahoehoe, HI 96764
- Mountain View Public Library—1235 Volcano, Mountain View, HI 96771
- Na'alehu Public Library—5669 Mamalahoa Hwy, Na'alehu, HI 96771
- Pahala Public Library—315 Pikake St., Pahala, HI 96777
- Thelma Parker Public Library—67–1209 Mamalahoa Highway, Kamuela, HI 96743–8429

Issued in Los Angeles, CA on July 25, 2005.

Brian Q. Armstrong,

FAA, Air Tour Management Plan Program Manager.

[FR Doc. 05–15178 Filed 8–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that an Information Collection Request (ICR) in support of the New Car Assessment Program has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on May 11, 2005 [70 FR 24859, or U.S. DOT Docket Number NHTSA–2005–21068].

DATES: Comments must be submitted on or before September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Johanna Lowrie at the National Highway Traffic Safety Administration, Office of Crashworthiness Standards (NVS–111) (202) 366–5269, 400 Seventh Street, SW., 5311, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Vehicle Information for the General Public.

OMB Number: 2127–0629.

Type of Request: Regular.

Abstract: NHTSA currently collects vehicle information through the Office of Vehicle Safety Compliance and through the Office of Crashworthiness Standards. The information collected has been useful to the New Car Assessment Program (NCAP) in selecting vehicles for it's crash testing programs, and providing information to consumers on vehicle safety features. The public's interest in vehicle information continues to grow. The public is interested not only in crash test results and other vehicle ratings, but is also interested in information on the benefit and availability of safety features. NHTSA also needs safety feature information when it attempts to analyze petitions for rulemaking asking the agency to mandate certain safety features.

An example of the type of information we propose to collect includes: Specific advanced frontal air bag information that would include the number of air

bag deployment stages; technologies air bag deployment is dependent upon; air bag on/off switch information; child restraint anchorages system information; seat belt information that would include pretensioners, load limiters or other energy management systems for the seat belt, seat belt extenders and adjustable upper belt anchorages; dynamic head restraints; side air bag information that would include where the side air bag is mounted, what type of side bag is mounted and whether the side air bags meet the requirements of the recommendations of the Technical Working Group on Out of Position Occupants (TWG); Automatic Door Lock (ADL) information; Electronic Stability Control (ESC), and anti-theft devices. We are also collecting information about safety belt reminder systems, crash data recorders and safety power windows.

NHTSA will use this information on the NHTSA Web site (*http://www.safercar.gov*), in the ''Buying a Safer Car'' and ''Buying a Safer Car for Child Passengers'' brochures, other consumer publications, as well as for rulemaking benefit analyses. On average, the agency register's 80 thousand unique visitors to the safercar.gov Web site per week.

NHTSA is making this burden easier by sending out formatted electronic files with the information request.

Affected Public: Manufacturers that sell motor vehicles in the United States under 10,000 lbs.

Estimated Total Annual Burden: 924 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on July 20, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–15177 Filed 8–1–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket Nos. 38302S and 38376S]

United States Department of Energy and United States Department of Defense v. Baltimore & Ohio Railroad Company, et al. and Aberdeen & Rockfish Railroad Company, et al.

AGENCY: Surface Transportation Board, DOT.

ACTION: Final decision.

SUMMARY: The Surface Transportation Board (Board) approved the Settlement Agreement negotiated in these cases by the United States Departments of Energy and Defense (the Government) and by the Union Pacific Railroad Company (UP), prescribed the Agreement's rate and rate update methodologies as the maximum reasonable rate level, extinguished UP's liability for reparations, and agreed not to entertain cross-complaints against UP in subsequent proceedings involving the Government's claims for reparations against remaining railroad defendants that participated in through rates with UP. The Board declined in part to rule on, and granted in part, the Government's separate request for ground rules to govern future proceedings against remaining railroad defendants and granted the Government's request to continue holding these proceedings in abeyance subject to the Government reporting quarterly on the progress of settlement negotiations.

DATES: The decision is effective on September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600.[Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Board under 49 U.S.C. 10704 approved the Settlement Agreement negotiated by the Government and UP in these cases. The Agreement applies broadly to the nationwide movement over UP of spent nuclear fuel and ''irradiated parts or constituents'' in casks; other radioactive wastes requiring protective shielding or labeling, marking, or placarding; empty casks; and buffer and escort cars (covered movements). The Agreement recognizes that the transportation of the covered movements over UP constitutes common carrier service; adopts guidelines for safe handling and security; and obligates UP to provide on an as needed basis ''extra services.'' It also adopts rate methodologies and procedures to: (1) Govern all current and future covered movements anywhere on UP's system; (2) compensate UP for ''extra services'' and Government-requested dedicated train service; and (3) calculate equitable compensation to reimburse UP for emergency-related costs. Additionally, the Agreement adopts alternative dispute resolution procedures with final recourse to the Board and mechanisms to renegotiate portions of the Agreement if specific circumstances change or if changed circumstances make further adherence to the terms of the Agreement ''grossly inequitable'' to either party.

Additional information is available in the Board's decision, posted on the agency's Web site at *http://WWW.STB.DOT.GOV*.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: July 27, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. 05–15188 Filed 8–1–05; 8:45 am]

BILLING CODE 4915–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 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. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Thursday, August 18, 2005.

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 Area 6 Taxpayer Advocacy Panel will be held Thursday, August 18, 2005 from 8 a.m. Pacific time to 9:30 a.m. Pacific time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. 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: July 26, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–15228 Filed 8–1–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, August 11, 2005, from 12 p.m. 1 p.m. e.t.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

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 Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Thursday, August 11, 2005, from 12 p.m. to 1 p.m. e.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: various IRS issues.

Dated: July 26, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–15229 Filed 8–1–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Fiduciary Powers of Savings Associations

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before September 1, 2005.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Mark D. Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov*; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Fiduciary Powers of Savings Associations.

OMB Number: 1550–0037.

Form Number: N/A.

Regulation requirement: 12 CFR 550.70(c) and 550.125.

Description: Section 550.70(c) of OTS's regulations requires that a federal savings association that wants to commence in a new state fiduciary activities that are not materially different from those that OTS has already approved, must file a notice with OTS. Instructions for filing the notice are found at 12 CFR 550.125. OTS must know when a federal savings association is acting in a fiduciary capacity in a new state, in order to effectively monitor and examine the fiduciary activities of the association.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 10.

Estimated Number of Responses: 10.

Estimated Burden Hours per Response: 3 hours.

Estimated Frequency of Response: Event-generated.

Estimated Total Burden: 30 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: July 27, 2005.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Acting Director.

[FR Doc. 05–15210 Filed 8–1–05; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Recordkeeping and Confirmation Requirements for Securities Transactions

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before September 1, 2005.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Mark D. Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov*; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Recordkeeping and Confirmation Requirements for Securities Transactions.

OMB Number: 1550–0109.

Form Number: N/A.

Regulation requirement: 12 CFR part 551.

Description: 12 CFR part 551 imposes recordkeeping and confirmation requirements for savings associations that effect securities transactions.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 880.

Estimated Number of Responses: 880.

Estimated Burden Hours per Response: 5 hours.

Estimated Frequency of Response: Event-generated.

Estimated Total Burden: 4,400 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: July 27, 2005.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Acting Director.

[FR Doc. 05–15211 Filed 8–1–05; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Tuesday,
August 2, 2005

Part II

Millennium Challenge Corporation

Notice of Entering Into a Compact With the Government of Nicaragua; Notice

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 05–14]

Notice of Entering Into a Compact With the Government of the Republic of Nicaragua

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with Section 610(b)(2) of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D), the Millennium Challenge Corporation is publishing a detailed summary and text of the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Government of the Republic of Nicaragua. Representatives of the United States Government and the Republic of Nicaragua executed the Compact documents on July 14, 2005.

Dated: July 28, 2005.

Jon A. Dyck,

Vice President & General Counsel, Millennium Challenge Corporation.

Summary of Millennium Challenge Compact With the Republic of Nicaragua

I. Introduction

Once one of the faster-growing countries in Latin America, Nicaragua fell into a state of severe economic collapse in the 1980s and only began a process of slow macroeconomic recovery in the last few years. Looking toward the future, Nicaragua now has an opportunity to achieve growth by taking advantage of regional economic integration and trade openings. The recently-approved MCC program (''Program'') will help the country to build the necessary capacity to take full advantage of these opportunities.

The Government of Nicaragua (GON) presented MCC with a strategy to achieve economic growth and poverty reduction by building the productive capacity of the departments of León and Chinandega, a region with proven growth potential due to its fertile land and connection to international markets. After extensive consultations, the Nicaraguans identified insecure property rights, under-developed infrastructure, and low-value rural business activity as the greatest barriers to growth, and developed a proposal to address them with MCA assistance. The Program will contribute to improving the lives of the 800,000 residents of León and Chinandega by raising household incomes in the region and also will benefit the country by transforming the region into an engine of economic growth. The Program has three objectives:

- Increase investment by strengthening property rights in León. (Property Regularization Project).
- Reduce transportation costs between León and Chinandega and domestic, regional and global markets (Transportation Objective Project.
- Increase profits and wages of farms and enterprises in León and Chinandega (Rural Business Development Project).

The five-year, $175 million Compact will help Nicaragua accomplish these objectives as outlined below.

II. Program Overview and Impact

1. Property Regularization Project ($26.5 Million)

Insecure property rights, high land transaction costs, and inefficient property registration services undermine enterprise development, investment, and rural income growth in Nicaragua. To address these problems, the GON is focusing on legal, judicial, and institutional reforms at the national level. At the regional level, the Property Regularization Project will expand to León an existing World Bank project in Chinandega, Proyecto de Ordenamiento de la Propiedad (''PRODEP''), thereby leveraging PRODEP's implementation experience and structure. Combined, these efforts will lay the foundation for increasing investment and income.

The Activities of this Project include:

- Institutional Capacity Building: Provide technical support to government institutions to implement and sustain tenure regularization reforms in León.
- Cadastral Mapping: Conduct area-wide cadastral mapping in León to obtain current property descriptions to be recorded in a geographic information system.
- Land Tenure Regularization: Clarify land tenure, resolve disputes, and improve formal documentation of property rights.
- Database Installation: Link municipal and national registry and cadastral databases.
- Protected Area Demarcation: Demarcate and legally validate the boundaries of four environmentally-sensitive protected areas, regularize land rights within the perimeter of each, and facilitate the adoption of land use management plans by occupants therein.
- Analysis and Communications: Fund short-term technical assistance, policy analysis and outreach to promote participation in, use and sustainability of the improved property registration system.

Benefits: This Project will work to eliminate the institutional and regulatory barriers preventing productive investment in property in León. Eliminating these barriers will contribute to improving the investment climate, increasing the asset value of land, reducing land-related social conflict, encouraging intelligent management of regional natural resources, and strengthening local government land use planning.

2. Transportation Project ($92.8 Million)

High transportation costs are a significant constraint to economic growth, particularly for agriculture and small- and medium-sized rural businesses. The Pacific Corridor, important for trade between Nicaragua and its neighbors, links producers and consumers in León and Chinandega to markets north in neighboring Honduras and El Salvador and south to Nicaragua's urban center.

Activities under this Project include:

- N–I Road (segment of Pacific Corridor): Improve a 58-kilometer segment of the Pacific Corridor between Nejapa and Izapa.
- Secondary Roads: Pave and upgrade key secondary routes to link rural producers to the primary road network.
- Technical Assistance: Provide technical assistance to the Ministry of Transportation and Infrastructure (MTI) and the Nicaraguan Road Maintenance Fund (Fondo de Mantenimiento Vial or FOMAV).

Benefits: This Project will reduce transportation costs, stimulate economic development, and improve access to markets and social services for road users. This will help Nicaragua, Honduras, and El Salvador fully realize the benefits of DR–CAFTA. A sustainable road maintenance mechanism will safeguard the funding of road improvements and lengthen road lifespan.

3. Rural Business Development Project ($33.7 Million)

Despite a comparative advantage in the production, processing and marketing of agricultural products, over 70 percent of the rural population in León-Chinandega is poor. Producers, suppliers, service providers, processors, and marketing agents frequently work in isolation or are absent in the region. Women are less likely to participate in agricultural organizations, receive technical assistance or credit or plant higher profit-yielding crops, despite their significant presence as producers. The region also suffers from pronounced

deforestation and water supply constraints to farming and other productive activities, especially the poor communities in the northern highlands.

The activities to be implemented under this Project include:

- Rural Business Development Services: Expand higher-profit agriculture and agribusiness by providing business development services, disseminating market information, developing improved production techniques, and managing the two Project Activities described below.
- Technical and Financial Assistance: To help small- and medium-sized farms and agribusiness transition to higher-profit activities, provide technical and financial assistance to these enterprises, including support that will directly offset certain costs of small farms; and
- Grants to Improve Water Supply for Farming and Forestry Production: Based on a watershed management action plan, provide grants to improve the water supply for irrigation and facilitate higher value, sustainable agriculture and forestry in the upper watershed areas of the region.

Benefits: These activities will facilitate increases in the production of high-value goods and the profits and wages of farmers, agribusinesses and other non-farm businesses. These increases in profits and wages will translate into higher disposable incomes of families in the region, reducing the high incidence of poverty. In addition, these activities are expected to generate employment and contribute to a regional economy well-positioned to take advantage of national and international investment and market opportunities. Better water management will encourage more productive use of land and environmental sustainability, particularly for communities in the northern highlands.

4. Measuring Outcome and Impact ($3.3 Million)

The overall objective of the Program is to increase income and reduce poverty in León and Chinandega, and the Program's success will be measured by the increase in income of beneficiaries due to the Program. The Monitoring and Evaluation Plan will assess progress toward the achievement of the Compact's objectives and goal.

By the end of the Property Regularization Project, an estimated 70 percent of rural and 50 percent of urban properties (or ~43,000 land parcels) in León will have more secure, registered titles. Thousands of disputes over property rights will be expected to have been successfully mediated and the costs in time and money of conducting property-related transactions are projected to have been reduced by 50 percent. Together, this more secure investment climate and more efficient registration system will encourage investment and environmental protection. Farmers who have their land titles regularized by the Project are expected to increase investment in land improvement by 32 percent over five years. All four protected areas in León will be formally demarcated and occupant tenure will be regularized, allowing effective development and enforcement of land use management plans.

Road upgrades will reduce transportation costs between the region and domestic, regional and international markets for an estimated 3,300 current road users per day. Upgrading up to 100 kilometers of secondary roads is anticipated to reduce travel times and transport costs to markets and education and health services for rural communities. Improvements to the N–I road and the secondary roads are important for realizing the economic benefits outlined in the Rural Business Development Project as well as for stimulating new investments in Nicaragua as trade north from Managua to Honduras and El Salvador becomes more efficient and cost-effective.

Thousands of farmers will directly benefit from the Rural Business Development Project by receiving help with transitioning into higher-value agriculture. In addition, an estimated 7,000 jobs will be created. The additional profits and wages of farms generated as a result of the Rural Business Development Project are projected to total $30 million annually, beginning six years after the Project's initiation. To ensure that the benefits from the Project are long-term, the Project will facilitate linkages among different actors involved in rural business, such as distributors and processors, and build local capacity to link producers to market opportunities. In addition, thousands of hectares of currently arid land will have improved water supply and be under sustainable farm or forest production.

5. Program Management, Financial/Procurement Management, and Audit ($18.8 Million)

MCA-Nicaragua, a legal entity, will be established to implement the Compact and is the entity ultimately accountable for Program success. This entity will consist of an independent Board of Directors, with central government, local government, and civil society representatives, that will oversee the implementation of the Program. It will also include a technical secretariat staffed with full-time professional staff that will provide daily management of the implementation of the Program. In addition to having observer status on the MCA-Nicaragua Board, MCC will retain approval rights at a number of key decision points during implementation, including key steps in procurements, budgets for Project Activities, major re-disbursements and key personnel decisions.

The Rural Business Project will be managed by competitively hired professional staff who will reside in an office (''Rural Office'') located in the region. For the Property Regularization Project, the Compact will fund additional staff and activities within the existing World Bank implementing unit (PRODEP). For the Transportation Project, management, construction, and supervision will be handled by competitively procured firms that will coordinate closely with the Nicaraguan Ministry of Transportation and Infrastructure.

A competitively selected joint venture of international private-sector accounting/consulting firms will serve as the Fiscal/Procurement Agent (Agent) for the Program. The Agent will provide professional services for (1) funds control, disbursement documentation and management, cash management and accounting; and (2) the planning, management and supervision of the procurement processes contemplated under the MCC Program.

The Board of Directors will engage auditors to conduct both financial audits and compliance audits of all financial and procurement activities. For the first year of the Program, audits will be conducted every six months. For subsequent years, the MCC will consider whether audits should be conducted more or less frequently than every six months. An auditor will be competitively selected from a list of approved auditors to be provided by the MCC Inspector General.

III. Assessment

1. Economic Analysis

The Property Regularization Project has an economic rate of return (ERR) of 29 percent. Clearer definition of property rights through improved land titles is expected to benefit the economy by increasing the private returns to investments on land, improving the ability to use land to leverage credit, reducing high costs of land-related transactions, and reducing the need for defensive expenditures to protect

property rights. The preferred basis for estimating economic returns is to combine estimates of increases in land values (reflecting new economic benefits of having land) and savings in transactions costs.

The ERR for the Transportation Project is estimated to be 13 percent. This return is the weighted average of the returns for two activities: N–I Road (23 percent) and Secondary Roads (8 percent minimum). The economic benefits from the Transportation Project derive both from the direct benefits of reduced transportation costs and from the stimulus to new investment from lower transportation costs. The stimulation of new businesses and investments due to lower transport costs are more difficult to measure, but are likely to increase the economic benefits. Sectors whose ratio of transport costs to production price is relatively high, such as agriculture and agro-processing, are likely to receive new investments as a result of improved infrastructure. Additionally, improved transportation can have additional benefits through increased school enrollment and improved health outcomes. These indirect benefits have not been factored into the economic returns, so the ERR mentioned above is likely a conservative estimate of the gains from the Project.

The ERR for the Rural Business Development Project is estimated to be 15 percent, calculated as a weighted average of its activities. The return to the Rural Business Development Office was estimated to be 18 percent, based on projected costs, current crop profitability and employment generation. An estimated 7,000 new jobs will be generated as a result of this farm transition. The specific activities for the improvement of water supply for farming and forest production will be determined over the course of the Program. These activities, however, will be required to achieve at least a 10 percent economic rate of return.

2. Consultative Process

The technical team charged with developing the MCA proposal held numerous meetings and work sessions in Managua and the country's regional departments with leaders in the political and private sectors, non-governmental organizations (NGOs), and various associations. Many of the consultations included Nicaragua's Local Development Council (LDCs)—representative bodies at the regional department level whose members are elected from the public and private sector and civil society. The technical team also spoke with local farm and women's cooperatives, local business associations, and NGOs about the Program's technical details.

Nicaragua's consultative process for the MCA proposal resulted in three key outcomes: (1) A shift from a national to a regional focus, (2) the prioritization of proposal components, and (3) ongoing participation and ownership at the local level.

- As discussions at the national and regional level progressed about Nicaragua's constraints to economic growth and poverty reduction, stakeholders came to focus on the departments of León and Chinandega, a region believed to have the greatest potential for economic growth as well as some of the most extreme poverty.
- The León and Chinandega Development Councils—which collectively represent over 100 civil society, private sector, and local government organizations—provided crucial assistance to the GON technical team in developing and prioritizing the proposal components. The team also solicited feedback from other private sector and civil society organizations at the regional and national level.
- The GON technical team continues to involve the Local Development Councils and other local groups and expects them to play an important role in program oversight, including having representation on the Board of the MCA-Nicaragua governing entity, an organization that will be established specifically to implement and oversee the Program.

3. Government Commitment and Effectiveness

The Program has received a significant level of government attention from the President of Nicaragua, Ministers and their staff. The GON has also committed to make reforms as part of the Compact. These reforms include passing and enacting several laws which relate to MCC qualification criteria and to the implementation of components of the Compact (e.g., road maintenance funding, new law governing tenure regularization, etc.).

4. Sustainability

Sustainability of the Property Regularization Project will be derived from the extent to which people use the improved registration system and from the fiscal capacity of the registry, cadastre and titling services. The incentives for people to use and pay for services as well as the costs of services will be appropriate in the local context. Several recent policy reforms (e.g., new cadastre and registry laws) and proposed reforms (e.g., tenure regularization law) will bring about new institutional relationships and operational practices that will more effectively facilitate the process for keeping property records up-to-date. The GON's ability to maintain modern, computerized land records and maps and a well-trained staff will depend on both an adequate public budget and the GON's ability to set and collect fees for services. More accessible, reliable and efficient services will likely increase the willingness of users to use the system and to pay for services. The new registry law will provide an autonomous budget for the registry so that it can more rationally project its costs and revenues and set fees and budgets accordingly. This Project includes specific support for training, technical assistance and analysis of policy, fee structures and other measures to help ensure sustainability.

The technical assistance activities in the Transportation Project will promote institutional sustainability as well as the policy reforms in the Compact. The Program will include conditions that have specific targets, by date, for funding escrows required for maintenance. In addition, the GON has agreed that if it has not satisfied its funding obligation by year two of the Project, certain elements of this Project will not be funded any further. The GON also expects municipalities to cover a significant portion of maintenance costs for the secondary roads.

The Rural Business Development Project's primary objective is to increase the economic viability of farmers and agribusinesses in the region. Initially, a Rural Office will be established as a division or subsidiary of MCA-Nicaragua based on the view that the impacts must be sustainable. Selection criteria for activities funded under the Project will include their potential for self-sustainability. Expanded horticultural production will create economies of scale that reduce the unit costs of inputs and post-harvesting services. The Project is expected to improve rural access to finance through its financial literacy campaign and by promoting ''bankable'' business activities. The watershed management action plan will provide a basis for improving environmental sustainability of land uses throughout the region, and beneficiaries will be assisted in establishing business models that will pay the costs associated with maintaining investments over time.

5. Environmental and Social Impacts

Property Regularization Project

Overall, this Project is expected to be positive from an environmental and social point of view. PRODEP promotes the conservation of forests and other natural habitats directly through the strengthening of existing protected areas. A Project-specific environmental plan will be developed, similar to the plan in place for PRODEP's work in Chinandega, to monitor potential negative impacts. The Project also will (i) identify measures to facilitate increased access by poorer households to land via land markets, (ii) help advance gender equity in land tenure regularization to empower women property owners, and (iii) work to gain consensus on indigenous community land rights within the context of tenure regularization.

Transportation Project

While the majority of the works under this Project will occur along existing rights-of-way, this Project qualifies as a significant rehabilitation. For some of the roads, this rehabilitation will fundamentally change the nature of the traffic, and therefore the impacts after construction. Comprehensive road-specific Environmental Impact Assessments (EIAs) have not yet been conducted; however, each of the roads to be improved under this Project will require completion of environmental analysis acceptable to MCC. The Project budget includes funds to conduct the requisite environmental analyses.

Rural Business Development Project

Activities under this Project could potentially have adverse environmental impacts that are site-specific and largely mitigable. The Compact specifies the environmental review criteria for activities sponsored by the Project and describes the environmental sustainability principles for the agricultural and agribusiness technical assistance. The activity to improve watershed management, in particular, will have significant positive environmental impacts. Nicaragua has one of the highest rates of deforestation in the region, resulting in decreased soil productivity, significant erosion, and flooding. In addition, the Estero Real estuary in the region is one of the most important ecosystems in Central America and one of its most vulnerable. It is vital for shrimp production and as a sanctuary for migratory birds and endangered species, and serves as a natural flood control system. Improvement in soil conservation and reforestation in the Project area will positively benefit this sensitive ecosystem.

6. Donor Coordination

The proposed Projects complement and supplement efforts by other donors. Nicaragua's Program calls for increasing rural incomes and financing infrastructure. USAID, USDA, the World Bank, the Inter-American Development Bank (IDB), IFAD, NDF, UNDP, and other development agencies are all active in supporting various rural development activities. Work to upgrade the Nicaraguan Pacific Corridor is being funded by the World Bank, the Central American Bank for Economic Integration, and the Nordic Fund. In addition, the IDB and World Bank have funded projects to strengthen the capacity of MTI and the Road Maintenance Fund. Further coordination with the larger donor community will include participation by MCC in the Infrastructure and Rural Development Donor Coordinating committees chaired by the GON. The Rural Office also will assist farmers and agribusinesses in the region to gain information on and access to programs sponsored by other donors.

IV. Summary and Conclusion

Nicaragua's MCC Program focuses on creating a regional engine for economic growth in the northwestern part of the country by transforming the rural business sector into a high-value, sustainable corridor that is primed for greater trade with regional and international markets. The Program complements economic growth strategies such as The Dominican Republic-Central America-United States Free Trade Agreement (DR–CAFTA) and enjoys broad support from civil society. The Property Regularization, Transportation, and Rural Business Development Projects will build the capacity of León and Chinandega to accelerate the economic transformation from subsistence farming to a demand-driven, market-oriented, rural business zone. The combined effect of these three core Projects will have a positive impact on economic growth and poverty reduction in Nicaragua.

Millennium Challenge Compact Between the United States of America Acting Through the Millennium Challenge Corporation and the Government of the Republic of Nicaragua

Table of Contents

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Millennium Challenge Compact

This Millennium Challenge Compact (the ''*Compact*'') is made between the United States of America, acting through the Millennium Challenge Corporation, a United States Government corporation (''*MCC*''), and the Government of the Republic of Nicaragua (the ''*Government*'') (referred to herein individually as a ''*Party*'' and collectively, the ''*Parties*''). A compendium of capitalized terms

defined herein is included in Exhibit A attached hereto.

Recitals

Whereas, MCC, acting through its Board of Directors, has selected the Republic of Nicaragua (''*Nicaragua*'') as eligible to present to MCC a proposal for the use of 2004 and 2005 Millennium Challenge Account (''*MCA*'') assistance to help facilitate poverty reduction through economic growth in Nicaragua;

Whereas, the Government has carried out a consultative process with the country's private sector and civil society to outline the country's priorities for the use of MCA assistance and developed a proposal, which was submitted to MCC on October 25, 2004 (the ''*Proposal*'');

Whereas, the Proposal focused on, among other things, improving the property rights, infrastructure and competitiveness of rural businesses in the Nicaraguan departments of León and Chinandega (the ''*León-Chinandega*'');

Whereas, MCC has evaluated the Proposal and related documents to determine whether the Proposal is consistent with core MCA principles and includes proposed activities and projects that will advance the progress of Nicaragua towards achieving economic growth and poverty reduction; and

Whereas, based on MCC's evaluation of the Proposal and related documents and subsequent discussions and negotiations between the Parties, the Government and MCC determined to enter into this Compact to implement a program using MCC Funding to advance Nicaragua's progress towards economic growth and poverty reduction (the ''*Program*'');

Now, Therefore, in consideration of the foregoing and the mutual covenants and agreements set forth herein, the Parties hereby agree as follows:

Article I. Purpose and Term

Section 1.1 Objectives

The overall objective of this Compact (the ''Program Objective'') is to increase income and reduce poverty in León-Chinandega, which is key to advancing the goal of economic growth and poverty reduction in Nicaragua (the ''*Compact Goal*''). The Parties have identified the following project-level objectives (each, a ''*Project Objective*'' and together the ''Project Objectives'') to advance the Program Objective, each of which is described in more detail in the Annexes attached hereto:

(a) Increase investment by strengthening property rights in León (the ''*Property Regularization Objective*'');

(b) Reduce transportation costs between León-Chinandega and domestic, regional and global markets (the ''*Transportation Objective*''); and

(c) Increase the value-added of farms and businesses in León-Chinandega (the ''*Rural Business Development Objective*'').

(The Program Objective and the individual Project Objectives are referred to herein collectively as the ''*Objectives*'' and each individually as an ''*Objective*''). The Government expects to achieve, and shall use its best efforts to ensure the achievement of, these Objectives during the Compact Term.

Section 1.2 Projects

The Annexes attached hereto describe the specific projects and the policy reforms and other activities related thereto (each, a ''*Project*'') that the Government will carry out, or cause to be carried out, in furtherance of this Compact to achieve the Objectives and the Compact Goal.

Section 1.3 Entry Into Force; Compact Term

This Compact shall enter into force on the date of the last letter in an exchange of letters between the Principal Representatives of each Party confirming that all conditions set forth in Section 4.1 have been satisfied by the Government and MCC (such date, the ''*Entry into Force*''). This Compact shall remain in force for five (5) years from the Entry into Force, unless earlier terminated in accordance with Section 5.4 (the ''*Compact Term*'').

Article II. Funding and Resources

Section 2.1 MCC Funding

(a) MCC's Contribution. Subject to the terms and conditions herein, MCC shall grant to the Government an amount not to exceed One Hundred Seventy Five Million United States Dollars (USD $175,000,000) (''*MCC Funding*'') during the Compact Term to enable the Government to implement the Program and achieve the Objectives; *provided, however,* MCC may elect, in its sole discretion, to grant all or any portion of MCC Funding directly to an entity to be organized and established pursuant to Nicaraguan law and in accordance with Section 3(d) of Annex I and the Governance Agreement (''*MCA-Nicaragua*'') pursuant to a separate Supplemental Agreement (the ''*Grant Agreement*'') between MCC, the Government, and MCA-Nicaragua to enable the Government, through MCA-Nicaragua, to implement the Program and achieve the Objectives.

(i) Subject to Sections 2.1(a)(ii), 2.2(b), and 5.4(b), the allocation of the MCC Funding within the Program and among and within the Projects shall be as generally described in Annex II or as otherwise agreed upon by the Parties from time to time.

(ii) If at any time MCC determines that a condition precedent to an MCC Disbursement has not been satisfied, MCC may, upon written notice to the Government, reduce the total amount of MCC Funding by an amount equal to the amount estimated in the applicable Detailed Financial Plan for the Program or Project activity for which such condition precedent has not been met. Upon the expiration or termination of this Compact, (A) any amounts of MCC Funding not disbursed by MCC to the Government shall be automatically released from any obligation in connection with this Compact and (B) any amounts of MCC Funding disbursed by MCC to the Government as provided in Section 2.1(b)(i), but not re-disbursed as provided in Section 2.1(b)(ii) or otherwise incurred as permitted pursuant to Section 5.4(e) prior to the expiration or termination of this Compact, shall be returned to MCC in accordance with Section 2.5(a)(ii).

(b) Disbursements.

(i) Disbursements of MCC Funding. MCC shall from time to time make disbursements of MCC Funding (each such disbursement, an ''*MCC Disbursement*'') to a Permitted Account or through such other mechanism agreed by the Parties under and in accordance with the procedures and requirements set forth in Annex I, the Disbursement Agreement or as otherwise provided in any other relevant Supplemental Agreement.

(ii) Re-Disbursements of MCC Funding. The release of MCC Funding from a Permitted Account (each such release, a ''*Re-Disbursement*'') shall be made in accordance with the procedures and requirements set forth in Annex I, the Disbursement Agreement or as otherwise provided in any other relevant Supplemental Agreement.

(c) Interest. Unless the Parties agree otherwise in writing, any interest or other earnings on MCC Funding that accrue or are earned (collectively, ''Accrued Interest'') shall be held in a Permitted Account and accrue or be earned in accordance with the requirements for the treatment of Accrued Interest as specified in Annex I or any relevant Supplemental Agreement. On a quarterly basis and upon the termination or expiration of this Compact, the Government shall return, or ensure the return of, all Accrued Interest to any United States

Government account designated by MCC.

(d) Conversion; Exchange Rate. The Government shall ensure that all MCC Funding that is held in the Permitted Account(s) shall be denominated in the currency of the United States of America (''*United States Dollars*'') prior to Re-Disbursement; *provided,* that a certain portion of MCC Funding may be transferred to a Local Account and may be held in such Local Account in the currency of Nicaragua prior to Re-Disbursement in accordance with the requirements of Annex I and any relevant Supplemental Agreement between the Parties. To the extent that any amount of MCC Funding held in United States Dollars must be converted into the currency of Nicaragua for any purpose, including for any Re-Disbursement or any transfer of MCC Funding into a Local Account, the Government shall ensure that such amount is converted consistent with Annex I, including the rate and manner set forth in Annex I, and the requirements of the Disbursement Agreement or any other Supplemental Agreement between the Parties.

(e) Guidance. From time to time, MCC may provide guidance to the Government through Implementation Letters on the frequency, form and content of requests for MCC Disbursements and Re-Disbursements or any other matter relating to MCC Funding. The Government shall apply such guidance in implementing this Compact.

Section 2.2 Government Resources

(a) Necessary Resources. The Government shall provide or cause to be provided such Government funds and other resources, and shall take or cause to be taken such actions, including obtaining all necessary approvals and consents, as are specified in this Compact or in any Supplemental Agreement to which the Government is a party or as are otherwise necessary and appropriate to effectively carry out the Government Responsibilities or other responsibilities or obligations of the Government under or in furtherance of this Compact during the Compact Term and through the completion of any post-Compact Term activities, audits or other responsibilities.

(b) Reallocation; Allocation Reductions.

(i) If at any time during the Compact Term, the Government materially reallocates or reduces the allocation in its national budget, or any other Nicaraguan governmental authority at a departmental, municipal, regional or other jurisdictional level materially reallocates or reduces the allocation of its respective budget, of the normal and expected resources that the Government or such other governmental authority, as applicable, would have otherwise received or budgeted, from external or domestic sources, for the activities contemplated herein, the Government shall notify MCC in writing within fifteen (15) days of such reallocation or reduction, such notification to contain information regarding the amount of the reallocation or reduction, the affected activities, and an explanation for such reallocation or reduction.

(ii) If MCC determines, independently or otherwise, upon review of the executed national annual budget or budget of such other governmental authority, that such a material reallocation or reduction of resources has occurred, MCC shall notify the Government and, within fifteen (15) days after such notification, the Government shall provide, or cause to be provided, a written explanation for such reallocation or reduction.

(iii) After reviewing such explanation, MCC may (A) reduce, in its sole discretion, the total amount of MCC Funding or any MCC Disbursement by an amount equal to the amount estimated in the applicable Detailed Financial Plan for the activity for which funds were reduced or reallocated or (B) otherwise suspend or terminate MCC Funding in accordance with Section 5.4(b).

Section 2.3 Limitations on the Use or Treatment of MCC Funding

(a) Abortions and Involuntary Sterilizations. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is subject to prohibitions on use of funds contained in (i) paragraphs (1) through (3) of section 104(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b(f)(1)–(3)), a United States statute, which prohibitions shall apply to the same extent and in the same manner as such prohibitions apply to funds made available to carry out Part I of such Act; or (ii) any provision of law comparable to the eleventh and fourteenth provisos under the heading ''Child Survival and Health Programs Fund'' of division E of Public Law 108–7 (117 Stat. 162), a United States statute.

(b) United States Job Loss or Displacement of Production. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production, including:

(i) Providing financial incentives to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(ii) Supporting investment promotion missions or other travel to the United States with the intention of inducing United States firms to relocate a substantial number of United States jobs or a substantial amount of production outside the United States;

(iii) Conducting feasibility studies, research services, studies, travel to or from the United States, or providing insurance or technical and management assistance, with the intention of inducing United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(iv) Advertising in the United States to encourage United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(v) Training workers for firms that intend to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(vi) Supporting a United States office of an organization that offers incentives for United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States; or

(vii) Providing general budget support for an organization that engages in any activity prohibited above.

(c) Military Assistance and Training. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support the purchase or use of goods or services for military purposes, including military training, or to provide any assistance to the military, police, militia, national guard or other quasi-military organization or unit.

(d) Prohibition of Assistance Relating to Environmental, Health or Safety Hazards. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health, or safety hazard. Unless MCC and the Government agree otherwise in writing, the Government shall ensure that activities undertaken, funded, or otherwise supported in whole or in part (directly or indirectly) by MCC Funding comply with environmental guidelines delivered by MCC to the Government or posted by MCC on its Web site or otherwise publicly made available, as

such guidelines may be amended from time to time (the ''*Environmental Guidelines*''), including any definition of ''likely to cause a significant environmental, health, or safety hazard'' as may be set forth in such Environmental Guidelines.

(e) Taxation.

(i) Taxes, Budgetary Earmarking. As required by applicable United States law and in furtherance of the applicable requirement in the General Agreement for Economic, Technical and Related Assistance between the Government of the United States of America and the Government of Nicaragua, dated May 14, 1962, as amended from time to time (the ''*Bilateral Agreement*'') that assistance shall be exempt from taxes, the Government shall ensure that the Program, any Program Assets, MCC Funding and Accrued Interest shall be free from any and all taxes, budgetary earmarking, withholding, charges, allocations, and other obligations and contributions imposed under the laws currently or hereafter in effect in Nicaragua during the Compact Term. This exemption shall (A) be implemented in an administratively efficient manner consistent with the principles that MCC Funding will be used only to fund the Program and to achieve the Objectives and to avoid, where possible, double taxation of Providers, irrespective of their nationality and place of residence and (B) apply to any use of any Program Asset, MCC Funding and Accrued Interest, including any Exempt Uses, and to any work performed under or activities undertaken in furtherance of this Compact by any person or entity (including contractors and grantees) funded by MCC Funding, and shall apply to all taxes, tariffs, duties, and other levies (each, a ''*Tax*'' and collectively, ''*Taxes*''), including, except as otherwise provided herein:

(1) To the extent attributable to MCC Funding, income taxes and other taxes on profit or businesses imposed on organizations or entities, other than nationals of Nicaragua, receiving MCC Funding, including taxes on the acquisition, ownership, rental, disposition or other use of real or personal property, taxes on investment or deposit requirements and currency controls in Nicaragua, or any other tax, duty, charge or fee of whatever nature, except fees for specific services rendered; for purposes of this Section 2.3(e)(i)(1), the term ''national'' refers to organizations established under the laws currently or hereafter in effect in Nicaragua, other than MCA-Nicaragua or any other entity established solely for purposes of managing or overseeing the implementation of the Program or any wholly-owned subsidiaries, divisions, or Affiliates of entities not registered or established under the laws currently or hereafter in effect in Nicaragua;

(2) Customs duties, tariffs, import and export taxes, or other levies on the importation, use and re-exportation of goods, services or the personal belongings and effects, including personally-owned automobiles, for Program use or the personal use of individuals who are neither citizens nor permanent residents of Nicaragua and who are present in Nicaragua for purposes of carrying out the Program or their family members, including all charges based on the value of such imported goods;

(3) Taxes on the income or personal property of all individuals who are neither citizens nor permanent residents of Nicaragua, including income and social security taxes of all types and all taxes on the personal property owned by such individuals, to the extent such income or property are attributable to MCC Funding, and such individuals shall be accorded any special status required under Nicaraguan law to obtain the exemption to the taxes contemplated in this Section 2.3(e)(i)(3); and

(4) Taxes or duties levied on the purchase of goods or services funded by MCC Funding, including sales taxes, tourism taxes, value-added taxes (VAT), or other similar charges.

(ii) This Section 2.3(e) shall apply, but is not limited to (A) any transaction, service, activity, contract, grant or other implementing agreement funded in whole or in part by MCC Funding; (B) any supplies, equipment, materials, property or other goods (referred to herein collectively as ''goods'') or funds introduced into, acquired in, used or disposed of in, or imported into or exported from, Nicaragua by MCC, or by any person or entity (including contractors and grantees) as part of, or in conjunction with, MCC Funding or the Program; (C) any contractor, grantee, or other organization carrying out activities funded in whole or in part by MCC Funding; and (D) any employee of such organizations (the uses set forth in clauses (A) through (D) are collectively referred to herein as ''*Exempt Uses*'').

(iii) If a Tax has been levied and paid contrary to the requirements of this Section 2.3(e), whether inadvertently, due to the impracticality of implementation of this provision with respect to certain types or amounts of taxes, or otherwise, the Government shall refund promptly to MCC to an account designated by MCC the amount of such Tax in the currency of Nicaragua, within thirty (30) days (or such other period as may be agreed in writing by the Parties) after the Government is notified of such levy and tax payment; *provided, however,* the Government shall apply national funds to satisfy its obligations under this paragraph and no MCC Funding, Accrued Interest, or any assets, goods, or property (real, tangible, or intangible) purchased or financed in whole or in part by MCC Funding (''*Program Assets*'') may be applied by the Government in satisfaction of its obligations under this paragraph.

(iv) The Parties shall memorialize in a mutually acceptable Implementation Letter or Supplemental Agreement or other suitable document the mechanisms for implementing this Section 2.3(e), including (A) a formula for determining refunds for Taxes paid, the amount of which is not susceptible to precise determination, (B) a mechanism for ensuring the tax-free importation, use, and re-exportation of goods, services, or the personal belongings of individuals (including all Providers) described in paragraph (i)(2) of this Section 2.3(e), and (C) any other appropriate Government action to facilitate the administration of this Section 2.3(e).

(f) Alteration. The Government shall ensure that no MCC Funding, Accrued Interest, or Program Assets shall be subject to any impoundment, rescission, sequestration or any provision of law now or hereafter in effect in Nicaragua that would have the effect of requiring or allowing any impoundment, rescission or sequestration of any MCC Funding, Accrued Interest, or Program Asset.

(g) Liens or Encumbrances. The Government shall ensure that no MCC Funding, Accrued Interest, or Program Assets shall be subject to any lien, attachment, enforcement of judgment, pledge, or encumbrance of any kind (each a ''*Lien*'') by any person or entity, including by any government entity, except with the prior approval of MCC in accordance with Section 3(c) of Annex I. In the event of the imposition of any Lien not so approved, the Government shall promptly seek the release of such Lien and shall pay any amounts owed to obtain such release; *provided, however,* the Government shall apply national funds to satisfy its obligations under this Section 2.3(g) and no MCC Funding, Accrued Interest, or Program Assets may be applied by the Government in satisfaction of its obligations under this Section 2.3(g).

(h) Other Limitations. The Government shall ensure that the use or treatment of MCC Funding, Accrued Interest, and Program Assets shall be

subject to and in conformity with such other limitations (i) as required by the applicable law of the United States of America now or hereafter in effect during the Compact Term, (ii) as advisable under or required by applicable United States Government policies now or hereafter in effect during the Compact Term, or (iii) to which the Parties may otherwise agree in writing.

(i) Utilization of Goods, Services and Works. The Government shall ensure that any Program Assets, services, facilities or works funded in whole or in part (directly or indirectly) by MCC Funding, unless otherwise agreed by the Parties in writing, shall be used solely in furtherance of this Compact.

(j) Notification of Applicable Laws and Policies. MCC shall notify the Government of any applicable United States law or policy affecting the use or treatment of MCC Funding, whether or not specifically identified in this Section 2.3, and shall provide to the Government a copy of the text of any such applicable law and a written explanation of any such applicable policy.

Section 2.4 Incorporation; Notice; Clarification

(a) The Government shall include, or ensure the inclusion of, all of the requirements set forth in Section 2.3 in all Supplemental Agreements to which MCC is not a party and shall use its best efforts to ensure that no such Supplemental Agreement is implemented in violation of the prohibitions set forth in Section 2.3.

(b) The Government shall ensure notification of all of the requirements set forth in Section 2.3 to any Provider and all relevant officers, directors, employees, agents, representatives, Affiliates, contractors, sub-contractors, grantees, and sub-grantees of the Government or any Provider.

(c) In the event the Government or any Provider requires clarification from MCC as to whether an activity contemplated to be undertaken in furtherance of this Compact violates or may violate any provision of Section 2.3, the Government shall notify, or ensure that such Provider notifies, MCC in writing and provide in such notification a detailed description of the activity in question. In such event, the Government shall not proceed, and shall use its best efforts to ensure that no relevant Provider proceeds, with such activity, and the Government shall ensure that no Re-Disbursements shall be made for such activity, until MCC advises the Government or such Provider in writing that the activity is permissible.

Section 2.5 Refunds; Violation

(a) Notwithstanding the availability to MCC, or exercise by MCC of, any other remedies, including under international law, this Compact, or any Supplemental Agreement:

(i) If any amount of MCC Funding or Accrued Interest, or any Program Asset, is used for any purpose prohibited under this Article II or otherwise in violation of any of the terms and conditions of this Compact, any guidance in any Implementation Letter, or any Supplemental Agreement between the Parties, MCC may, upon written notice, require the Government to repay promptly to MCC to an account designated by MCC or to others as MCC may direct the amount of such misused MCC Funding or Accrued Interest, or the cash equivalent of the value of any misused Program Asset, in United States Dollars, plus any interest that accrued or would have accrued thereon, within fifteen (15) days after the Government is notified (or such other period as may be agreed in writing by the Parties), whether by MCC or otherwise, of such prohibited use; *provided, however,* the Government shall apply national funds to satisfy its obligations under this Section 2.5(a)(i) and no MCC Funding, Accrued Interest, or Program Assets may be applied by the Government in satisfaction of its obligations under this Section 2.5(a)(i); and

(ii) If all or any portion of this Compact is terminated or suspended and upon the expiration of this Compact, the Government shall, subject to the requirements of Sections 5.4(e) and 5.4(f), refund, or ensure the refund, to MCC the amount of any MCC Funding, plus any Accrued Interest, promptly, but in no event later than thirty (30) days after the Government receives MCC's request for such refund (or such other period as may be agreed in writing by the Parties); *provided,* that if this Compact is terminated or suspended in part, MCC may request a refund for only the amount of MCC Funding, plus any Accrued Interest, then allocated to the terminated or suspended portion; *provided, further,* that any refund of MCC Funding or Accrued Interest shall be to such account(s) as designated by MCC.

(b) Notwithstanding any other provision in this Compact or any other agreement to the contrary, MCC's right under this Section 2.5 for a refund shall continue during the Compact Term and for a period of (i) five (5) years thereafter or (ii) one (1) year after MCC receives actual knowledge of such violation, whichever is later.

(c) If MCC determines that any activity or failure to act violates, or may violate, any Section in this Article II, MCC may refuse any further MCC Disbursements for or conditioned upon such activity, and may take any action to prevent any Re-Disbursement related to such activity.

Article III. Implementation

Section 3.1 Implementation Framework

This Compact shall be implemented by the Parties in accordance with this Article III and as further specified in the Annexes and in relevant Supplemental Agreements.

Section 3.2 Government Responsibilities

(a) The Government shall have principal responsibility for oversight and management of the implementation of the Program (i) in accordance with the terms and conditions specified in this Compact and relevant Supplemental Agreements, (ii) in accordance with all applicable laws then in effect in Nicaragua, and (iii) in a timely and cost-effective manner and in conformity with sound technical, financial and management practices (collectively, the ''*Government Responsibilities*''). Unless otherwise expressly provided, any reference to the Government Responsibilities or any other responsibilities or obligations of the Government herein shall be deemed to apply to any Government Affiliate and any of their respective directors, officers, employees, contractors, sub-contractors, grantees, sub-grantees, agents or representatives.

(b) The Government shall ensure that no person or entity shall participate in the selection, award, administration, or oversight of a contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding, in which (i) the entity, the person, members of the person's immediate family (defined as relationships within the fourth degree of consanguinity or affinity) or household or his or her business partners, or organizations controlled by or substantially involving such person or entity, has or have a direct or indirect financial or other interest or (ii) the person or entity is negotiating or has any arrangement concerning prospective employment, unless such person or entity has first disclosed in writing to the Government the conflict of interest and, following such disclosure, the Parties agree in writing to proceed

notwithstanding such conflict. The Government shall ensure that no person or entity involved in the selection, award, administration, oversight or implementation of any contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding shall solicit or accept from, or offer to a third party, or seek or be promised directly or indirectly for itself or for another person or entity, any gift, gratuity, favor or benefit, other than items of *de minimis* value and otherwise consistent with such guidance as MCC may provide from time to time.

(c) The Government shall not designate any person or entity, including any Government Affiliate, to implement, in whole or in part, this Compact or any Supplemental Agreement between the Parties (including any Government Responsibilities or any other responsibilities or obligations of the Government under this Compact or any Supplemental Agreement between the Parties), or to exercise any rights of the Government under this Compact or any Supplemental Agreement between the Parties, except as expressly provided herein or with the prior written consent of MCC; *provided, however,* the Government shall designate MCA-Nicaragua and may, with the prior written consent of MCC, designate such other mutually acceptable persons or entities, to implement some or all of the Government Responsibilities or any other responsibilities or obligations of the Government or to exercise any rights of the Government under this Compact or any Supplemental Agreement between the Parties (referred to herein collectively as ''*Designated Rights and Responsibilities*''), in accordance with the terms and conditions set forth in this Compact or such Supplemental Agreement (each, a ''*Permitted Designee*''). Notwithstanding any provision herein or any other agreement to the contrary, no such designation shall relieve the Government of such Designated Rights and Responsibilities, for which the Government shall retain ultimate responsibility. In the event that the Government designates any person or entity, including any Government Affiliate, to implement any portion of the Government Responsibilities or other responsibilities or obligations of the Government or to exercise any rights of the Government under this Compact or any Supplemental Agreement between the Parties in accordance with this Section 3.2(c), then the Government shall ensure that such person or entity (i) performs such Designated Rights and Responsibilities in the same manner and to the full extent to which the Government is obligated to perform such Designated Rights and Responsibilities, (ii) does not assign, delegate, or contract (or otherwise transfer) any of such Designated Rights and Responsibilities to any other person or entity and (iii) certifies to MCC in writing that it will so perform such Designated Rights and Responsibilities in accordance with this Compact and any other relevant Supplemental Agreement and will not assign, delegate, or contract (or otherwise transfer) any of such Designated Rights and Responsibilities to any person or entity without the prior written consent of MCC.

(d) The Government shall, upon a request from MCC, execute, or ensure the execution of, an assignment to MCC of any cause of action which may accrue to the benefit of the Government, a Government Affiliate, or any Permitted Designee, including MCA-Nicaragua, in connection with or arising out of any activities funded in whole or in part (directly or indirectly) by MCC Funding.

(e) The Government shall ensure that (i) no decision of MCA-Nicaragua is modified, supplemented, unduly influenced or rescinded by any governmental authority, and (ii) the authority of MCA-Nicaragua shall not be expanded, restricted or otherwise modified, except in accordance with this Compact, applicable law, the Governance Agreement, the Governing Documents or any other Supplemental Agreement between the Parties.

(f) The Government shall ensure that all persons and individuals that enter into agreements to provide goods, services or works under the Program or in furtherance of this Compact shall do so in accordance with the Procurement Guidelines and shall obtain all necessary immigration, business and other permits, licenses, consents, and approvals to enable them and their personnel to fully perform under such agreements.

Section 3.3 Government Deliveries

The Government shall proceed, and cause others to proceed, in a timely manner to deliver to MCC all reports, documents or other deliveries required to be delivered by the Government under this Compact or any Supplemental Agreement between the Parties, in form and substance as set forth in this Compact or in any such Supplemental Agreement.

Section 3.4 Government Assurances

The Government hereby provides the following assurances to MCC that as of the date this Compact is signed:

(a) The information contained in the Proposal and any agreement, report, statement, communication, document or otherwise delivered or otherwise communicated to MCC by or on behalf of the Government on or after the date of the submission of the Proposal (i) are true, accurate and complete in all material respects and (ii) do not omit any fact known to the Government that if disclosed would (A) alter in any material respect the information delivered, (B) likely have a material adverse effect on the Government's ability to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of this Compact, or (C) have likely adversely affected MCC's determination to enter into this Compact or any Supplemental Agreement between the Parties.

(b) The MCC Funding made available hereunder is not part of and is in addition to the normal and expected resources that the Government usually receives or budgets for the activities contemplated herein from external or domestic sources.

(c) This Compact does not conflict and will not conflict with any international agreement or obligation to which the Government is a party or by which it is bound.

(d) No payments have been (i) received by any official of the Government or any other government body in connection with the procurement of goods or services to be undertaken or funded in whole or in part (directly or indirectly) by MCC Funding, except fees, taxes, or similar payments legally established in Nicaragua (subject to Section 2.3(e)) and consistent with applicable Nicaraguan law) or (ii) made to any third party, in connection with or in furtherance of this Compact, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a *et seq.*).

Section 3.5 Implementation Letters; Supplemental Agreements

(a) MCC may, from time to time, issue one or more letters to furnish additional information or guidance to assist the Government in the implementation of this Compact (each, an ''*Implementation Letter*''). The Government shall apply such guidance in implementing this Compact.

(b) The details of any funding, implementing and other arrangements in furtherance of this Compact may be memorialized in one or more agreements between (i) the Government

(or any Government Affiliate or Permitted Designee) and MCC, (ii) MCC and/or the Government (or any Government Affiliate or Permitted Designee) and any third party, including any of the Providers or Permitted Designees, or (iii) any third parties where neither MCC nor the Government is a party, before, on or after the Entry into Force (each, a ''*Supplemental Agreement*''). The Government shall deliver, or cause to be delivered, to MCC within five (5) days of its execution a copy of any Supplemental Agreement to which MCC is not a party.

Section 3.6 Procurement; Awards of Assistance

(a) MCC Funding shall not be subject to applicable Nicaraguan procurement guidelines, including those established in Law 323, *Ley de Contrataciones del Estado.* The Government shall ensure that the procurement of all goods, services and works by the Government, MCA-Nicaragua or any other Provider in furtherance of this Compact shall be consistent with the procurement guidelines (the ''*Procurement Guidelines*'') reflected in a Supplemental Agreement between the Parties (the ''*Procurement Agreement*''), which Procurement Guidelines shall include the following requirements:

(i) Open, fair and competitive procedures are used in a transparent manner to solicit, award and administer contracts, grants, and other agreements and to procure goods, services and works;

(ii) Solicitations for goods, services, and works shall be based upon a clear and accurate description of the goods, services or works to be acquired;

(iii) Contracts shall be awarded only to qualified and capable contractors that have the capability and willingness to perform the contracts in accordance with the terms and conditions of the applicable contracts and on a cost effective and timely basis; and

(iv) No more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices, shall be paid to procure goods, services, and works.

(b) The Government shall maintain, and shall use its best efforts to ensure that all Providers maintain, records regarding the receipt and use of goods and services acquired in furtherance of this Compact, the nature and extent of solicitations of prospective suppliers of goods and services acquired in furtherance of this Compact, and the basis of award of contracts, grants and other agreements in furtherance of this Compact, for a period of ten years, or such other period as the Parties may otherwise agree in writing.

(c) The Government shall use its best efforts to ensure that information, including solicitations, regarding procurement, grant and other agreement-related actions funded (or to be funded) in whole or in part (directly or indirectly) by MCC Funding shall be made publicly available in the manner outlined in the Procurement Guidelines or in any other manner agreed upon by the Parties in writing.

(d) No goods, services or works may be funded in whole or in part (directly or indirectly) by MCC Funding which are procured pursuant to orders or contracts firmly placed or entered into prior to the Entry into Force, except as the Parties may otherwise agree in writing.

(e) The Government shall ensure that MCA-Nicaragua and any other Permitted Designee follows, and uses its best efforts to ensure that all Providers follow, the Procurement Guidelines in procuring (including soliciting) goods, services and works and in awarding and administering contracts, grants and other agreements in furtherance of this Compact, and shall furnish to MCC evidence of the adoption of the Procurement Guidelines by MCA-Nicaragua no later than the time specified in the Disbursement Agreement.

(f) The Government shall include, or ensure the inclusion of, the requirements of this Section 3.6 into all Supplemental Agreements between the Government, any Government Affiliate, MCA-Nicaragua or other Permitted Designee or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents, on the one hand, and a Provider, on the other hand.

Section 3.7 Policy Performance; Policy Reforms

In addition to the specific policy and legal reform commitments identified in Annex I and the Schedules thereto, the Government shall seek to maintain, and use its best efforts to improve, its level of performance under the policy criteria identified in Section 607 of the Millennium Challenge Act of 2003, as amended (the ''*Act*''), and the MCA selection criteria and methodology published by MCC pursuant to Section 607 of the Act from time to time (''*MCA Eligibility Criteria*'').

Section 3.8 Records and Information; Access; Audits; Reviews

(a) Reports and Information. The Government shall furnish to MCC, and shall use its best efforts to ensure that all Providers and any other third party receiving MCC Funding, as appropriate, furnish to the Government (and the Government shall provide to MCC), any records and other information required to be maintained under this Section 3.8 and such other information, documents and reports as may be necessary or appropriate for the Government to effectively carry out its obligations under this Compact, including under Section 3.12.

(b) Government Books and Records. The Government shall maintain, and shall use its best efforts to ensure that all Providers maintain, accounting books, records, documents and other evidence relating to this Compact adequate to show, to the satisfaction of MCC, without limitation, the use of all MCC Funding, including all costs incurred by the Government and the Providers in furtherance of this Compact, the receipt and use of goods and services acquired in furtherance of this Compact by the Government and the Providers, agreed-upon cost sharing requirements, the nature and extent of solicitations of prospective suppliers of goods and services acquired by the Government and the Providers in furtherance of this Compact, the basis of award of Government and other contracts and orders in furtherance of this Compact, the overall progress of the implementation of the Program and any other documents required by this Compact or any Supplemental Agreement between the Parties or reasonably requested by MCC upon reasonable notice (*''Compact Records''*). The Government shall maintain, and shall use its best efforts to ensure that all Covered Providers maintain, Compact Records in accordance with generally accepted accounting principles prevailing in the United States, or at the Government's option and with the prior written approval by MCC, other accounting principles, such as those (i) prescribed by the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) or (ii) then prevailing in Nicaragua. Compact Records shall be maintained for at least five (5) years after the end of the Compact Term or for such longer period, if any, required to resolve any litigation, claims or audit findings or any statutory requirements.

(c) Access. The Government shall, at all reasonable times, permit, or cause to be permitted, authorized representatives of MCC, the Inspector General, the United States Government Accountability Office, any auditor responsible for an audit contemplated

herein or otherwise conducted in furtherance of this Compact, and any agents or representatives engaged by MCC or a Permitted Designee to conduct any assessment, review or evaluation of the Program, the opportunity to audit, review, evaluate or inspect activities funded, in whole or in part (directly or indirectly) by MCC Funding or undertaken in connection with the Program, the utilization of goods and services purchased or funded in whole or in part (directly or indirectly) by MCC Funding, and Compact Records, including of the Government or any Provider, relating to activities funded or undertaken in furtherance of, or otherwise relating to, this Compact, and shall use its best efforts to ensure access by MCC, the Inspector General, the United States Government Accountability Office or relevant auditor, reviewer or evaluator or their respective representatives or agents to all relevant directors, officers, employees, Affiliates, contractors, representatives and agents of the Government or any Provider.

(d) Audits.

(i) Government Audits. The Government shall, on at least an annual basis and as the Parties may otherwise agree in writing, conduct, or cause to be conducted, financial audits of all MCC Disbursements and Re-Disbursements during the year since the Entry into Force or since the prior anniversary of the Entry into Force in accordance with the following terms, except as the Parties may otherwise agree in writing. As requested by MCC in writing, the Government shall use, or cause to be used, an auditor named on the approved list of auditors in accordance with the *Guidelines for Financial Audits Contracted by Foreign Recipients* (*''Audit Guidelines''*) issued by the Inspector General of the United States Agency for International Development (the *''Inspector General''*), and as approved by MCC, to conduct such annual audits. Such audits shall be performed in accordance with such Guidelines and be subject to quality assurance oversight by the Inspector General in accordance with such Guidelines. An audit shall be completed and delivered to MCC no later than 90 days after the first period to be audited and no later than 90 days after each anniversary of the Entry into Force thereafter, or such other period as the Parties may otherwise agree in writing.

(ii) Audits of U.S. Entities. The Government shall ensure that Supplemental Agreements between the Government or any Provider, on the one hand, and a United States non-profit organization, on the other hand, state that the United States organization is subject to the applicable audit requirements contained in OMB Circular A–133, notwithstanding any other provision of this Compact to the contrary. The Government shall ensure that Supplemental Agreements between the Government or any Provider, on the one hand, and a United States for-profit Covered Provider, on the other hand, state that the United States organization is subject to audit by the cognizant United States Government agency, unless the Government and MCC agree otherwise in writing.

(iii) Audit Plan. The Government shall submit, or cause to be submitted, to MCC, no later than 20 days prior to the date of its adoption, a plan, in accordance with the Audit Guidelines, for the audit of the expenditures of any Covered Providers, which audit plan, in form and substance as approved by MCC, the Government shall adopt, or cause to be adopted, no later than sixty (60) days prior to the end of the first period to be audited (such plan, the *''Audit Plan''*).

(iv) Covered Provider. A *''Covered Provider''* is (A) a non-United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) USD $300,000 or more of MCC Funding in any MCA-Nicaragua fiscal year or any other non-United States person or entity that receives (directly or indirectly) USD $300,000 or more of MCC Funding from any Provider in such fiscal year or (B) any United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) USD $500,000 or more of MCC Funding in any MCA-Nicaragua fiscal year or any other United States person or entity that receives (directly or indirectly) USD $500,000 or more of MCC Funding from any Provider in such fiscal year.

(v) Corrective Actions. The Government shall use its best efforts to ensure that Covered Providers take, where necessary, appropriate and timely corrective actions in response to audits, consider whether a Covered Provider's audit necessitates adjustment of its own records, and require each such Covered Provider to permit independent auditors to have access to its records and financial statements as necessary.

(vi) Audit Reports. The Government shall furnish, or use its best efforts to cause to be furnished, to MCC an audit report in a form satisfactory to MCC for each audit required by this Section 3.8, other than audits arranged for by MCC, no later than 90 days after the end of the period under audit, or such other time as may be agreed by the Parties from time to time.

(vii) Other Providers. For Providers who receive MCC Funding under this Compact pursuant to direct contracts or agreements with MCC, MCC shall include appropriate audit requirements in such contracts or agreements and shall, on behalf of the Government, unless otherwise agreed by the Parties, conduct the follow-up activities with regard to the audit reports furnished pursuant to such requirements.

(viii) Audit by MCC. MCC retains the right to perform, or cause to be performed, the audits required under this Section 3.8 by utilizing MCC Funding or other resources available to MCC for this purpose, and to audit, conduct a financial review, or otherwise ensure accountability of any Provider or any other third party receiving MCC Funding, regardless of the requirements of this Section 3.8.

(e) Application to Providers. The Government shall include, or ensure the inclusion of, at a minimum, the requirements of:

(i) Paragraphs (a), (b), (c), (d)(ii), (d)(iii), (d)(v), (d)(vi), and (d)(viii) of this Section 3.8 into all Supplemental Agreements between the Government, any Government Affiliate, MCA-Nicaragua, any other Permitted Designee or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents (each, a *''Government Party''*), on the one hand, and a Covered Provider that is not a U.S. non-profit organization, on the other hand;

(ii) Paragraphs (a), (b), (c), (d)(ii), and (d)(viii) of this Section 3.8 into all Supplemental Agreements between a Government Party and a Provider that does not meet the definition of a Covered Provider; and

(iii) Paragraphs (a), (b), (c), (d)(ii), (d)(v) and (d)(viii) of this Section 3.8 into all Supplemental Agreements between a Government Party and a Covered Provider that is a U.S. non-profit organization.

(f) Reviews or Evaluations. The Government shall conduct, or cause to be conducted, such performance reviews, data quality reviews, environmental audits, or program evaluations during the Compact Term or otherwise and in accordance with the M&E Plan or as otherwise agreed in writing by the Parties.

(g) Cost of Audits, Reviews or Evaluations. MCC Funding may be used to fund the costs of any audits, reviews or evaluations required under this Compact, including as reflected on Exhibit A to Annex II, and in no event shall the Government be responsible for the costs of any such audits, reviews or

evaluations from financial sources other than MCC Funding.

Section 3.9 Insurance; Performance Guarantees; Indemnification Claims

(a) Insurance; Performance Guarantees. The Government shall, to MCC's satisfaction, insure or cause to be insured all Program Assets, and shall obtain, or cause to be obtained, such other appropriate insurance and other protections to cover against risks or liabilities associated with the operations of the Program, including by requiring Providers to obtain adequate insurance and post adequate performance bonds or other guarantees. MCA-Nicaragua shall be named as the insured party on any such insurance and the beneficiary of any other such guarantee, including performance bonds. MCC shall be named as an additional insured on any such insurance or other guarantee, to the extent permissible under applicable laws. The Government shall ensure that any proceeds from claims paid under such insurance or any other form of guarantee shall be used to replace or repair any loss of Program Assets or to pursue the procurement of the covered goods, services, works, or otherwise; *provided, however,* at MCC's election, such proceeds shall be deposited in a Permitted Account as designated by MCA-Nicaragua and acceptable to MCC or as otherwise directed by MCC.

(b) Indemnification Claims. To the extent MCA-Nicaragua is held liable under any indemnification or other similar provision of any agreement between MCA-Nicaragua, on the one hand, and any other Provider or other third party, on the other hand, the Government shall pay in full on behalf of MCA-Nicaragua any such obligation; *provided, however,* the Government shall apply national funds to satisfy its obligations under this Section 3.9 and no MCC Funding, Accrued Interest or Program Assets may be applied by the Government in satisfaction of its obligations under this Section 3.9. If the Government believes in good faith that such liability is not caused primarily by the negligence or misconduct of MCA-Nicaragua or another Government Party, the Government shall so notify MCC in writing within fifteen (15) business days after such belief is formed, which notice shall contain sufficient information for MCC to independently assess the accuracy of the Government's position. If, within fifteen (15) business days after receiving such notice, MCC determines, in its sole discretion, that such liability is not caused primarily by the negligence or misconduct of MCA-Nicaragua or another Government Party, MCC will authorize MCA-Nicaragua, in writing, to use MCC Funding to fund such liability or refund to the Government the payment of the same.

Section 3.10 Domestic Requirements

The Government shall proceed in a timely manner to seek any required approval of this Compact or similar domestic requirement, which process the Government shall initiate promptly after the conclusion of this Compact. The absence of any necessary approval of this Compact or noncompliance with any similar domestic requirement shall not prevent MCC from, or otherwise adversely affect MCC in, exercising of any of its rights under this Compact or any Supplemental Agreement. Notwithstanding anything to the contrary in this Compact, this Section 3.10 shall provisionally apply prior to the Entry into Force.

Section 3.11 No Conflict

The Government shall undertake not to enter into any agreement or other arrangement or take any action in conflict with this Compact or any Supplemental Agreement during the Compact Term.

Section 3.12 Reports

The Government shall provide, or cause to be provided, to MCC at least on each anniversary of the Entry into Force (or such other anniversary agreed by the Parties in writing), and otherwise within thirty (30) days of any written request by MCC, or as otherwise agreed in writing by the Parties, the following information:

(a) The name of each entity to which MCC Funding has been provided;

(b) The amount of MCC Funding provided to such entity;

(c) A description of the Program and each Project funded in furtherance of this Compact, including:

(i) A statement of whether the Program or any Project was solicited or unsolicited; and

(ii) A detailed description of the objectives and measures for results of the Program or Project;

(d) The progress made by Nicaragua toward achieving the Compact Goal and Objectives;

(e) A description of the extent to which MCC Funding has been effective in helping Nicaragua to achieve the Compact Goal and Objectives;

(f) A description of the coordination of MCC Funding with other United States foreign assistance and other related trade policies;

(g) A description of the coordination of MCC Funding with assistance provided by other donor countries;

(h) Any report, document or filing that the Government, any Government Affiliate or any Permitted Designee submits to any government body in connection with this Compact;

(i) Any report or document required to be delivered to MCC under the Environmental Guidelines, any audit plan, or any component of the Implementation Plan; and

(j) Any other report, document or information requested by MCC or required by this Compact or any Supplemental Agreement between the Parties.

Article IV. Conditions Precedent; Deliveries

Section 4.1 Conditions Prior to the Entry Into Force and Deliveries

As conditions precedent to the Entry into Force, the Parties shall satisfy the conditions set forth in this Section 4.1.

(a) The Government (or a mutually acceptable Government Affiliate) and MCC shall execute a Disbursement Agreement, which agreement shall be in full force and effect as of the Entry into Force.

(b) The Government (or a mutually acceptable Government Affiliate) and MCC shall execute one or more term sheets that set forth the material and principal terms and conditions of each of the Supplemental Agreements identified in Exhibit B attached hereto (the *"Supplemental Agreement Term Sheets"*).

(c) The Government (or a mutually acceptable Government Affiliate) and MCC shall execute a Procurement Agreement, which agreement shall be in full force and effect as of the Entry into Force.

(d) The Government shall deliver a certificate signed and dated by the Principal Representative of the Government that:

(i) Certifies the Government has completed all of its domestic requirements for this Compact to be fully enforceable under Nicaraguan law;

(ii) Attaches thereto, and certifies that such attachments are true, correct and complete copies of all decrees, legislation, regulations or other governmental documents relating to its domestic requirements for this Compact to enter into force, which MCC may post on its Web site or otherwise make publicly available; and

(iii) Attaches a written statement as to the incumbency and specimen signature of the Principal Representative and each Additional Representative of the Government executing any document under this Compact, such written statement to be signed by a duly authorized official of the Government other than the Principal Representative or any such Additional Representative.

(e) MCC shall deliver a certificate signed and dated by the Principal Representative of MCC that:

(i) Certifies that MCC has completed its domestic requirements for this Compact to enter into force; and

(ii) Attaches a written statement as to the incumbency and specimen signature of the Principal Representative and each Additional Representative of MCC executing any document under this Compact such written statement to be signed by a duly authorized official of the Government other than the Principal Representative or any such Additional Representative.

Section 4.2 Conditions Precedent to MCC Disbursements or Re-Disbursements

Prior to, and as condition precedent to, any MCC Disbursement or Re-Disbursement, the Government shall satisfy, or ensure the satisfaction of, all applicable conditions precedent in the Disbursement Agreement.

Article V. Final Clauses

Section 5.1 Communications

Unless otherwise expressly stated in this Compact or otherwise agreed in writing by the Parties, any notice, certificate, request, report, document or other communication required, permitted, or submitted by either Party to the other under this Compact shall be: (a) In writing; (b) in English; and (c) deemed duly given: (i) Upon personal delivery to the Party to be notified; (ii) when sent by confirmed facsimile or electronic mail, if sent during normal business hours of the recipient Party, if not, then on the next business day; or (iii) two (2) business days after deposit with an internationally recognized overnight courier, specifying next day delivery, with written verification of receipt to the Party to be notified at the address indicated below, or at such other address as such Party may designate:

To MCC:

Millennium Challenge Corporation, Attention: Vice President for Country Programs (with a copy to the Vice President and General Counsel), 875 Fifteenth Street, NW., Washington, DC 20005, United States of America, Facsimile: +1 (202) 521–3700, Telephone: +1 (202) 521–3600, e-mail: *VPCountryRelations@mcc.gov* (Vice President for Country Programs); *VPGeneralCounsel@mcc.gov* (Vice President and General Counsel)

To the Government:

Secretary of Coordination and Strategy of the Presidency, Casa Presidencial, Managua, Nicaragua, C.A.

Notwithstanding the foregoing, any audit report delivered pursuant to Section 3.8, if delivered by facsimile or electronic mail, shall be followed by an original in overnight express mail. This Section 5.1 shall not apply to the exchange of letters contemplated in Section 1.3 or any amendments under Section 5.3.

Section 5.2 Representatives

Unless otherwise agreed in writing by the Parties, for all purposes relevant to this Compact, the Government shall be represented by the individual holding the position of, or acting as, the Secretary of the Presidency of Nicaragua, and MCC shall be represented by the individual holding the position of, or acting as, Vice President for Country Relations (each, a *''Principal Representative''*), each of whom, by written notice to the other Party, may designate one or more additional representatives (each, an *''Additional Representative''*) for all purposes other than signing amendments to this Compact. The names of the Principal Representative and any Additional Representative of each of the Parties shall be provided, with specimen signatures, to the other Party, and the Parties may accept as duly authorized any instrument signed by such representatives relating to the implementation of this Compact, until receipt of written notice of revocation of their authority. A Party may change its Principal Representative to a new representative of equivalent or higher rank upon written notice to the other Party, which notice shall include the specimen signature of the new Principal Representative.

Section 5.3 Amendments

The Parties may amend this Compact only by a written agreement signed by the Principal Representatives of the Parties.

Section 5.4 Termination; Suspension

(a) Subject to Section 2.5 and paragraphs (e) through (h) of this Section 5.4, either Party may terminate this Compact in its entirety by giving the other Party thirty (30) days' written notice.

(b) Notwithstanding any other provision of this Compact, including Section 2.1, or any Supplemental Agreement between the Parties, MCC may suspend or terminate this Compact or MCC Funding, in whole or in part, and any obligation or sub-obligation related thereto, upon giving the Government written notice, if MCC determines, in its sole discretion, that:

(i) Any use or proposed use of MCC Funding or Program Assets or continued implementation of the Compact would be in violation of applicable law or U.S. Government policy, whether now or hereafter in effect;

(ii) The Government, any Provider, or any other third party receiving MCC Funding or using Program Assets is engaged in activities that are contrary to the national security interests of the United States;

(iii) The Government or any Permitted Designee has committed an act or omission or an event has occurred that would render Nicaragua ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), by reason of the application of any provision of the Foreign Assistance Act of 1961 or any other provision of law;

(iv) The Government or any Permitted Designee has engaged in a pattern of actions or omissions inconsistent with the MCA Eligibility Criteria, or there has occurred a significant decline in the performance of Nicaragua on one or more of the eligibility indicators contained therein;

(v) The Government or any Provider has materially breached one or more of its assurances or any other covenants, obligations or responsibilities under this Compact or any Supplemental Agreement;

(vi) An audit, review, report or any other document or other evidence reveals that actual expenditures for the Program or any Project or Project Activity were greater than the projected expenditure for such activities identified in the applicable Detailed Financial Plan or are projected to be greater than projected expenditures for such activities;

(vii) If the Government (A) materially reallocates or reduces the allocation in its national budget or any other Government budget of the normal and expected resources that the Government would have otherwise received or budgeted, from external or domestic sources, for the activities contemplated herein, (B) fails to contribute or provide the amount, level, type and quality of resources required to effectively carry out the Government Responsibilities or any other responsibilities or obligations of the Government under or in furtherance of this Compact, or (C) fails to pay any of its obligations as required under this Compact or any Supplemental Agreement, including such obligations which shall be paid solely out of national funds;

(viii) If the Government, any Provider, or any other third party receiving MCC

Funding or using Program Assets, or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantee, sub-grantee, representatives or agents, is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking;

(ix) Any MCC Funding or Program Assets are applied (directly or indirectly) to the provision of resources and support to, individuals and organizations associated with terrorism, sex trafficking or prostitution;

(x) An event or condition of any character has occurred, including any enactment or change of law, that: (A) Materially and adversely affects, or is likely to materially and adversely affect, the ability of the Government, MCA-Nicaragua or any other party to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of this Compact or any Supplemental Agreement or to perform its obligations under or in furtherance of this Compact or any Supplemental Agreement or to exercise its rights thereunder; (B) makes it improbable that the Objectives will be achieved during the Compact Term; (C) materially and adversely affects the Program, any Program Asset, or any Permitted Account; (D) constitutes misconduct injurious to MCC, or constitutes a fraud or a felony, by the Government, any Government Affiliate, MCA-Nicaragua or any other Permitted Designee, any other Provider, or any officer, director, employee, agent, representative, Affiliate, contractor, grantee, subcontractor or sub-grantee of any of the foregoing; or (E) materially contradicts, violates or otherwise conflicts with any provision in this Compact or any Supplemental Agreement;

(xi) The Government, any Government Affiliate, MCA-Nicaragua or any other Permitted Designee, or any Provider has taken any action or omission or engaged in any activity in violation of, or inconsistent with, the requirements of this Compact or any Supplemental Agreement to which the Government, any Government Affiliate, MCA-Nicaragua or any other Permitted Designee, or any Provider is a party; or

(xii) There has occurred a failure to meet a condition precedent or series of conditions precedent to, or any other requirements or conditions in connection with, an MCC Disbursement as set out in and in accordance with any Supplemental Agreement between the Parties.

(c) MCC may reinstate any suspended or terminated MCC Funding under this Compact or any Supplemental Agreement if MCC determines, in its sole discretion, that the Government or other relevant party has demonstrated a commitment to correcting each condition for which MCC Funding was suspended or terminated.

(d) The authority to suspend or terminate this Compact or any MCC Funding under this Section 5.4 includes the authority to suspend or terminate any obligations or sub-obligations relating to MCC Funding under any Supplemental Agreement without any liability to MCC whatsoever.

(e) All MCC Funding shall terminate upon expiration or termination of the Compact Term; *provided*, however, reasonable expenditures for goods, services, and works that are properly incurred under or in furtherance of this Compact before expiration or termination of the Compact Term may be paid from MCC Funding, provided that the request for such payment is properly submitted within sixty (60) days after such expiration or termination.

(f) Except for payments which the Parties are committed to make under noncancelable commitments entered into with third parties before such suspension or termination, the suspension or termination of this Compact or any Supplemental Agreement, in whole or in part, shall suspend, for the period of the suspension, or terminate, or ensure the suspension or termination of, as applicable, any obligation or sub-obligation of the Parties to provide financial or other resources under this Compact or any Supplemental Agreement, or to the suspended or terminated portion of this Compact or such Supplemental Agreement, as applicable. In the event of such suspension or termination, the Government shall use its best efforts to suspend or terminate, or ensure the suspension or termination of, as applicable, all such noncancelable commitments related to the suspended or terminated MCC Funding. Any portion of this Compact or any such Supplemental Agreement that is not suspended or terminated shall remain in full force and effect.

(g) Upon the full or partial suspension or termination of this Compact or any MCC Funding, MCC may, at its expense, direct that title to Program Assets be transferred to MCC if such Program Assets are in a deliverable state; *provided*, for any Program Asset(s) partially purchased or funded (directly or indirectly) by MCC Funding, the Government shall reimburse to a U.S. Government account designated by MCC the cash equivalent of the portion of the value of such Program Asset(s).

(h) Prior to the expiration of this Compact or upon the effective termination of this Compact, the Parties shall consult in good faith with a view to reaching an agreement in writing on (i) the post-Compact Term treatment of MCA-Nicaragua, (ii) the process for ensuring the refunds of MCC Disbursements that have not yet been released from a Permitted Account through a valid Re-Disbursement or otherwise committed in accordance with Section 5.4(e), or (iii) any other matter related to the winding up of the Program and this Compact.

Section 5.5 Privileges and Immunities; Bilateral Agreement

(a) MCC is an agency of the Government of the United States of America and its personnel assigned to Nicaragua will be notified pursuant to the Vienna Convention on Diplomatic Relations as members of the mission of the Embassy of the United States of America. The Government shall ensure that any personnel of MCC so notified, including individuals detailed to or contracted by MCC, and the members of the families of such personnel, while such personnel are performing duties in Nicaragua, shall enjoy the privileges and immunities that are enjoyed by a member of the United States Foreign Service, or the family of a member of the United States Foreign Service so notified, as appropriate, of comparable rank and salary of such personnel, if such personnel or the members of the families of such personnel are not a national of, or permanently resident in, Nicaragua.

(b) All MCC Funding shall be considered United States assistance furnished under the Bilateral Agreement.

Section 5.6 Attachments

Any annex, schedule, exhibit, table, appendix or other attachment expressly attached hereto (collectively, the ''*Attachments*'') is incorporated herein by reference and shall constitute an integral part of this Compact.

Section 5.7 Inconsistencies

(a) Conflicts or inconsistencies between any parts of this Compact shall be resolved by applying the following descending order of precedence:

(i) Articles I through V

(ii) Any Attachments

(b) In the event of any conflict or inconsistency between this Compact and any Supplemental Agreement

between the Parties, the terms of this Compact shall prevail. In the event of any conflict or inconsistency between any Supplemental Agreement between the Parties and any other Supplemental Agreement, the terms of the Supplemental Agreement between the Parties shall prevail. In the event of any conflict or inconsistency between Supplemental Agreements between any parties, the terms of a more recently executed Supplemental Agreement between such parties shall take precedence over a previously executed Supplemental Agreement between such parties. In the event of any inconsistency between a Supplemental Agreement between the Parties and any component of the Implementation Plan, the terms of the relevant Supplemental Agreement shall prevail.

Section 5.8 Indemnification

The Government shall indemnify and hold MCC and any MCC officer, director, employee, Affiliate, contractor, agent or representative (each of MCC and any such persons, an ''*MCC Indemnified Party*'') harmless from and against, and shall compensate, reimburse and pay such MCC Indemnified Party for, any liability or other damages which (a) are directly or indirectly suffered or incurred by such MCC Indemnified Party or to which any MCC Indemnified Party may otherwise become subject, regardless of whether or not such damages relate to any third-party claim, and (b) arise from or as a result of the negligence or willful misconduct of the Government, any Government Affiliate, MCA-Nicaragua or any other Permitted Designee, directly or indirectly connected with, any activities (including acts or omissions) undertaken in furtherance of this Compact; *provided, however*, the Government shall apply national funds to satisfy its obligations under this Section 5.8 and no MCC Funding, Accrued Interest, or Program Asset may be applied by the Government in satisfaction of its obligations under this Section 5.8.

Section 5.9 Headings

The Section and Subsection headings used in this Compact are included for convenience only and are not to be considered in construing or interpreting this Compact.

Section 5.10 Interpretation; Definitions

(a) Any reference to the term ''including'' in this Compact shall be deemed to mean ''including without limitation'' except as expressly provided otherwise.

(b) Any reference to activities undertaken ''in furtherance of this Compact'' or similar language shall include activities undertaken by the Government, any Government Affiliate, any Permitted Designee, any Provider or any other third party receiving MCC Funding involved in carrying out the purposes of this Compact or any Supplemental Agreement, including their respective officers, directors, employees, Affiliates, contractors, grantees, sub-grantees, sub-contractors, agents or representatives, whether pursuant to the terms of this Compact, any Supplemental Agreement or otherwise.

(c) References to ''day'' or ''days'' shall be calendar days unless provided otherwise.

(d) The term ''*U.S. Government*'' shall mean any branch, agency, bureau, government corporation, government chartered entity or other body of the Federal government of the United States.

(e) The term ''*Affiliate*'' of a party is a person or entity that controls, is controlled by, or is under the same control as the party in question, whether by ownership or by voting, financial or other power or means of influence.

(f) The term ''*Government Affiliate*'' is an Affiliate, ministry, bureau, department, agency, government corporation or any other entity chartered or established by the Government.

(g) The term ''*Provider*'' shall mean (i) MCA-Nicaragua, any Government Affiliate or any other Permitted Designee involved in any activities in furtherance of this Compact or (ii) any third party who receives at least USD $50,000 in the aggregate of MCC Funding (other than employees of MCA-Nicaragua) during the Compact Term or such other amount as the Parties may agree in writing, whether directly from MCC, indirectly through Re-Disbursements, or otherwise.

(h) References to any Affiliate or Government Affiliate herein shall include any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives, and agents.

(i) Any references to ''Supplemental Agreement between the Parties'' shall mean any agreement between MCC on the one hand, and the Government or any Government Affiliate or Permitted Designee on the other hand.

Section 5.11 Signatures

Other than a signature to this Compact or an amendment to this Compact pursuant to Section 5.3, a signature delivered by facsimile or electronic mail in accordance with Section 5.1 shall be deemed an original signature, and the Parties hereby waive any objection to such signature or to the validity of the underlying document, certificate, notice, instrument or agreement on the basis of the signature's legal effect, validity or enforceability solely because it is in facsimile or electronic form. Such signature shall be accepted by the receiving Party as an original signature and shall be binding on the Party delivering such signature.

Section 5.12 Designation

MCC may designate any Affiliate, agent, or representative to implement, in whole or in part, its obligations, and exercise any of its rights, under this Compact or any Supplemental Agreement between the Parties.

Section 5.13 Survival

Any Government Responsibilities, covenants, or obligations or other responsibilities to be performed by the Government after the Compact Term shall survive the termination or expiration of this Compact and expire in accordance with their respective terms. Notwithstanding the termination or expiration of this Compact, the following provisions shall remain in force: Sections 2.2, 2.3, 2.5, 3.2, 3.3, 3.4, 3.5, 3.8, 3.9 (for one year), 3.12, 5.1, 5.2, 5.4(d), 5.4(e) (for sixty days), 5.4(f), 5.4(g), 5.4(h), 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 5.12, this Section 5.13, 5.14, and 5.15.

Section 5.14 Consultation

Either Party may, at any time, request consultations relating to the interpretation or implementation of this Compact or any Supplemental Agreement between the Parties. Such consultations shall begin at the earliest possible date. The request for consultations shall designate a representative for the requesting Party with the authority to enter consultations and the other Party shall endeavor to designate a representative of equal or comparable rank. If such representatives are unable to resolve the matter within 20 days from the commencement of the consultations then each Party shall forward the consultation to the Principal Representative or such other representative of comparable or higher rank. The consultations shall last no longer than 45 days from date of commencement. If the matter is not resolved within such time period, either Party may terminate this Compact pursuant to Section 5.4(a). The Parties shall enter any such consultations guided by the principle of achieving the

Compact Goal in a timely and cost-effective manner.

Section 5.15 MCC Status

MCC is a United States government corporation acting on behalf of the United States Government in the implementation of this Compact. As such, MCC has no liability under this Compact, is immune from any action or proceeding arising under or relating to this Compact and the Government hereby waives and releases all claims related to any such liability. In matters arising under or relating to this Compact, MCC is not subject to the jurisdiction of the courts or other body of Nicaragua.

Section 5.16 Language

This Compact is prepared in English and in the event of any ambiguity or conflict between this official English version and any other version translated into any language for the convenience of the Parties, this official English version shall prevail.

Section 5.17 Publicity; Information and Marking

The Parties shall give appropriate publicity to this Compact as a program to which the United States, through MCC, has contributed, including by posting this Compact, and any amendments thereto, on the MCC Web site and the MCA-Nicaragua Web site, identifying Program activity sites, and marking Program Assets; *provided*, any announcement, press release or statement regarding MCC or the fact that MCC is funding the Program or any other publicity materials referencing MCC, including the publicity described in this Section 5.17, shall be subject to prior approval by MCC and shall be consistent with any instructions provided by MCC from time to time in relevant Implementation Letters. Upon the termination or expiration of this Compact, MCC may request the removal of, and the Government shall, upon such request, remove, or cause the removal of, any such markings and any references to MCC in any publicity materials or on the MCA-Nicaragua Web site.

In Witness Whereof, the undersigned duly authorized by their respective governments, have signed this Compact this 14th day of July, 2005 and this Compact shall enter into force in accordance with Section 1.3.

Done at Washington, DC, in the English language.

For the Millennium Challenge Corporation, on Behalf of the United States of America, Name: Paul V. Applegarth. Title: Chief Executive Officer.

For the Government of the Republic of Nicaragua.

For the Government of the Republic of Nicaragua, Name: Norman Jose Caldera Cardenal.

Title: Minister of Foreign Affairs.

Exhibit A—Compendium of Defined Terms

The following compendium of capitalized terms that are used herein is provided for the convenience of the reader. To the extent that there is a conflict or inconsistency between the definitions in this Exhibit A and the definitions elsewhere in the text of this Compact, the definition elsewhere in this Compact shall prevail over the definition in this Exhibit A.

Accrued Interest is any interest or other earnings on MCC Funding that accrues or are earned.

Act means the Millennium Challenge Act of 2003, as amended.

Activity Indicator is an Indicator of the M&E Plan that will measure the delivery of key goods and services in order to monitor the pace of Project Activity execution. A table of Activity Indicator definitions is set forth at Section 2(a)(iii) of Annex III.

Additional Representative is a representative as may be designated by a Principal Representative, by written notice, for all purposes other than signing amendments to this Compact.

Affiliate means the affiliate of a party, which is a person or entity that controls, is controlled by, or is under the same control as the party in question, whether by ownership or by voting, financial or other power or means of influence. References to Affiliate herein shall include any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives, and agents.

Atlantic Corridor is one of the main corridors of the International Network of Mesoamerican Highways that runs along the coast of the Atlantic Ocean.

Attachments are any annex, schedule, exhibit, table, appendix or other attachment expressly attached to this Compact.

Audit Guidelines means the ''Guidelines for Financial Audits Contracted by Foreign Recipients'' issued by the Inspector General of the United States Agency for International Development.

Audit Plan means a plan, in accordance with the Audit Guidelines, for the audit of the expenditures of any Covered Providers, which audit plan, in the form and substance as approved by MCC, the Government shall adopt, or cause to be adopted, no later than sixty (60) days prior to the end of the first period to be audited.

Auditor means the auditor(s) as described in, and engaged pursuant to, Section 3(h) of Annex I and as required by Section 3.8(d) of the Compact.

Auditor/Reviewer Agreement is an agreement between MCA-Nicaragua and each Auditor or Reviewer, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Auditor or Reviewer with respect to the audit, review or evaluation, including access rights, required form and content of the applicable content of the applicable audit, review or evaluation and other terms and conditions such as payment of the Auditor or Reviewer.

Bank(s) means any bank holding an account referenced in Section 4(d) of Annex I.

Bank Agreement means an agreement between MCA-Nicaragua and a Bank, satisfactory to MCC, that sets forth the signatory authority, access rights, anti-money laundering and anti-terrorist financing provisions, and other terms related to the Permitted Account.

Baseline means the value of each Indicator prior to undertaking any activity that affects the value of such Indicator.

Beneficiaries means the Nicaraguans who participate or are covered by the Program as identified in accordance with Annex I and further described in Section (2)(a) of Annex III.

Bilateral Agreement means the General Agreement for Economic, Technical and Related Assistance between the Government of the United States of America and the Government of Nicaragua, dated May 14, 1962, as amended from time to time.

Board means the independent board of directors of MCA-Nicaragua that oversees MCA-Nicaragua's responsibilities and obligations under this Compact (including any Designated Rights and Responsibilities) and further described in Section 3(d)(ii) of Annex I.

Chairman means the Chairman of the board of directors of MCA-Nicaragua.

Civil Board Members are the two representatives drawn from among the Civil Observers to serve as voting members on the Board.

Civil Observer(s) are representatives appointed by civil society organizations (as described in Section 3(d)(ii)(2)(B)(iii) of Annex I), which representatives cannot be a public official, to serve as Observers on the Board.

Compact means the Millennium Challenge Compact made between the United States of America, acting through the Millennium Challenge

Corporation, and the Government of the Republic of Nicaragua.

Compact Goal means advancing economic growth and poverty reduction in Nicaragua.

Compact Records shall have the meaning set forth in Section 3.8(b).

Compact Reports are any documents or reports delivered to MCC in satisfaction of the Government's reporting requirements under this Compact or any Supplemental Agreement between the Parties.

Compact Term means that this Compact shall remain in force for five (5) years from the Entry into Force, unless earlier terminated in accordance with Section 5.4 of this Compact.

Covered Provider means (i) A non-United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) USD $300,000 or more of MCC Funding in any MCA-Nicaragua fiscal year or any other non-United States person or entity that receives (directly or indirectly) USD $300,000 or more of MCC Funding from any Provider in such fiscal year or (ii) any United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) USD $500,000 or more of MCC Funding in any MCA-Nicaragua fiscal year or any other United States person or entity that receives (directly or indirectly) USD $500,000 or more of MCC Funding from any Provider in such fiscal year.

Designated Rights and Responsibilities shall have the meaning set forth in Section 3.2(c).

Detailed Financial Plan means the financial plans that specify, respectively, the annual and quarterly detailed budget and projected cash requirements for the Program and each Project (including monitoring, evaluation and administrative costs), projected both on a commitment and cash requirement basis.

Disbursement Agreement is a Supplemental Agreement that MCC, the Government (or a mutually acceptable Government Affiliate) and MCA-Nicaragua shall enter into that (i) further specifies the terms and conditions of any MCC Disbursements and Re-Disbursements, (ii) is in a form and substance mutually satisfactory to the Parties, and (iii) is signed by the Principal Representative of each Party (or in the case of the Government, the principal representative of the applicable Government Affiliate).

DR–CAFTA means The Dominican Republic-Central America-United States Free Trade Agreement.

Entry into Force means the entry into force of this Compact, which shall be on the date of the last letter in an exchange of letters between the Principal Representatives of each Party confirming that all conditions set forth in Section 4.1 have been satisfied by the Government and MCC.

Environmental Guidelines means the environmental guidelines delivered by MCC to the Government or posted by MCC on its Web site or otherwise publicly made available, as such guidelines may be amended from time to time.

ESI means Environmental and Social Impact.

Evaluation Component means the component of the M&E Plan that specifies a methodology, process and timeline for the evaluation of planned, ongoing, or completed Project Activities to determine their efficiency, effectiveness, impact and sustainability.

Exempt Uses means (i) any transaction, service, activity, contract, grant or other implementing agreement funded in whole or in part by MCC Funding; (ii) any supplies, equipment, materials, property or other goods (referred to collectively as ''goods'') or funds introduced into, acquired in, used or disposed of in, or imported into or exported from, Nicaragua by MCC, or by any person or entity (including contractors and grantees) as part of, or in conjunction with, MCC Funding or the Program; (iii) any contractor, grantee, or other organization carrying out activities funded in whole or in part by MCC Funding; and (iv) any employee of such organizations.

Expected Income Gains means the increase in income that accrues to a group of Beneficiaries as a result of one or more Project Activities over a period of time.

Final Evaluation shall have the meaning set forth in Section 3(a) of Annex III.

Financial Plan means collectively, the Multi-Year Financial Plan and each Detailed Financial Plan and each amendment, supplement or other change thereto.

Financial Plan Annex means Annex II of this Compact, which summarizes the Multi-Year Financial Plan for the Program.

Fiscal Accountability Plan shall have the meaning set forth in Section 4(c) of Annex I.

Fiscal Agent shall have the meaning set forth in Section 3(g) of Annex I.

Fiscal Agent Agreement is an agreement between MCA-Nicaragua and each Fiscal Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Fiscal Agent and other appropriate terms and conditions, such as payment of the Fiscal Agent.

FOMAV means Nicaraguan Road Maintenance Fund or Fondo de Mantenimiento.

General Director means the General Director of MCA-Nicaragua.

Goal Indicator means the Compact Goal Indicator of the M&E Plan that will measure the impact of the Program on the incomes of the Beneficiaries. A table of Goal Indicator definitions is set forth at Section 2(a)(i) of Annex III.

Governance Agreement means the governance agreement entered into by the Government and MCA-Nicaragua, in a form and substance satisfactory to MCC, on or before the time specified in the Disbursement Agreement and based on the principles found in Section 3(d)(i) to Annex I.

Governing Document means any decree, legislation, regulation, contractual arrangement or other document establishing or governing MCA-Nicaragua, including the Governance Agreement.

Government means the Government of the Republic of Nicaragua.

Government Affiliate is an Affiliate, ministry, bureau, department, agency, government corporation or any other entity chartered or established by the Government. References to Government Affiliate shall include any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives, and agents.

Government Board Member(s) are the government members identified in Section 3(d)(ii)(2)(A)(i) of Annex I serving as voting members on the Board, and any replacements thereof.

Government Observer(s) are the government representatives appointed by the ministries of (i) MAGFOR, (ii) MTI and (iii) MARENA to serve as Observers on the Board.

Government Party means the Government, any Government Affiliate, MCA-Nicaragua, any other Permitted Designee or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents.

Government Responsibilities means the Government shall have principal responsibility for oversight and management of the implementation of the Program (i) in accordance with the terms and conditions specified in this Compact and relevant Supplemental Agreements, (ii) in accordance with all applicable laws then in effect in Nicaragua, and (iii) in a timely and cost-effective manner and in conformity with sound technical, financial and management practices.

Grant Agreement means a separate Supplemental Agreement to be entered

into between MCC, the Government, and MCA-Nicaragua, wherein MCC shall grant to MCA-Nicaragua, an amount not to exceed one hundred seventy-five million United States Dollars (USD $175,000,000) during the Compact Term to enable the Government, through MCA-Nicaragua, to implement the Program and achieve the Objectives.

IDB means the Inter-American Development Bank.

Implementation Letter is a letter that may be issued by MCC from time to time to furnish additional information or guidance to assist the Government in the implementation of this Compact.

Implementation Plan is a detailed plan for the implementation of the Program and each Project, which will be memorialized in one or more documents and shall consist of: (i) A Financial Plan; (ii) Fiscal Accountability Plan; (iii) Procurement Plan; (iv) Program and Project Work Plans; and (v) M&E Plan.

Implementing Entity means a Government Affiliate, nongovernmental organization or other public- or private-sector entity or person to implement and carry out the Projects or any other activities to be carried out in furtherance of this Compact.

Implementing Entity Agreement is an agreement between MCA-Nicaragua (or the appropriate Outside Project Manager) and an Implementing Entity, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of such Implementing Entity and other appropriate terms and conditions, such as payment of the Implementing Entity.

Indicators means the quantitative, objective and reliable data that the M&E Plan will use to measure the results of the Program.

Inspector General means the Inspector General of the United States Agency for International Development.

León means the department of León in Nicaragua.

León-Chinandega means the departments of León and Chinandega in Nicaragua.

Lien means any lien, attachment, enforcement of judgment, pledge, or encumbrance of any kind.

Local Account is an interest-bearing local currency of Nicaragua Permitted Account at the Commercial Bank to which the Fiscal Agent may authorize transfer from any U.S. Dollar Permitted Account for the purpose of making Re-Disbursements payable in local currency.

M&E means Monitoring and Evaluation.

M&E Annex means Annex III of this Compact, which generally describes the components of the M&E Plan for the Program.

M&E Plan means the plan to measure and evaluate progress toward achievement of the Compact Goal and Objectives of this Compact as generally described in Annex III.

MAGFOR means the Ministry of Agriculture and Forestry.

MARENA means the Ministry of the Environment and Natural Resources of Nicaragua.

Material Agreement shall have the meaning set forth in Section 3(c)(i)(4) of Annex I.

Material Re-Disbursement means any Re-Disbursement that require MCC approval under applicable law, the Procurement Agreement, the Governance Agreement, any other Governing Document, or any other Supplemental Agreement.

Material Terms of Reference means any terms of reference for the procurement of goods, services or works that require MCC approval under applicable law, the Procurement Agreement, the Governance Agreement, any other Governing Document, or any other Supplemental Agreement.

Mayor Board Member means the mayor drawn from among the Mayor Observers.

Mayor Observers means the mayor representatives elected pursuant to Section 3(d)(ii)(2)(B)(iv) of Annex I.

MCA means the 2004 and 2005 Millennium Challenge Account.

MCA Eligibility Criteria means the MCA selection criteria and methodology published by MCC pursuant to Section 607 of the Act from time to time.

MCA-Nicaragua means an entity to be organized and established pursuant to Nicaraguan law and in accordance with Section 3(d) of Annex I and the Governance Agreement.

MCA-Nicaragua Web site means the Web site operated by MCA-Nicaragua.

MCC means the Millennium Challenge Corporation.

MCC Disbursement means the disbursement of MCC Funding by MCC to a Permitted Account or through such other mechanism agreed by the Parties as defined in and in accordance with Section 2.1(b)(i) of this Compact.

MCC Disbursement Request means the applicable request that the Government and MCA-Nicaragua will jointly submit for an MCC Disbursement as may be specified in the Disbursement Agreement.

MCC Funding means an amount not to exceed one hundred seventy-five million United States Dollars (USD $175,000,000).

MCC Indemnified Party means MCC and any MCC officer, director, employee, Affiliate, contractor, agent or representative.

MCC Representative is a representative appointed by MCC to serve as an Observer on the Board.

Monitoring Component means the component of the M&E Plan that specifies how progress toward the Compact Goal, Objectives and Project Activities will be monitored.

MTI means the Ministry of Transportation and Infrastructure.

Multi-Year Financial Plan means the multi-year financial plan for the Program and for each Project, which is summarized in Annex II to this Compact.

Multi-Year Financial Plan Summary is the Multi-Year Financial Plan summary attached to this Compact as Exhibit A of Annex II.

N-I Road is a 58 kilometer stretch of road between Izapa and Nejapa on the outskirts of Managua.

NDP means the National Development Plan (also known as the ''PRSP II'').

Nicaragua means the Republic of Nicaragua.

Objective(s) mean the Program Objective and the individual Project Objectives, collectively.

Objective Indicator means the Indicator for each Objective that will measure the final results of the Projects in order to monitor their success in meeting each of the Objectives. A table of Objective Indicator definitions is set forth at Section 2(a)(ii) of Annex III.

Observers means the non-voting observers of the Board.

Officers shall have the meaning set forth in Section 3(d)(iii)(3) of Annex I.

Outcome Indicator is an Indicator of the M&E Plan that will measure the intermediate results of goods and services delivered under the Project in order to provide an early measure of the likely impact of the Projects on the Objectives. A table of Outcome Indicator definitions is set forth at Section 2(a)(ii) of Annex III.

Outside Project Manager means the qualified persons or entities engaged by the Technical Secretariat, on behalf of MCA-Nicaragua, to serve as outside project managers in accordance with Section 3(e) of Annex I.

Pacific Corridor is one of the main corridors of the International Network of Mesoamerican Highways that runs along the Pacific Ocean.

Parties means the United States, acting through MCC, and the Government, except as otherwise provided in Annex III.

Party means (i) the United States, acting through MCC, or (ii) the Government.

Permitted Account(s) shall have the meaning set forth in Section 4(d) of Annex I.

Permitted Designee shall have the meaning set forth in Section 3.2(c).

Pledge means any pledge of any MCC Funding or any Program Assets, or any guarantee directly or indirectly of any indebtedness.

PPP means Plan Puebla-Panama, which is a plan to create a reliable Mesoamerican network of highways known as the International Network of Mesoamerican Highways.

Principal Representative means (i) for the Government, the individual holding the position of, or acting as, the Secretary of the Presidency of Nicaragua, and (ii) for MCC, the individual holding the position of, or acting as, the Vice President for Country Relations.

Procurement Agent(s) are the procurement agents that MCA-Nicaragua will engage to carry out and/or certify specified procurement activities in furtherance of this Compact on behalf of the Government, MCA-Nicaragua, any Outside Project Manager or Implementing Entity.

Procurement Agent Agreement is the agreement that MCA-Nicaragua enters into with the Procurement Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Procurement Agent with respect to the conduct, monitoring and review of procurements and other appropriate terms and conditions, such as payment of the Procurement Agent.

Procurement Agreement is a Supplemental Agreement between the Parties, which includes the Procurement Guidelines, and governs the procurement of all goods, services and works by the Government or any Provider in furtherance of this Compact.

Procurement Guidelines are the procurement guidelines reflected in the Procurement Agreement and shall include the requirements set forth in Section 3.6(a)(i-iv).

Procurement Plan means a procurement plan adopted by MCA-Nicaragua, which shall forecast the upcoming eighteen-month procurement activities and be updated every six months.

Procurement Supervisor(s) are the procurement supervisors that MCA-Nicaragua shall engage to supervise specified procurement activities in furtherance of this Compact on behalf of the Government, MCA-Nicaragua, any Outside Project Manager or any Implementing Entity.

Procurement Supervisor Agreement is the agreement that MCA-Nicaragua shall enter into with the Procurement Supervisor, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Procurement Supervisor with respect to the conduct, monitoring and review of procurements and other appropriate terms and conditions, such as payment of the Procurement Supervisor.

Program means the program to be implemented under this Compact, using MCC Funding to advance Nicaragua's progress towards economic growth and poverty reduction.

Program Annex means Annex I to this Compact, which generally describes the Program that MCC Funding will support in Nicaragua during the Compact Term and the results to be achieved from the investment of MCC Funding.

Program Assets means (i) MCC Funding, (ii) Accrued Interest, or (iii) any assets, goods, or property (real, tangible, or intangible) purchased or financed in whole or in part by MCC Funding.

Program Objective means the overall objective of this Compact, which is to increase income and reduce poverty in León-Chinandega, which is key to advancing the Compact Goal.

Project(s) are the specific projects and the policy reforms and other activities related thereto that the Government will carry out, or cause to be carried out, in furtherance of this Compact to achieve the Objectives and the Compact Goal.

Project Activity means the activities that will be undertaken in furtherance of each Project as identified in the Schedules to Annex I.

Project Objective(s) means the project-level objectives that will advance the Program Objective, each of which is described in more detail in the Annexes to this Compact.

Project Specialist means the Infrastructure Specialist and the Rural Business Specialist.

Property Regularization Objective means the Project Objective of this Compact to increase investment by strengthening property rights in León.

Property Regularization Project is the Project described in Schedule 1 of Annex I, that the Parties intend to implement in furtherance of the Property Regularization Objective.

Proposal is the proposal for use of MCA assistance submitted to MCC by the Government on October 25, 2004.

Provider means (i) MCA-Nicaragua, any Government Affiliate or any other Permitted Designee involved in any activities in furtherance of this Compact or (ii) any third party who receives at least USD $50,000 in the aggregate of MCC Funding (other than employees of MCA-Nicaragua) during the Compact Term or such other amount as the Parties may agree in writing, whether directly from MCC, indirectly through Re-Disbursements, or otherwise.

PRSP is the Poverty Reduction Strategy that Nicaragua began developing in 2001 to work toward the Heavily Indebted Poor Countries initiative.

Re-Disbursement is the release of MCC Funding from a Permitted Account.

Reviewer shall have the meaning set forth in Section 3(h) of Annex I.

Rural Business Development Objective means the Project Objective of this Compact to increase the value-added of farms and businesses in León-Chinandega.

Rural Business Development Project is the Project described in Schedule 3 of Annex I, that the Parties intend to implement in furtherance of the Rural Business Development Objective.

Rural Office means the MCA-Nicaragua office that will be set up and equipped in León-Chinandega using MCC Funding to provide the services described in Section 2(a) of Schedule 3 of Annex I.

Special Account means a single, completely separate U.S. Dollar interest-bearing Permitted Account at a commercial bank that is procured through a competitive process to receive MCC Disbursements.

Supplemental Agreement is an agreement between (i) the Government (or any Government Affiliate or Permitted Designee) and MCC, (ii) MCC and/or the Government (or any Government Affiliate or Permitted Designee) and any third party, including any of the Providers or Permitted Designees, or (iii) any third parties where neither MCC nor the Government is a party, before, on or after the Entry into Force, which agreement memorializes details any funding, implementing and other arrangements in furtherance of this Compact.

Supplemental Agreement between the Parties means any agreement between MCC on the one hand, and the Government or any Government Affiliate or Permitted Designee on the other hand.

Supplemental Agreement Term Sheets means one or more term sheets that the Government (or mutually acceptable Government Affiliate) and MCC shall execute that set forth the material and principal terms and conditions of each of the Supplemental Agreements identified in Exhibit B attached to this Compact.

Target is the one or more expected results of an Indicator that specifies the

expected value and the expected time by which that result will be achieved.

Tax(es) shall have the meaning set forth in Section 2.3(e)(i).

Technical Secretariat means a management team to have overall management responsibility for the implementation of this Compact and further described in Section 3(d)(iii) of Annex I.

Transportation Objective means the Project Objective of this Compact to reduce transportation costs between León-Chinandega and domestic, regional and global markets.

Transportation Project is the Project described in Schedule 2 of Annex I, that the Parties intend to implement in furtherance of the Transportation Objective.

U.S. Government shall mean any branch, agency, bureau, government corporation, government chartered entity or other body of the Federal government of the United States.

United States Dollars (USD) means the currency of the United States of America.

Watershed Plan means the watershed management action plan as described in Section 2(c)(i) of Schedule 3 of Annex I.

Work Plans means work plans for the overall administration of the Program and for each Project.

Exhibit B—List of Certain Supplemental Agreements

1. Governance Agreement.
2. Grant Agreement, if applicable.
3. Fiscal Agent Agreement.
4. Bank Agreement.

Annex I—Program Description

This Annex I to the Compact (the *''Program Annex''*) generally describes the Program that MCC Funding will support in Nicaragua during the Compact Term and the results to be achieved from the investment of MCC Funding. Prior to any MCC Disbursement or Re-Disbursement, including for the Projects described herein, MCC, the Government (or a mutually acceptable Government Affiliate) and MCA-Nicaragua shall enter into a Supplemental Agreement that (i) further specifies the terms and conditions of such MCC Disbursements and Re-Disbursements, (ii) is in a form and substance mutually satisfactory to the Parties, and (iii) is signed by the Principal Representative of each Party (or in the case of the Government, the principal representative of the applicable Government Affiliate) (the *''Disbursement Agreement''*). Except as specifically provided herein, the Parties may amend this Program Annex only by written agreement signed by the Principal Representative of each Party. Each capitalized term in this Program Annex shall have the same meaning given such term elsewhere in this Compact. Unless otherwise expressly stated, each Section reference herein is to the relevant Section of the main body of the Compact.

1. Background; Consultative Process

(a) Background. Nicaragua is one of the poorest countries in the Western Hemisphere. Over the last several decades, the country has experienced a dramatic rise and decline that has left approximately 70% of the country's rural population living in poverty. From 1958–1978, the country benefited from one of the stronger growth rates in Latin America, in part due to growth in agriculture in the northwestern part of the country. This period was followed by economic collapse from 1979–1994 that sent the country back 50 years. As the economy began to slowly recover during the late 1990s, corruption, weakening of democratic institutions, and natural disasters (notably, Hurricane Mitch) hampered the country's road to recovery. Despite the lack of growth over the last two decades, Nicaragua has recently shown signs of macroeconomic recovery. The potential impact of The Dominican Republic-Central America-United States Free Trade Agreement (*''DR–CAFTA''*) and a customs union agreement with Guatemala, Honduras, and El Salvador provide a unique opportunity for the country to accelerate economic growth.

In 2001, Nicaragua began the process of developing a Poverty Reduction Strategy (*''PRSP''*) to work toward the Heavily Indebted Poor Countries initiative. This strategy had a social emphasis and focused on structural reforms, human capital investment, greater protection of vulnerable groups, institutional development, environmental and social protection, and decentralization. Consultations in 2002 began a process of re-evaluating country priorities to achieve poverty reduction by accelerating economic growth. As a result, the Government complemented its PRSP with a National Development Plan [1] (*''NDP''*) that consisted of longer-term vision focused on productive development to accelerate growth and poverty reduction. The NDP was presented to the Nicaraguan consultative group in October 2003 and an updated draft is currently in circulation.

The objective of the NDP is ''sustained economic growth through local development and productive clusters, democratic governance with citizen participation, transparency and accountability, and modernization of the state.'' To accomplish this objective, the NDP emphasizes actions to improve the investment climate, to facilitate productive development by leveraging regional competitive potential, and to link the country to international markets. This includes an emphasis on improving human productivity, investing in productive infrastructure, and strengthening governance capabilities at the local level. The NDP served as the foundation from which the Government launched a broad consultative effort to develop the MCC Proposal.

(b) Consultative Process. A diverse group of stakeholders at the national, regional, and municipal levels provided input during the development of Nicaragua's Proposal, building on the Government's PRSP/NDP, which calls for strengthening local development and participation. The technical team charged with developing the Proposal held numerous meetings and work sessions in Managua and the country's regional departments with leaders in the political and private sectors, non-governmental organizations (NGOs), and various associations. Many of the consultations included Nicaragua's Local Development Council (LDCs), representative bodies at the regional department level whose members are elected from the public and private sector and civil society.[2] The LDCs were established to increase citizen participation in development planning. The technical team also spoke with local farm and women's cooperatives, local business associations, and NGOs about the Program's technical details.

Nicaragua's consultative process for the Proposal resulted in three key outcomes: (1) A shift from a national to a regional focus, (2) the prioritization of Proposal components, and (3) ongoing participation and ownership at the local level.

(1) As discussions at the national and regional level progressed about Nicaragua's constraints to economic growth and poverty reduction, stakeholders came to focus on the departments of León and Chinandega, a region believed to have the greatest potential for economic growth as well as some of the most extreme poverty.

[1] The National Development Plan also is known as the ''PRSP II.''

[2] Each of Nicaragua's regions and autonomous zones has a local development council that the central government recognizes through the Citizen Participation Law passed in July 2004.

(2) The León and Chinandega LDCs, which collectively represent over 100 civil society, private sector, and local government organizations, provided crucial assistance to the Government's technical team in developing and prioritizing the Proposal components. The team also solicited feedback from other private sector and civil society organizations at the regional and national level. The high level of participation by these LDCs marks the first time the Government has bestowed this level of authority to a region and fulfills the fundamental vision of the PRSP/NDP to strengthen local capacity and participation.

(3) The Government's technical team continues to involve the LDCs and other local groups and expects them to play an important role in program oversight, including having representation on the Board of Directors of MCA-Nicaragua.

Nicaragua's Proposal focuses on creating a regional engine for economic growth in the northwestern part of the country (*i.e.*, León-Chinandega) by transforming the rural business sector there into a high-value, sustainable one linked to regional and global markets. The regional focus builds on three important themes from the NDP and consultative process:

- Improving the investment climate and creating jobs;
- Facilitating productive development by leveraging regional competitive potential; and
- Linking the country more closely to international markets (*i.e.*, trade-led growth).

The region encompassing León and Chinandega was a major engine for economic growth from 1958–1978 and today, benefits from the most fertile soil in the country, proximity to the country's Pacific coast port (Corinto) and Honduras' Atlantic coast port (Cortes), and a growing concentration of entrepreneurial capacity. Notwithstanding the region's potential, it suffers from serious constraints to economic growth and poverty reduction. Additionally, the northern mountainous part of the region and the peninsula of Cosiguina include some of the most extreme poverty in the country, where communities suffer from continuous land degradation, droughts, and isolation from domestic and international markets.

After broad consultations with the private sector and NGOs, discussions with other donors, and extensive meetings with local development council members in the region, the Government and MCC have agreed to an integrated development Program that will focus on removing three major constraints to economic growth and poverty reduction: (i) Insecure property rights; (ii) under-developed transportation infrastructure; and (iii) low value-added rural business productivity.

2. Overview

(a) Program Objectives. The Program involves a series of specific and complementary interventions that the Parties expect will achieve the Objectives and thus, advance the progress of Nicaragua towards the Compact Goal.

(b) Projects. The Parties have identified, for each Objective, Projects that the Government will implement, or cause to be implemented, using MCC Funding. Each Project is described in the Schedules to this Program Annex. The Schedules to this Program Annex identify the activities that will be undertaken in furtherance of each Project (each, a *''Project Activity''*) as well as the various activities within a Project Activity. Notwithstanding anything to the contrary in this Compact, the Parties may agree to amend, terminate or suspend these Projects or create a new project by written agreement signed by the Principal Representative of each Party without amending this Compact; *provided, however,* any such amendment of a Project or creation of a new project (i) is consistent with the Objectives; (ii) does not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1(a) of this Compact; (iii) does not cause the Government's responsibilities or contribution of resources to be less than specified in Section 2.2 of this Compact or elsewhere in this Compact; and (iv) does not extend the Compact Term. The activities of the Program generally will be undertaken in León-Chinandega.

(c) Beneficiaries. The intended beneficiaries of each Project are described in the respective Schedule to this Program Annex and Annex III to the extent identified as of the date hereof. The intended beneficiaries shall be identified more precisely during the initial phases of the implementation of the Program. The Parties shall agree upon the description of the intended beneficiaries of the Program, and the Parties will make publicly available a more detailed description of these beneficiaries, including publishing such description on the MCA-Nicaragua Web site.

(d) Civil Society. Civil society shall participate in overseeing the implementation of the Program through its representation on, and as Observers to, the Board, as provided in Section 3(d) of this Program Annex. In addition, the Work Plans and/or Procurement Plans for each Project shall note the extent to which civil society will have a role in the implementation of a particular Project or Project Activity. Finally, members of civil society may be recipients of training or other public awareness programs that are integral to the Project Activities.

(e) Monitoring and Evaluation. Annex III of this Compact generally describes the plan to measure and evaluate progress toward achievement of the Compact Goal and Objectives of this Compact (the *''M&E Plan''*). As outlined in the Disbursement Agreement and other Supplemental Agreements, continued disbursement of MCC Funding under this Compact (whether as MCC Disbursements or Re-Disbursements) shall be contingent, among other things, on successful achievement of targets set forth in the M&E Plan.

3. Implementation Framework

The implementation framework and the plan for ensuring adequate governance, oversight, management, monitoring, evaluation and fiscal accountability for the use of MCC Funding is summarized below and in the Schedules attached to this Program Annex, or as may otherwise be agreed in writing by the Parties.

(a) General. The elements of the implementation framework will be further described in relevant Supplemental Agreements and in a detailed plan for the implementation of the Program and each Project (the *''Implementation Plan''*), which will be memorialized in one or more documents and shall consist of a Financial Plan, Fiscal Accountability Plan, Procurement Plan, Program and Project Work Plans, and M&E Plan. MCA-Nicaragua shall adopt each component of the Implementation Plan in accordance with the requirements and timeframe as may be specified in this Program Annex, the Disbursement Agreement or as may otherwise be agreed by the Parties from time to time. MCA-Nicaragua may amend the Implementation Plan or any component thereof without amending this Compact, provided any material amendment of the Implementation Plan or any component thereof has been approved by MCC and is otherwise consistent with the requirements of this Compact and any relevant Supplemental Agreement between the Parties. By such time as may be specified in the Disbursement Agreement or as may otherwise be agreed by the Parties from time to time,

MCA-Nicaragua shall adopt one or more work plans for the overall administration of the Program and for each Project (collectively, the *''Work Plans''*). The Work Plan(s) shall set forth the details of each activity to be undertaken or funded by MCC Funding as well as the allocation of roles and responsibilities for specific Project activities, or other programmatic guidelines, performance requirements, targets, or other expectations for a Project.

(b) Government.

(i) The Government shall promptly take all necessary and appropriate actions to carry out the Government Responsibilities and other obligations or responsibilities of the Government under and in furtherance of this Compact, including undertaking or pursuing such legal, legislative or regulatory actions, procedural changes and contractual arrangements as may be necessary or appropriate to achieve the Objectives, to successfully implement the Program, to designate any rights or responsibilities to any Permitted Designee, and to establish MCA-Nicaragua, which shall have the form, structure and other features to be determined and agreed upon by the Parties on or before the time specified in the Disbursement Agreement and which shall be responsible for the oversight and management of the implementation of this Compact on behalf of the Government. The Government shall promptly deliver to MCC certified copies of any documents, orders, decrees, laws or regulations evidencing such legal, legislative, regulatory, procedural, contractual or other actions.

(ii) During the Compact Term, the Government shall ensure that MCA-Nicaragua is duly authorized and organized, and sufficiently staffed and empowered, to fully carry out the Designated Rights and Responsibilities. Without limiting the generality of the preceding sentence, MCA-Nicaragua shall be organized, and have such roles and responsibilities, as described in Section 3(d) of this Program Annex and as provided in applicable law and in the Governance Agreement and any other Governing Documents; *provided, however,* the Government or another Permitted Designee may, subject to MCC approval, carry out any of the roles and responsibilities designated to be carried out by MCA-Nicaragua and described in Section 3(d) of this Program Annex or elsewhere in this Program Annex, applicable law, the Governance Agreement, or any other Governing Document or Supplemental Agreement prior to and during the initial period of the establishment and staffing of MCA-Nicaragua, but in no event longer than the earlier of (i) the formation of the Board, establishment of MCA-Nicaragua (including the Technical Secretariat) and engagement of each of the Officers and (ii) six months from the Entry into Force, unless otherwise agreed by the Parties in writing.

(c) MCC.

(i) Notwithstanding Section 3.1 of this Compact or any provision in this Program Annex to the contrary, and except as may be otherwise agreed upon by the Parties from time to time, MCC must approve in writing each of the following transactions, activities, agreements and documents prior to the execution or carrying out of such transaction, activity, agreement or document and prior to MCC Disbursements or Re-Disbursements in connection therewith:

(1) MCC Disbursements;

(2) Each component of the Financial Plan and any amendments and supplements thereto;

(3) Any Audit Plan;

(4) Agreements (i) between the Government and MCA-Nicaragua, (ii) between the Government, a Government Affiliate, MCA-Nicaragua or any other Permitted Designee, on the one hand, and any Provider or Affiliate of a Provider, on the other hand, (A) which require such MCC approval under applicable law, the Procurement Agreement, the Governance Agreement, any other Governing Document, or any other Supplemental Agreement, or (iii) in which the Government, Government Affiliate, MCA-Nicaragua or any other Permitted Designee appoints, hires or engages any of the following in furtherance of this Compact:

(A) Auditor and Reviewer;

(B) Fiscal Agent;

(C) Bank;

(D) Procurement Agent and Procurement Supervisor;

(E) Outside Project Manager;

(F) Implementing Entity; and

(G) Director, Observer, Officer and/or other key employee or contractor of MCA-Nicaragua, including any compensation for such person. (Any agreement described in clause (i) through (iii) of this Section 3(c)(i)(4) and any amendments and supplements thereto, each, a *''Material Agreement''*);

(5) Any modification, termination or suspension of a Material Agreement, or any action that would have the effect of such a modification, termination or suspension of a Material Agreement;

(6) Any agreement that is (A) not at arm's length or (B) with a party related to the Government, MCA-Nicaragua, or any of their respective Affiliates;

(7) Any Re-Disbursement (each, a *''Material Re-Disbursement''*) that requires such MCC approval under applicable law, the Procurement Agreement, the Governance Agreement, any other Governing Document or any other Supplemental Agreement;

(8) Any terms of reference for the procurement of goods, services or works that require such MCC approval under applicable law, the Procurement Agreement, the Governance Agreement, any other Governing Document or any other Supplemental Agreement (each, a *''Material Terms of Reference''*);

(9) The Implementation Plan, including each component plan thereto, and any material amendments and supplements to the Implementation Plan or any component thereto;

(10) Any pledge of any MCC Funding or any Program Assets or any guarantee directly or indirectly of any indebtedness (each, a *''Pledge''*);

(11) Any decree, legislation, regulation, contractual arrangement or other document establishing or governing MCA-Nicaragua, including the Governance Agreement (*''Governing Document''*);

(12) Any disposition (in whole or in part), liquidation, dissolution, winding up, reorganization or other change of (A) MCA-Nicaragua, including any revocation or modification of, or supplement to, any Governing Document related thereto, or (B) any subsidiary or Affiliate of MCA-Nicaragua;

(13) Any change in character or location of any Permitted Account;

(14) Formation or acquisition of any subsidiary (direct or indirect) or other Affiliate of MCA-Nicaragua;

(15) Any (A) change of a Director, Observer, Officer or other key employee or contractor of MCA-Nicaragua, or in the composition of the Board, including approval of the nominee for Chairman, or (B) filling of any vacant seat of the Chairman, a Director or an Observer or vacant position of an Officer or other key employee or contractor of MCA-Nicaragua;

(16) The management information system to be developed and maintained by the Technical Secretariat of MCA-Nicaragua, and any material modifications to such system;

(17) Any decision to amend, supplement, replace, terminate or otherwise change any of the foregoing; and

(18) Any other activity, agreement, document or transaction requiring the approval of MCC in this Compact, applicable law, the Governance Agreement, any other Governing Document, the Procurement Agreement,

the Disbursement Agreement, or any other Supplemental Agreement between the Parties.

The Chairman of the Board (the *''Chairman''*) and/or the General Director of MCA-Nicaragua (the *''General Director''*) or other designated Officer, as provided in applicable law and the Governance Agreement, shall certify any documents or reports delivered to MCC in satisfaction of the Government's reporting requirements under this Compact or any Supplemental Agreement between the Parties (the *''Compact Reports''*).

(ii) MCC shall have the authority to exercise its approval rights set forth in this Section 3(c) in its sole discretion and independent of any participation or position taken by the MCC Representative at a meeting of the Board. MCC retains the right to revoke its approval of any matter, agreement or action if MCC concludes, in its sole discretion, that its approval was issued on the basis of incomplete, inaccurate or misleading information furnished by the Government, any Government Affiliate, MCA-Nicaragua or any other Permitted Designee. Notwithstanding any provision in this Compact or any Supplemental Agreement to the contrary, the exercise by MCC of its approval rights under this Compact or any Supplemental Agreement shall not (1) diminish or otherwise affect the Government Responsibilities or any other obligations or responsibilities of the Government under this Compact or any Supplemental Agreement, (2) transfer any such obligations or responsibilities of the Government, or (3) otherwise subject MCC to any liability.

(d) MCA-Nicaragua.

(i) General. Unless otherwise agreed by the Parties in writing, MCA-Nicaragua shall, as a Permitted Designee, be responsible for the oversight and management of the implementation of this Compact. MCA-Nicaragua shall be governed by applicable law, a governance agreement to be entered into by the Government and MCA-Nicaragua, in a form and substance satisfactory to MCC, on or before the time specified in the Disbursement Agreement (*''Governance Agreement''*), and any other Governing Documents, based on the following principles:

(1) The Government shall ensure that MCA-Nicaragua shall not assign, delegate or contract any of the Designated Rights and Responsibilities without the prior written consent of the Government and MCC. MCA-Nicaragua shall not establish any Affiliates or subsidiaries (direct or indirect) without the prior written consent of the Government and MCC.

(2) Unless otherwise agreed by the Parties in writing, MCA-Nicaragua shall consist of (a) an independent board of directors (the *''Board''*) to oversee MCA-Nicaragua's responsibilities and obligations under this Compact (including any Designated Rights and Responsibilities) and (b) a management team (the *''Technical Secretariat''*) to have overall management responsibility for the implementation of this Compact.

(ii) Board.

(1) Formation. The Government shall ensure that the Board shall be formed, constituted, governed and operated in accordance with applicable law and the terms and conditions set forth in the Governance Agreement, any other applicable Governing Document, and any other relevant Supplemental Agreement.

(2) Composition. Unless otherwise agreed by the Parties in writing, the Board shall consist of (i) seven voting members, one of whom shall be appointed the Chairman as provided in applicable law, the Governance Agreement or any other Governing Document and subject to MCC approval, and (ii) non-voting observers (the *''Observers''*).

(A) Unless otherwise agreed by the Parties in writing, the Board shall initially be composed of seven voting members as follows:

(i) Four (4) minister- or secretary-level representatives of the Government (each, a *''Government Board Member''*), each of whom shall be appointed by the President of the Republic of Nicaragua, which appointment shall be subject to MCC approval;

(ii) Two (2) representatives drawn from among the Civil Observers (each, a *''Civil Board Member''*); and

(iii) One (1) mayor drawn from among the Mayor Observers (the *''Mayor Board Member''*).

(B) The Observers shall be:

(i) A representative (the *''MCC Representative''*) appointed by MCC;

(ii) A representative (each, a *''Government Observer''* appointed by each of the following Government ministries:

a. The Ministry of Agriculture and Forestry (*''MAGFOR''*);

b. The Ministry of Transportation and Infrastructure (''*MTI*''); and

c. The Ministry of the Environment and Natural Resources of Nicaragua (''MARENA'');

(iii) A representative (each, a ''*Civil Observer*'') appointed by each of the following civil society organizations, which representative cannot be a public official:

a. León Local Development Council;

b. Chinandega Local Development Council;

c. Two (2) other civil society organizations, the selection of which shall be subject to MCC approval; and

d. Such other organization(s) to which the Parties mutually agree.

(iv) Two (2) mayor representatives (each, a ''*Mayor Observer*''), one elected by all of the mayors of municipalities within the department of León, and the other elected by all of the mayors of the municipalities within the department of Chinandega.

(C) Each Government Board Member position shall be filled by the individual then holding the office identified, and such individuals shall serve in their capacity as the applicable Government official and not in their personal capacity. Each Government Board Member may be replaced by another government official of comparable rank from a ministry or other government body relevant to the Program activities, subject to approval by the Government and MCC. Each Mayor Observer may be replaced by another mayor elected by all of the mayors of municipalities within the department where such Mayor Observer is from.

(D) The Parties shall mutually agree on the individual who shall initially fill the seat of Chairman and any person who subsequently serves as Chairman.

(E) Each Observer shall have rights to attend all meetings of the Board, participate in the discussions of the Board, and receive all information and documents provided to the Board, together with any other rights of access to records, employees or facilities as would be granted to a member of the Board under applicable law, the Governance Agreement and any other Governing Document.

(F) The Chairman, in the presence of the other Government Board Members and the MCC Representative, shall choose by lot the initial two (2) Civil Board Members from among the four (4) Civil Observers, who shall serve as voting members of the Board for two non-consecutive terms of fifteen (15) months each beginning on the Entry into Force and the day following the 30-month anniversary of the Entry into Force, respectively. The remaining two (2) Civil Observers shall serve as voting members of the Board for two non-consecutive terms of fifteen (15) months each beginning on the day following the expiration of the 15-month anniversary of the Entry into Force and the day following the 45-month anniversary of the Entry into Force, respectively. This Compact, applicable law, the Governance Agreement and relevant

Supplemental Agreements between the Parties shall govern the terms and conditions of the participation of the Civil Observers on the Board. For purposes of this paragraph and the next, a ''15-month'' term shall equal 457 days for terms 1 and 2 and 456 days for terms 3 and 4. If the Parties mutually agree to more than four (4) Civil Observers, the Parties shall determine a mutually acceptable manner for modifying the procedure for choosing the Civil Board Members to allow, to the extent practical, all Civil Observers an equal opportunity to serve as a Civil Board Member.

(G) The Chairman, in the presence of the other Government Board Members and the MCC Representative, shall choose by lot the initial Mayor Board Member from among the two (2) Mayor Observers, who shall serve as a voting member of the Board for two non-consecutive terms of fifteen (15) months each beginning on the Entry into Force and the day following the 30-month anniversary of the Entry into Force, respectively. The other Mayor Observer shall serve as a voting member of the Board for two non-consecutive terms of fifteen (15) months each beginning on the day following the expiration of the 15-month anniversary of the Entry into Force and the day following the 45-month anniversary of the Entry into Force, respectively. This Compact, applicable law, the Governance Agreement and relevant Supplemental Agreements between the Parties shall govern the terms and conditions of the participation of the Mayor Observers on the Board. If the Parties mutually agree to more than two (2) Mayor Observers, the Parties shall determine a mutually acceptable manner for modifying the procedure for choosing the Mayor Board Members to allow, to the extent practical, all Mayor Observers an equal opportunity to serve as a Mayor Board Member.

(3) Role and Responsibilities.

(A) The Board shall oversee the Technical Secretariat, the overall implementation of the Program and the performance of the Designated Rights and Responsibilities.

(B) Certain actions may be taken, and certain agreements and other documents and instruments may be executed and delivered, by MCA-Nicaragua only upon the approval and authorization of the Board as provided under applicable law or as set forth in the Governance Agreement or any other Governing Document, including each MCC Disbursement Request, selection or termination of certain Providers, any component of the Implementation Plan, certain Re-Disbursements and certain terms of reference.

(C) The Chairman shall certify the approval by the Board of all Compact Reports or any other documents or reports from time to time delivered to MCC by MCA-Nicaragua (whether or not such documents or reports are required to be delivered to MCC), and that such documents or reports are true, accurate and complete.

(D) Without limiting the generality of the Designated Rights and Responsibilities that the Government may designate to MCA-Nicaragua, and subject to MCC's contractual rights of approval as set forth in Section 3(c) of this Program Annex or elsewhere in this Compact or any relevant Supplemental Agreement, the Board shall have the exclusive authority as between the Board and the Technical Secretariat for all actions defined for the Board under applicable law and in the Governance Agreement or any other Governing Document and which are expressly designated therein as responsibilities that cannot be delegated further.

(4) Indemnification of MCC Representative. The Government shall ensure, at the Government's sole cost and expense, that appropriate insurance is obtained and appropriate indemnifications and other protections are provided, acceptable to MCC and to the fullest extent permitted under the laws of the Republic of Nicaragua, to ensure that Civil Board Members and Observers shall not be held personally liable for the actions or omissions of the Board. Pursuant to Section 5.5 and Section 5.8 of this Compact, the Government and MCA-Nicaragua shall hold harmless the MCC Representative for any liability or action arising out of the MCC Representative's role as a non-voting observer on the Board. The Government hereby waives and releases all claims related to any such liability and acknowledges that the MCC Representative has no fiduciary duty to MCA-Nicaragua. In matters arising under or relating to the Compact, the MCC Representative is not subject to the jurisdiction of the courts or other body of Nicaragua. MCA-Nicaragua shall provide a written waiver and acknowledgement that no fiduciary duty to MCA-Nicaragua is owed by the MCC Representative.

(iii) Technical Secretariat. Unless otherwise agreed in writing by the Parties, the Technical Secretariat shall report, through the General Director or other Officer as designated in applicable law and the Governance Agreement, directly to the Board and shall have the composition, roles and responsibilities described below and set forth more particularly in applicable law and the Governance Agreement and any other Governing Document.

(1) Appointment of General Director. The General Director of MCA-Nicaragua shall be selected and hired by the Board after an open and competitive recruitment and selection process, which appointment shall be subject to MCC approval.

(2) Appointment of Other Officers. Unless otherwise specified in the Government Agreement or any other Governing Document, the other Officers of MCA-Nicaragua shall be selected and hired by the General Director after an open and competitive recruitment and selection process, which appointment shall be subject to the approval of the Board and MCC.

(3) Composition. The Government shall ensure that the Technical Secretariat shall be composed of qualified experts from the public or private sectors, including such offices and staff as may be necessary to carry out effectively its responsibilities, each with such powers and responsibilities as set forth in applicable law and the Governance Agreement, any Governing Document and from time to time in any Supplemental Agreement between the Parties, including the following: (i) General Director; (ii) Administration and Finance Director; (iii) Monitoring and Evaluation Director; (iv) Environmental and Social Impact Specialist, (v) Management Information Systems Director; (vi) Communications Director; and (vii) Infrastructure Specialist and Rural Business Specialist (each, a ''*Project Specialist*'') (the persons holding the positions in sub-clauses (i) through (vii) and such other offices as may be created and designated in accordance with the Governance Agreement and any other Supplemental Agreement between the Parties, shall be collectively referred to as ''*Officers*''). The Parties contemplate that for purposes of the initial period of operations, and in no event longer than six months, MCA-Nicaragua may appoint an acting General Director, subject to the prior approval of MCC; *provided*, during such period, the Board shall ratify the actions of such acting General Director and MCA-Nicaragua shall select a permanent General Director through a competitive selection process and subject to MCC prior approval in accordance with this Annex I.

(4) Role and Responsibilities.

(A) The Technical Secretariat shall assist the Board in overseeing the implementation of the Program and shall have principal responsibility (subject to the direction and oversight of

the Board and subject to MCC's contractual rights of approval as set forth in Section 3(c) of this Program Annex or elsewhere in this Compact or any relevant Supplemental Agreement) for the overall management of the implementation of the Program.

(B) Without limiting the foregoing general responsibilities or the generality of Designated Rights and Responsibilities that the Government may designate to MCA-Nicaragua, the Technical Secretariat shall develop the components of the Implementation Plan, oversee the implementation of the Projects, manage and coordinate monitoring and evaluation, maintain internal accounting records, conduct and oversee certain procurements, and perform such other responsibilities as set forth in applicable law and the Governance Agreement or delegated to the Technical Secretariat by the Board from time to time.

(C) The Technical Secretariat shall have the obligation and right to approve certain actions and documents or agreements, including certain Re-Disbursements, MCC Disbursement Requests, Compact Reports, certain human resources decisions, and certain procurement actions, as provided in applicable law and the Governance Agreement.

(e) Outside Project Manager. The Technical Secretariat shall have the authority to engage qualified persons or entities to serve as outside project managers (each, an *''Outside Project Manager''*) in the event that it is advisable to do so for the proper and efficient day-to-day management of a Project; *provided, however,* that the appointment or engagement of any Outside Project Manager after a competitive selection process shall be subject to approval by the Board and MCC prior to such appointment or engagement. Upon Board approval, the Technical Secretariat, on behalf of MCA-Nicaragua, may delegate, assign, or contract to the Outside Project Managers such duties and responsibilities as it deems appropriate with respect to the management of the Implementing Entities and the implementation of the specific Projects or Project Activities; and *provided, further,* that the Technical Secretariat shall remain accountable for those duties and responsibilities and all reports delivered by the Outside Project Manager notwithstanding any such delegation, assignment or contract and the Outside Project Manager shall be subject to the oversight of the Fiscal Agent and Procurement Agent. The Board may, independent of any request from the Technical Secretariat, determine that it is advisable to engage one or more Outside Project Managers and instruct the Technical Secretariat or, where appropriate, a Procurement Agent to commence and conduct the competitive selection process for such Outside Project Manager.

(f) Implementing Entities. Subject to the terms and conditions of this Compact and any other Supplemental Agreement between the Parties, MCA-Nicaragua may provide MCC Funding, directly or indirectly through an Outside Project Manager, to one or more Government Affiliates or to one or more nongovernmental organization or other public-or private-sector entities or persons to implement and carry out the Projects or any other activities to be carried out in furtherance of this Compact (each, an *''Implementing Entity''*). The Government shall ensure that MCA-Nicaragua (or the appropriate Outside Project Manager) enters into an agreement with each Implementing Entity, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of such Implementing Entity and other appropriate terms and conditions, such as payment of the Implementing Entity (the *''Implementing Entity Agreement''*). An Implementing Entity shall report directly to the Technical Secretariat or Outside Project Manager, as designated in the applicable Implementing Entity Agreement or as otherwise agreed by the Parties.

(g) Fiscal Agent. The Government shall ensure that MCA-Nicaragua engages one or more fiscal agents (each, a *''Fiscal Agent''*), who shall be responsible for, among other things: (i) Ensuring and certifying that Re-Disbursements are properly authorized and documented in accordance with established control procedures set forth in the Disbursement Agreement, the Fiscal Agent Agreement and other relevant Supplemental Agreements; (ii) Re-Disbursement and cash management, including instructing a Bank to make Re-Disbursements from a Permitted Account (to which the Fiscal Agent has sole signature authority), following applicable certification by the Fiscal Agent; (iii) providing applicable certifications for MCC Disbursement Requests; (iv) maintaining proper accounting of all MCC Funding financial transactions and certain other accounting functions; (v) producing reports on MCC Disbursements and Re-Disbursements (including any requests therefore) in accordance with established procedures set forth in the Disbursement Agreement, the Fiscal Agent Agreement or any other relevant Supplemental Agreements; (vi) funds control; and (vii) procurement functions, as may be specified from time to time. Upon the written request of MCC, the Government shall ensure that MCA-Nicaragua terminates a Fiscal Agent, without any liability to MCC, and the Government shall ensure that MCA-Nicaragua engages a new Fiscal Agent, subject to the approval by the Board and MCC. The Government shall ensure that MCA-Nicaragua enters into an agreement with each Fiscal Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Fiscal Agent and other appropriate terms and conditions, such as payment of the Fiscal Agent (*''Fiscal Agent Agreement''*).

(h) Auditors and Reviewers. The Government shall ensure that MCA-Nicaragua carries out the Government's audit responsibilities as provided in Sections 3.8(d), (e) and (f) of this Compact, including engaging one or more auditors (each, an *''Auditor''*) required by Section 3.8(d) of this Compact. As requested by MCC in writing from time to time, the Government shall ensure that MCA-Nicaragua also engages (i) an independent reviewer to conduct reviews of performance and compliance under this Compact pursuant to Section 3.8(f) of this Compact, which reviewer shall have the capacity to (A) conduct general reviews of performance or compliance, (B) conduct environmental audits, and (C) conduct data quality assessments in accordance with the M&E Plan, as described more fully in Annex III, and/or (ii) an independent evaluator to assess performance as required under the M&E Plan (each, a *''Reviewer''*). MCA-Nicaragua shall select the Auditor(s) or Reviewers in accordance with the Governance Agreement, any other Governing Document or other relevant Supplemental Agreement. The Government shall ensure that MCA-Nicaragua enters into an agreement with each Auditor or Reviewer, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Auditor or Reviewer with respect to the audit, review or evaluation, including access rights, required form and content of the applicable audit, review or evaluation and other appropriate terms and conditions such as payment of the Auditor or Reviewer (the *''Auditor/Reviewer Agreement''*). In the case of a financial audit required by Section 3.8(f) of this Compact, such Auditor/Reviewer Agreement shall be effective no later than 120 days prior to the end of the relevant fiscal year or other period to be audited; *provided, however,* if MCC

requires concurrent audits of financial information or reviews of performance and compliance under this Compact, then such Auditor/Reviewer Agreement shall be effective no later than a date agreed by the Parties in writing.

(i) Procurement Agent. If requested by MCC, the Government shall ensure that MCA-Nicaragua engages one or more procurement agents (each, a *''Procurement Agent''*) to carry out and/or certify specified procurement activities in furtherance of this Compact on behalf of the Government, MCA-Nicaragua, any Outside Project Manager or Implementing Entity. The role and responsibilities of such Procurement Agent and the criteria for selection of a Procurement Agent shall be as set forth in the applicable Implementation Letter or Supplemental Agreement. The Government shall ensure that MCA-Nicaragua enters into an agreement with the Procurement Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Procurement Agent with respect to the conduct, monitoring and review of procurements and other appropriate terms and conditions, such as payment of the Procurement Agent (the *''Procurement Agent Agreement''*). Any Procurement Agent shall adhere to the procurement standards set forth in the Procurement Agreement and Procurement Guidelines and ensure procurements are consistent with the procurement plan (the *''Procurement Plan''*) adopted by MCA-Nicaragua, which plan shall forecast the upcoming eighteen month procurement activities and be updated every six months.

(j) Procurement Supervisor. If requested by MCC, the Government shall ensure that MCA-Nicaragua engages one or more procurement supervisors (each, a *''Procurement Supervisor''*) to supervise specified procurement activities in furtherance of this Compact on behalf of the Government, MCA-Nicaragua, any Outside Project Manager or any Implementing Entity. The role and responsibilities of such Procurement Supervisor and the criteria for selection of a Procurement Supervisor shall be as set forth in the applicable Implementation Letter or Supplemental Agreement. The Government shall ensure that MCA-Nicaragua enters into an agreement with the Procurement Supervisor, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Procurement Supervisor with respect to the conduct, monitoring and review of procurements and other appropriate terms and conditions, such as payment of the Procurement Supervisor (the *''Procurement Supervisor Agreement''*). Any Procurement Supervisor shall ensure that the procurement standards set forth in the Procurement Guidelines are adhered to and ensure procurements are consistent with the Procurement Plan.

4. Finances and Fiscal Accountability

(a) Financial Plan.

(i) Multi-Year Financial Plan. The multi-year financial plan for the Program and for each Project (the *''Multi-Year Financial Plan''*) is summarized in Annex II to this Compact.

(ii) Detailed Financial Plan. During the Compact Term, the Government shall ensure that MCA-Nicaragua delivers to MCC timely financial plans that specify, respectively, the annual and quarterly detailed budget and projected cash requirements for the Program and each Project (including monitoring, evaluation and administrative costs), projected both on a commitment and cash requirement basis (each a *''Detailed Financial Plan''*). Each Detailed Financial Plan shall be delivered by such time as specified in the Disbursement Agreement or as may otherwise be agreed by the Parties. The Multi-Year Financial Plan and each Detailed Financial Plan and each amendment, supplement or other change thereto are collectively, the *''Financial Plan.''*

(iii) Expenditures. No financial commitment involving MCC Funding shall be made, no obligation of MCC Funding shall be incurred, and no Re-Disbursement shall be made or MCC Disbursement Request submitted for any activity or expenditure, unless the expense is provided for in the Detailed Financial Plan and unless uncommitted funds exist in the balance of the Detailed Financial Plan for the relevant period or unless the Parties otherwise agree in writing.

(iv) Modifications to Financial Plan. Notwithstanding anything to the contrary in this Compact, MCA-Nicaragua may amend or supplement the Financial Plan or any component thereof without amending this Compact, provided any material amendment or supplement has been approved by MCC and is otherwise consistent with the requirements of this Compact and any relevant Supplemental Agreement between the Parties.

(b) Disbursement and Re-Disbursement. The Disbursement Agreement (and disbursement schedules thereto), as amended from time to time, shall specify the terms, conditions and procedures on which MCC Disbursements and Re-Disbursements shall be made. The obligation of MCC to make MCC Disbursements or approve Re-Disbursements is subject to the fulfillment, waiver or deferral of any such terms and conditions. The Government and MCA-Nicaragua shall jointly submit the applicable request for an MCC Disbursement (the *''MCC Disbursement Request''*) as may be specified in the Disbursement Agreement. MCC will make MCC Disbursements in tranches to a Permitted Account from time to time as provided in the Disbursement Agreement or as may otherwise be agreed by the Parties, subject to Program requirements and performance by the Government, MCA-Nicaragua and other relevant parties in furtherance of this Compact. Re-Disbursements will be made from time to time based on requests by an authorized representative of the appropriate party designated for the size and type of Re-Disbursement in accordance with the Governance Agreement and Disbursement Agreement; provided, however, unless otherwise agreed by the Parties in writing, no Re-Disbursement shall be made unless and until the written approvals specified herein or in the Governance Agreement and Disbursement Agreement for such Re-Disbursement have been obtained and delivered to the Fiscal Agent.

(c) Fiscal Accountability Plan. By such time as specified in the Disbursement Agreement or as otherwise agreed by the Parties, MCA-Nicaragua shall adopt as part of the Implementation Plan a fiscal accountability plan that identifies the principles and mechanisms to ensure appropriate fiscal accountability for the use of MCC Funding provided under this Compact, including the process to ensure that open, fair, and competitive procedures will be used in a transparent manner in the administration of grants or cooperative agreements and the procurement of goods and services for the accomplishment of the Objectives (the *''Fiscal Accountability Plan''*). The Fiscal Accountability Plan shall set forth, among other things, requirements with respect to the following matters: (i) Funds control and documentation; (ii) separation of duties and internal controls; (iii) accounting standards and systems; (iv) content and timing of reports; (v) policies concerning public availability of all financial information; (vi) cash management practices; (vii) procurement and contracting practices, including timely payment to vendors; (viii) the role of independent auditors; and (ix) the roles of fiscal agents and procurement agents.

(d) Permitted Accounts. The Government shall establish, or cause to be established, such accounts (each, a *''Permitted Account,''* and collectively *''Permitted Accounts''*) as may be agreed by the Parties in writing from time to time, including:

(i) A single, completely separate U.S. Dollar interest-bearing account (the *''Special Account''*) at a commercial bank that is procured through a competitive process to receive MCC Disbursements;

(ii) If necessary, an interest-bearing local currency of Nicaragua account (the *''Local Account''*) at the Commercial Bank to which the Fiscal Agent may authorize transfer from any U.S. Dollar Permitted Account for the purpose of making Re-Disbursements payable in local currency; and

(iii) Such other interest-bearing accounts to receive MCC Disbursements in such bank as the Parties mutually agree upon in writing.

No other funds shall be commingled in a Permitted Account other than MCC Funding and Accrued Interest thereon. All MCC Funding held in an interest-bearing Permitted Account shall earn interest at a rate of no less than such amount as the Parties may agree in the respective Bank Agreement or otherwise. MCC shall have the right, among other things, to view any Permitted Account statements and activity directly on-line, where feasible, or at such other frequency as the Parties may otherwise agree. By such time as shall be specified in the Disbursement Agreement or as otherwise agreed by the Parties, the Government shall ensure that MCA-Nicaragua enters into an agreement with each Bank, respectively, satisfactory to MCC, that sets forth the signatory authority, access rights, anti-money laundering and anti-terrorist financing provisions, and other terms related to the Permitted Account, respectively (each a *''Bank Agreement''*). For purposes of this Compact, any bank holding an account referenced in Section 4(d) of this Program Annex are each a *''Bank''* and, are collectively referred to as the *''Banks.''*

(e) Currency Exchange. The Bank shall convert MCC Funding to the currency of Nicaragua at a rate to which the Parties mutually agree with the Bank in the Bank Agreement.

5. Transparency; Accountability

Transparency and accountability to MCC and to the beneficiaries are important aspects of the Program and Projects. Without limiting the generality of the foregoing, in an effort to achieve the goals of transparency and accountability, the Government shall ensure that MCA-Nicaragua:

(a) Establishes an e-mail suggestion box as well as a means for other written comments that interested persons may use to communicate ideas, suggestions or feedback to MCA-Nicaragua;

(b) Considers as a factor in its decision-making the recommendations of the Observers, particularly in MCA-Nicaragua's deliberations over pending key Technical Secretariat decisions and key Board decisions as shall be specified in applicable law, the Governance Agreement and any other Governing Document;

(c) Develops and maintains a Web site (the *''MCA-Nicaragua Web site''*) in a timely, accurate and appropriately comprehensive manner, such MCA-Nicaragua Web site to include postings of information and documents in English and Spanish; and

(d) Posts on the MCA-Nicaragua Web site and otherwise makes publicly available from time to time the following documents or information, including by posting on the MCA-Nicaragua Web site, with links to and from the official Web site of the Government (*http://www.presidencia.gob.ni*) and the Web site of the Embassy of Nicaragua in the United States (*http://managua.usembassy.gov*):

(i) All minutes of the meetings of the Board;

(ii) The M&E Plan, as amended from time to time, along with periodic reports on Program performance;

(iii) All relevant Environmental Impact Assessments and supporting documents;

(iv) Such financial information as may be required by this Compact or as may otherwise be agreed from time to time by the Parties;

(v) All Compact Reports;

(vi) All audit reports by an Auditor and any periodic reports or evaluations by a Reviewer;

(vii) A copy of the Disbursement Agreement, as amended from time to time;

(viii) A copy of the Procurement Agreement (including Procurement Guidelines), Procurement Plan, procurement policies and standard documents, bid requests and awarded contracts; and

(ix) A copy of any documents related to the formation, organization and governance of MCA-Nicaragua, including the Governance Agreement and any other Governing Documents, and any amendments thereto.

Schedule 1 to Annex I—Property Regularization Project

This Schedule 1 generally describes and summarizes the key elements of a property regularization project that the Parties intend to implement in furtherance of the Property Regularization Objective (the *''Property Regularization Project''*). Additional details regarding the implementation of the Property Regularization Project will be included in the Implementation Plan and in relevant Supplemental Agreements.

1. Background

Insecure property rights and high transaction costs in Nicaragua's land market and property registration system restrict enterprise development, investment and income growth, particularly in rural areas. The shortcomings of Nicaragua's ineffective property registration system are evidenced by the fact that more than sixty percent of all land in Nicaragua is estimated to lack adequate property records. This lack of secure property rights impedes national and international sources of investment and finance, hindering entrepreneurship and household asset growth. Land tenure insecurity also is an obstacle to investment in public infrastructure such as streets, electricity, and water and waste services. In recent years, the Government has taken steps to implement a systematic approach to land title regularization and to advance institutional and legal reforms, including new cadastre and property registration laws that will, if implemented properly, create a platform for significant progress in this area. Recent studies supported by the World Bank show that regularizing property rights in Nicaragua through land titling and property registration has been associated with a 30% increase in asset values and a 10% increase in the probability of landholders undertaking additional investments in that property. With support from the World Bank and Nordic Development Fund, the Government also has initiated work to modernize the property registration system to clarify rights and to update records so that beneficiaries in the Departments of Chinandega, Esteli and Madriz will have accurate and registered land titles. MCC Funding will be used to expand these reforms and strengthen property rights in the Department of León (*''León''*) through the Project Activities described below.

2. Summary of Project Activities

The Property Regularization Project is designed to increase investment by strengthening property rights in León. The key activities of the Property Regularization Project include:

- Institutional Capacity Building. Provide technical support to government institutions to implement and sustain tenure regularization reforms in León.
- Cadastral Mapping. Conduct area-wide cadastral mapping in León to obtain current property descriptions to be recorded in a geographic information system.
- Land Tenure Regularization. Clarify land tenure, resolve disputes, and improve formal documentation of property rights.
- Database Installation. Link municipal and national registry and cadastral databases by installing the Integrated System of Cadastral and Registration Information (SIICAR) in León.
- Protected Area Demarcation. Demarcate and legally validate the boundaries of four environmentally-sensitive protected areas, regularize land rights within the perimeter of each, and facilitate the adoption of land use management plans by occupants therein.
- Analysis and Communications. Fund short-term technical assistance, policy analysis and outreach to promote participation in, the use and the sustainability of the improved property registration system.

The M&E Plan (described in Annex III) will set forth anticipated results and, where appropriate, regular benchmarks that may be used to monitor implementation progress. Performance against these benchmarks and the overall impact of the Property Regularization Project will be assessed and reported at the intervals to be specified in the M&E Plan or as otherwise agreed by the Parties from time to time. The Parties expect that additional indicators will be identified during the implementation of the Property Regularization Project.

The following summarizes the contemplated Property Regularization Project Activities:

(a) Activity: Institutional Capacity Building

To build the capacity of government institutions in León for recording property rights and providing related services for property transactions in León, MCC Funding will be used to:

(i) Expand the technical and administrative capacity of the Technical Secretariat of Proyecto de Ordenamiento de la Propiedad (PRODEP)[3] by hiring staff, procuring equipment and funding other operational expenses necessary to implement activities (b)–(d) below;

(ii) Provide technical assistance and training to registry and cadastral officials and technical staff hired or assigned to work on the Project; and

(iii) To the extent necessary to implement activities (b)–(d) below, locate, equip and staff (1) the León regional offices of the property registry, the cadastre, the office of alternative conflict resolution, the land titling agency, several municipal governments and (2) the national cadastre office in Managua.

(b) Activity: Cadastral Mapping

To provide an accurate and current physical description of all property in León, MCC Funding will be used to:

(i) Clarify municipal and urban administrative boundaries;

(ii) Prepare base maps on which parcel boundaries will be demarcated;

(iii) Perform parcel-by-parcel demarcation and mapping; and

(iv) Publish mapping results to enable owners and occupants to review demarcated parcel boundaries and request clarification and/or corrections, if needed.

(c) Activity: Land Tenure Regularization

To achieve accurate, registered and secure land titles or other valid property records for property owners in León, MCC Funding will support:

(i) The gathering of legal and other information about each parcel, training of fieldwork teams, and consultation with local authorities in León;

(ii) A promotion and information campaign to educate León residents about the benefits of participating in the regularization process; and

(iii) Administrative and legal actions to facilitate land title clarification and registration and conflict mediation.

(d) Activity: Database Installation

To integrate physical and legal descriptions of property and to develop a land information system, MCC Funding will be used for:

(i) Procurement and installation of SIICAR, a modern network of interconnected registry and cadastral databases that link municipalities in León to other databases;

(ii) Initial operation of SIICAR in León, including quality control; and

(iii) Technical assistance and training on the use of SIICAR in León.

(e) Activity: Protected Area Demarcation

To enable the protection of environmentally sensitive areas and regularize land rights within such areas, MCC Funding will be used to:

(i) Demarcate and legally record the boundaries of four (4) environmentally-sensitive protected areas in León;

(ii) Provide assistance to communities to implement land use management plans for the protected areas;

(iii) Conduct outreach and education regarding these activities; and

(iv) Coordinate and supervise sub-activities (i)–(iii) above.

(f) Activity: Analysis and Communications

MCC Funding will support the development of policies, strategies and technical measures to promote participation in, and the use and sustainability of, the improved property registration system, including:

(i) Implementation of a communications strategy about the overall objectives and approach of the Project;

(ii) Final development and implementation of PRODEP's draft gender strategy to improve awareness of women's rights in the regularization process;

(iii) Further development, in consultation with local communities, of a property tax strategy to prevent inappropriate taxation of regularized property rights and to improve municipal land tax administration;

(iv) Analysis of the impact of an improved property registration system on land markets;

(v) Clarification of the land tenure situation in the indigenous community in León and development of an appropriate approach to land tenure regularization in this community;

(vi) Development of a Project environmental plan to monitor potential negative impacts of the Project; and

(vii) Analysis of other potential administrative, technical and/or policy reforms related to topics such as secured lending, mechanisms for land acquisition and access, financial sustainability of the modernized registry and cadastre, and a national land policy framework.

The *expected results* from, and the *key benchmarks* to measure progress on, these activities are set forth in Annex III.

3. Beneficiaries

The Property Regularization Project will directly benefit anyone who has a

[3] PRODEP, constituted by decree as a technical secretariat of the Ministry of Finance and Public Credit, was developed, and is supported, by the World Bank. PRODEP is responsible for, among other things, implementing donor programs to modernize Nicaragua's land registry and cadastral systems and to regularize land rights.

property interest in land in León and particularly the poor, who historically have had a limited ability to resolve land tenure irregularities. The Parties anticipate that roughly 40% of the beneficiaries of the Project will be women who, jointly or independently, have land rights. Residents and businesses in the area will benefit from an improved investment climate resulting from increased land tenure security and lower property-related transaction costs.

4. Coordination With USAID and Other Donors

USAID\Nicaragua does not currently fund work on property rights regularization in Nicaragua. In the recent past, the mission supported policy-related research on land market development and on property registration with the Nicaraguan Ministry of Agriculture and the Inter-American Institute for Cooperation on Agriculture. USAID in Washington (Bureau for Latin America and the Caribbean) supports the exchange of information to help countries in the region achieve property registration goals set at the Summit of the Americas and has engaged with the Government of Nicaragua as part of this effort. The extension of PRODEP under this Compact complements USAID/Nicaragua's economic growth programs to diversify the rural sector in Nicaragua.

Despite past interventions by the World Bank, Inter-American Development Bank, USAID, Danish International Development Agency, United Nations Development Programme and other donors, Nicaragua still faces serious land tenure problems. To address these problems, the Government, through PRODEP, seeks to improve the legal and institutional framework for property rights. To strengthen consensus for reforms, PRODEP benefits from an inter-ministerial advisory committee.

Current funding from the World Bank and the Nordic Development Fund has allowed PRODEP to operate its program in Chinandega (in addition to Estelí and Madriz). Additional funding is required to meet the pressing property regularization needs of León to facilitate achievement of the Compact Goal. The Property Regularization Project will complement World Bank and Nordic Development Fund programs by providing the funds necessary for PRODEP to expand its efforts and operate in León. Finally, MCC-supported monitoring and evaluation will complement efforts to track progress in Nicaragua on land tenure security and land market development indicators that are currently under development with European Union support.

5. Sustainability

The sustainability of the Project's results depends on the extent to which people use the improved registration system and fiscal capacity of the registry, cadastre and titling services. The incentives for people to use and pay for services as well as the quality and costs of services will need to be appropriate to the local context. Several recent policy reforms that have been formally adopted (*e.g.*, new cadastre and registry laws) or that are in process of being adopted (*e.g.*, tenure regularization law) will bring about new institutional relationships and operational practices that will more effectively facilitate the process for keeping property records up-to-date. The Government's ability to maintain modern, computerized land records and maps and a well-trained staff will depend on both an adequate public budget and the Government's ability to set and collect fees for services. The World Bank suggests that incorporating up-to-date records for the 70% of all properties that are currently either unregistered or incorrectly registered will create a vastly expanded number of users. More accessible, reliable and efficient services will likely increase the willingness of these users to use the system and to pay for services. The new registry law will provide an autonomous budget for the registry so that it can more rationally project its costs and revenues and set fees and budget accordingly. The Project includes specific support for training, technical assistance and analysis of policy, fee structures and other measures to help ensure sustainability.

6. Policy and Legal Reform

(a) Performance Criteria.

The Parties have identified the following policy, legal and regulatory reforms and actions that the Government shall pursue in support, and to reach the full benefits, of the Property Regularization Project, the satisfactory implementation of which will be conditions precedent to certain MCC Disbursements as provided in the Disbursement Agreement:

(i) Legislation that modernizes tenure regularization and clarifies the legal basis for solving irregularities in tenure regularization;

(ii) Measures to safeguard the Project from any laws, regulations or policies that may undermine the results of the Project, including those that (i) undermine private land ownership or impede transparent, clear transfer of land title, (ii) result in inappropriate taxation of regularized property rights, (iii) constitute political manipulation during the tenure regularization process, and (iv) result from the inappropriate or illegitimate use of supplementary titles (titulo supletorio); and

(iii) Legislation that maintains the integrity of the four (4) environmentally-sensitive protected areas in León demarcated under the Project.

(b) Indicative Goals.

To improve its level of performance under the policy criteria identified in Section 607 of the Act and the MCA Eligibility Criteria, the Government will pursue the following legislative and policy reforms:

(i) Legal, regulatory and administrative reforms to improve access to secured lending, including relevant aspects of the legal, regulatory and administrative framework for secured transactions.

Schedule 2 to Annex I—Transportation Project

This Schedule 2 generally describes and summarizes the key elements of a transportation project that the Parties intend to implement in furtherance of the Transportation Objective (the *''Transportation Project''*). Additional details regarding the implementation of the Transportation Project will be included in the Implementation Plan and in relevant Supplemental Agreements.

1. Background

High transportation costs are a significant impediment to economic growth in Nicaragua. Even as regional commercial agendas such as DR–CAFTA promise to create a more competitive environment for trade, the cost and efficiency of the country's transportation network continues to hold back its true productive capacity. With an average truck speed of 20 kilometers per hour, this inadequate infrastructure has driven transportation costs in the region to twice that of comparable transportation costs in the United States.

Consequently, the PRSP and NDP propose an ambitious plan to strengthen the Nicaraguan transportation network. This fits within the broader strategy developed in the Plan Puebla-Panama (*''PPP''*) to create a reliable Mesoamerican network of highways known as the International Network of Mesoamerican Highways. This network comprises two main corridors on the Atlantic and the Pacific (the *''Atlantic Corridor''* and *''Pacific Corridor,''*

respectively) and a series of complementary routes. Under this initiative, member countries have pledged to work toward harmonizing transportation regulations and standards, modernizing customs procedures and border crossings, and strengthening airport security. The Atlantic and Pacific Corridors are vital to the integration of Central America and will have a significant economic impact on this region by creating an efficient connection between the production centers in Central America and major port facilities on the Atlantic and Pacific Oceans.

The 3,150 kilometer Pacific Corridor links Mexico, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica and Panama. In Nicaragua, the Pacific Corridor connects the Honduran border at Guasaule to the Costa Rican border and major production and consumption centers in and around the cities of Managua, León and Chinandega. The World Bank, the Central American Bank for Economic Integration, and the Nordic Development Fund have financed the construction of a modern transportation route from the Honduran border to the town of Izapa, approximately 58 kilometers from the capital of Managua. This remaining 58 kilometer stretch of road between Izapa and Nejapa (the *''N–I Road''*) on the outskirts of Managua is the final section needed to create an effective trade corridor linking producers and consumers in Managua to markets north in neighboring Honduras and El Salvador and linking producers in León and Chinandega to Managua and markets south. The current poor condition of the N–I Road has forced commercial traffic to be routed through highly populated centers along Lake Managua, negatively impacting service levels, maintenance, and safety.

Many productive areas in Nicaragua are connected to the main road arteries by unpaved secondary roads, whose uneven surfaces prohibit rapid transit, cause high vehicle operating costs, and damage transported goods, thereby undermining the competitiveness of the producers who must use them. These roads are also expensive to maintain, requiring periodic re-grading following the rainy season. For these reasons, the paving of selective secondary roads is a sound investment which contributes to the economic potential of the areas they serve.

2. Summary of Project Activities

The Transportation Project is designed to reduce transportation costs between Nicaraguan production centers and national, regional and global markets. The key activities of the Transportation Project include:

- N–I Road. The improvement of the 58 kilometer N–I Road.
- Secondary Roads. The upgrade of key secondary routes to improve the access of rural communities to domestic, regional and global markets.
- Technical Assistance. The provision of technical assistance to MTI and the Nicaraguan Road Maintenance Fund (*Fondo de Mantenimiento* or *''FOMAV''*).

The M&E Plan (described in Annex III) will set forth anticipated results and, where appropriate, regular benchmarks that may be used to monitor implementation progress. Performance against these benchmarks and the overall impact of the Transportation Project will be assessed and reported at the intervals to be specified in the M&E Plan or as otherwise agreed by the Parties from time to time. The Parties expect that additional indicators will be identified during the implementation of the Transportation Project.

The following summarizes the contemplated Transportation Project Activities.

(a) Activity: N–I Road

MCC Funding will support the following activities in connection with the improvements to the N–I Road:

(i) Final feasibility study, environmental impact assessment, and design;

(ii) Construction along the N–I Road, including building (A) appropriate base, sub-base and drainage structures, (B) a high-quality paved surface, and (C) entrance and exit lanes in appropriate places;

(iii)Environmental mitigation measures, as may be appropriate;

(iv) Signage and other safety improvements;

(v) Supervision of construction activities; and

(vi) Compensation for individuals, residences and businesses affected by the rehabilitation of the N–I Road consistent with the World Bank Policy on Involuntary Resettlement.

(b) Activity: Secondary Roads

MCC Funding will fund the paving of key secondary roads with the most cost-effective and appropriate surfacing technique, which roads will be selected from among a portfolio of proposed roads by MCA-Nicaragua, with MCC approval, subject to the conditions that each selected road must:

(i) Have been included in the medium-term investment plan of MTI;

(ii) Be located in León and/or Chinandega;

(iii) Conform to the Environmental Guidelines;

(iv) Conform to the World Bank policy on Involuntary Resettlement, where relevant;

(v) Be fully designed to the satisfaction of MCA-Nicaragua and MCC and have technical construction plans that are capable of being completed during the Compact Term;

(vi) Reasonably conform to the priorities of the local development councils in León and Chinandega;

(vii) Be properly documented to the satisfaction of MCA-Nicaragua and MCC, including a description of the location of the proposed road, the type of construction, the estimated cost, a technical and economic assessment, land acquisition required, and the status of any necessary environmental permits and other requisite licenses; and

(viii) Be projected ex ante to achieve an economic rate of return of not less than eight percent (8%), computed on the basis of a benefit stream from decreased vehicle operating costs.

(c) Activity: Technical Assistance to MTI and FOMAV

MCC Funding will fund technical assistance to build the sustainable operational capacity of MTI and FOMAV, an autonomous agency that was created within MTI in 2000 with funding from the World Bank and the Inter-American Development Bank (*''IDB''*). FOMAV is primarily responsible for all Nicaraguan maintainable roads, as classified by MTI.

The *expected results* from, and the *key benchmarks* to measure progress on, these activities are set forth in Annex III.

3. Beneficiaries

The principal beneficiaries of the Transportation Project are expected to be (i) users of the improved roads, due to decreased transportation costs to markets and social service delivery points (*e.g.*, hospitals, schools), and (ii) employees and owners of urban and rural businesses that rely on the Nicaraguan road network. The Transportation Project also promises to have a significant economic impact in the greater Central American region since it constitutes a key component of the Pacific Corridor.

4. Coordination With USAID and Other Donors

(a) Coordination during Project Development. In developing the Transportation Project, the Parties investigated the work of the donors described below in an effort to ensure that the Transportation Project

complements, and does not duplicate, replace or harm such work.

A national plan for transport developed by MTI serves as the basis for donor-funded road projects in Nicaragua. A number of multi-lateral and bilateral donors and lenders are active in the sector—IDB, World Bank, Central American Bank for Economic Integration, Denmark, Spain, and Japan, among others.

The World Bank is in the process of preparing its fourth loan related to the Nicaraguan road sector, which is expected to total an additional $70–75 million. In addition to funding civil works for construction and maintenance of highways, the Bank has funded training of MTI and micro-enterprises to perform road maintenance. The Bank's Program for Sustainable Institutional Strengthening of the Road Sector seeks to institutionally strengthen MTI to improve the quality of road construction, the reliability of resources allocated to the sector, road safety, and environmental management. A proposed World Bank loan is expected to include conditions relating to road maintenance, local counterpart funds, and social studies.

In 2003, the World Bank and IDB began funding FOMAV to strengthen its capacity and to better ensure the sustainability of road investments. IDB is conditioning new projects under its ongoing PPP Highway Project to Promote Competitiveness on the Government's contributing money to FOMAV. In addition, IDB chairs, along with the Minister of Transport and Infrastructure, the Infrastructure Coordinating Council, a body that coordinates infrastructure policies and donor activities in Nicaragua.

(b) Coordination during Project Implementation. In an effort to ensure that the Compact activities are adequately coordinated with the activities of other donors and financial institutions involved in road funding in Nicaragua, the Parties and other donors will coordinate in the construction of various sections of the Pacific Corridor, including drafting clauses into their agreements to ensure regular meetings to conduct oversight and to monitor progress.

5. Sustainability

The implementation of the Transportation Project is designed to support the development of local capacity by providing Nicaraguan professionals and institutions with experience in implementing the Program, while maintaining tight fiduciary risk controls. This design is expected to add to Nicaragua's soft infrastructure—the human capital base that is essential for the successful design, management and oversight of public and private projects. While most procurement for the Transportation Project will be managed by a private firm that will be selected through an international competitive bidding process, local staff will be involved in each step of the process.

Both the World Bank and IDB have, in recent years, funded programs to build the capacity of MTI to manage the transportation sector, make sound transportation investments (*e.g.*, analytical capabilities, economic evaluation, *etc.*), provide maintenance, and expand the participation of the private sector in providing transportation services (e.g., maintenance contracting). Under this Project, MCC will provide additional technical assistance to MTI and FOMAV to build upon these earlier donor efforts.

Effective road maintenance will be the key to financial sustainability of the Transportation Project. The present condition of many primary and secondary roads in Nicaragua is below most acceptable standards due primarily to a lack of adequate funding and the lack of proper maintenance standards. Although FOMAV has not secured funds for 2006 or beyond to discharge its road maintenance responsibilities, MTI and the Ministry of Finance are considering several proposals to create permanent funding for FOMAV, and the Government has agreed to fund road maintenance in the amount of $15 million in year 2006, increasing to $35 million in year 2010. Funding from MCC for the Transportation Project shall depend on the satisfaction of conditions for ongoing road maintenance and the funding thereof set forth in relevant Supplemental Agreements.

The key to ensuring environmental and social sustainability of the Program and this Project is ongoing public consultation to ensure optimal design and implementation and to ensure full country-ownership of the Program. The Technical Secretariat will include an Environmental and Social Impact (*''ESI''*) Specialist whose job will be to ensure that environmental and social mitigation measures (including resettlement and gender issues) are followed for all Project Activities in accordance with the provisions set forth in the Compact and other documents. The ESI Specialist also will serve as the point of contact for comments and concerns of Project-affected parties regarding the implementation of all segments of the Compact, and lead the effort to find feasible resolutions to those problems. The ESI Specialist will convene periodic public meetings to provide implementation updates and to identify and address public concerns.

6. Policy and Legal Reform

The Parties have identified the following policy, legal and regulatory reforms and actions that the Government shall pursue in support, and to reach the full benefits, of the Transportation Project, the satisfactory implementation of which will be conditions precedent to certain MCC Disbursements as provided in the Disbursement Agreement:

(a) Legislation to ensure sustainable maintenance of the national road network, including adequate funding. Funding targets will be agreed upon in the Disbursement Agreement, and shall include adequate funding to FOMAV for road maintenance in accordance with generally accepted technical standards.

(b) Local governments to provide adequate funding for sustainable maintenance of the secondary roads that MCC Funding is used to improve. Funding targets will be agreed upon in the Disbursement Agreement, and shall include adequate funding for road maintenance in accordance with generally accepted technical standards.

(c) Legislation on national road safety and enforcement of such legislation.

Schedule 3 to Annex I—Rural Business Development Project

This Schedule 3 describes and summarizes the key elements of a rural business development project that the Parties intend to implement in furtherance of the Rural Business Development Objective (the *''Rural Business Development Project''*). Additional details regarding the implementation of the Rural Business Development Project will be included in the Implementation Plan and in relevant Supplemental Agreements.

1. Background

Despite a comparative advantage in the production, processing and marketing of agricultural products, more than 70% of the rural population in León-Chinandega is poor. Producers, suppliers, service providers, processors, and marketing agents frequently work in isolation or are absent in the region. Women generally are less likely than men to participate in agricultural organizations, receive technical assistance or credit or plant higher profit-yielding crops, despite their significant presence as producers. The region also suffers from pronounced deforestation and inadequate irrigation for farming and other productive activities, especially the poor

communities in the Northern Highlands and in the peninsula of Cosiguina.

The Rural Business Development Project will support services that help develop higher-profit agriculture and agribusiness enterprises. The Project will particularly focus on reaching poor farmers who require more help in making the transition into these businesses. In addition, the Project will help sustain these enterprises by linking and coordinating businesses throughout the farm to market value chain—producers, entrepreneurs, buyers, service providers, and investors. Investments in public goods such as applied research and investment promotion promise to attract investment and expand productivity in the region. Grants will support activities to improve water supply to facilitate higher-value, sustainable agriculture and forestry in the upper watershed areas of the region. This will help poor families that live in the degraded upper watersheds and, in the long term, protect business developed downstream from damages caused by environmental degradation on the hillsides.

2. Summary of Project Activities

MCC Funding will be used to increase profits and wages in farms and non-farm businesses in León-Chinandega through the following activities:

- Rural Business Development Services. Expand higher-profit agriculture and agribusiness by providing business development services, disseminating market information, developing improved production techniques, and managing the two Project Activities described below;
- Technical and Financial Assistance. To help small- and medium-size farms and agribusinesses transition to higher-profit activities, provide technical and financial assistance to these enterprises, including support that will directly offset certain costs of small farms; and
- Grants to Improve Water Supply for Farming and Forest Production. Based on a watershed management action plan, provide grants to improve the water supply for irrigation and facilitate higher value, sustainable agriculture and forestry in the upper watershed areas of the region.

The M&E Plan (described in Annex III) will set forth anticipated results and, where appropriate, regular benchmarks that may be used to monitor implementation progress. Performance against these benchmarks and the overall impact of the Rural Business Development Project will be assessed and reported at the intervals to be specified in the M&E Plan or as otherwise agreed by the Parties from time to time. The Parties expect that additional indicators will be identified during Project implementation. Estimated amounts of MCC Funding for each Project Activity for the Rural Business Development Project are identified in Annex II of this Compact. The following summarizes the planned Rural Business Development Project Activities.

(a) Activity: Rural Business Development Services

To assist farms and businesses in developing higher-profit enterprises, MCC Funding will be used to support rural business development services that MCA-Nicaragua provides in León-Chinandega, subject to review and approval by MCC. In addition to setting up and equipping an office of MCA-Nicaragua in León-Chinandega (the *''Rural Office''*) that will provide these services, MCC funds will support the following Rural Office activities:

(i) Collection and dissemination of information about market demand for products that could be supplied from León-Chinandega and identification of farms and businesses that could produce these products;

(ii) Development of business plans for farmers and other businesses (including women-owned enterprises) to meet such market demand, which plans will identify, among other things, the technical and financial requirements needed to implement such plans and a specific implementation strategy and timeframe for doing so;

(iii) Based on the experience and needs of the farms and businesses supported by the Project, development of policy reform recommendations needed to help these enterprises grow into higher-profit enterprises;

(iv) Promotion of investment in León-Chinandega by (A) stimulating interest in the region's resources and geographic location, including through a promotional campaign directed by a specialized public private agency, Pro-Nicaragua, (B) providing investor services, and (C) coordinating with other donor program;

(v) Improvement of production techniques through research and development projects outsourced to local and international universities and research institutions;

(vi) Monitoring the performance of farms and other businesses that receive assistance from the Rural Office;

(vii) Management of Project Activities (b) and (c) below by the Rural Office's expert staff and consultants; and

(viii) Implementation of a gender strategy developed prior to the implementation of Project Activity (b) below.

The Rural Office will provide the services related to information dissemination and business plan development to farmers and other businesses without cost.

(b) Activity: Technical and Financial Assistance

To help farmers and other businesses successfully transition to higher-profit activities, MCC Funding will help selected small farms and businesses to obtain specific technical assistance (*e.g.*, agronomic and business assistance) and funding needed to successfully execute their businesses plans developed in coordination with the Rural Office. Technical assistance will include, among other things, training in complying with sanitary and phytosanitary standards, certification documentation and bioterrorism regulations, and ensure that businesses employ environmentally sustainable agricultural practices.

A review committee composed of key Rural Office staff and specialists from MCA-Nicaragua (including the Rural Business, ESI and Monitoring and Evaluation Specialists) will (i) develop criteria for selecting recipients of technical and financial assistance prior to any MCC Disbursement for the Project, subject to MCC approval, and (ii) make selections based on such criteria.

The Rural Office will identify independent contractors through a competitive selection process to provide the technical assistance funded under this Project Activity. The Rural Office will directly finance or assist selected farms and businesses to obtain financing through a network of financial institutions and other donor programs operating in the region.

(c) Activity: Grants To Improve Water Supply for Farming and Forest Production

To improve the supply of water for irrigation and encourage producers to transition to more environmentally sustainable land use in the upper watershed areas of León-Chinandega, MCC funds will support:

(i) Preparation of a watershed management action plan (the ''Watershed Plan'') by a water and natural resource specialist that the Rural Office will employ and an implementing entity that the Rural Office engages through a competitive selection process. The Watershed Plan, which the Rural Office will adopt, subject to MCA-Nicaragua and MCC approval, will, among other things:

(1) Analyze the watershed in León-Chinandega;

(2) Prioritize sites and potential investments to address problems that cause water deficiencies, flooding, erosion and other water-related issues in the region; and

(3) Identify (A) potential risks to other parts of the watershed that may result from these investments and (B) proposed measures to mitigate these risks.

(ii) Based on the Watershed Plan, an implementing entity that the Rural Office engages through a competitive selection process will solicit proposals for projects in the following investment areas, which proposals can either be funded by grants using MCC Funding or developed for funding by other donors:

(1) Investments in site-specific, small-scale irrigation schemes, soil conservation structures, reforestation activities and other water management measures; and/or

(2) Investments in higher value farming and/or forestry in this region. Proposed grants will be supported only if they (A) specifically fit within the Watershed Plan, (B) clearly demonstrate the potential to increase income in the community where the investment will be made, and (C) meet an investment criteria of at least a ten percent (10%) economic rate of return and an acceptable financial rate of return (at least eight percent (8%). The implementing entity will select the projects to be supported with MCC Funding, subject to the approval of the review committee described in Section 2(b) above, MCA-Nicaragua and MCC.

To ensure sustainability of the investments made with MCC Funding, the implementing entity will assist grant recipients to (i) build community support for a proposed investment, (ii) adopt sound business management practices for the development and operation of the investment, and (iii) establish the legal entities and financial mechanisms necessary to provide for maintenance, replacement and improvement of investments over time.

The *expected results* from, and the *key benchmarks* to measure progress on, these activities are set forth in Annex III.

3. Beneficiaries

The principal direct Project beneficiaries are expected to be relatively poor households employed in agriculture or with small farms. Agribusinesses and other micro-, small- and medium-sized enterprises also will benefit from new or expanded market opportunities created under the Project. The Project Activities related to grants for improving water supply will expand income growth benefits to some of the poorest households in the region while protecting agricultural enterprises from future resource degradation.

4. Coordination With USAID and Other Donors

(a) USAID. The Rural Office and USAID will coordinate in four strategic areas:

(i) Business development activities. The objectives of MCC- and USAID-supported agribusiness development activities are similar. Both will support technical assistance to help beneficiaries develop better business operations, overcome constraints to competitiveness, and work toward strengthening the linkages in the value chain. However, USAID's agribusiness development projects are national in scope while the MCC Project will focus intensively on León-Chinandega. MCC and USAID will coordinate closely to ensure their programs operate in a complementary fashion and benefit the largest possible number of farmers and agro-entrepreneurs. Together, U.S. Government efforts will offer a wider array of services and impact a larger client-base by encouraging implementing partners to coordinate effectively.

(ii) Development Credit Authority (DCA). The DCA guarantee program encourages banks to lend for the types of agricultural and agribusiness enterprises that will be supported by the Project. The Rural Office staff will engage financial institutions that qualify for the DCA program by encouraging Project farmers and agribusinesses with ''bankable'' business activities to take advantage of financial services from such financial institutions.

(iii) Advocacy for Policy Reform. The Rural Office will channel priority policy reform issues from León-Chinandega into national dialogue through USAID's partners, thereby magnifying USAID policy reform efforts.

(iv) SPS Capacity Building (SPSCB). USAID is supporting USDA to help the Government develop a national fee-based SPS certification system for a variety of agricultural products such as meats, dairy, seafood, poultry, fruits and vegetables. The SPSCB will be a strong Rural Office partner in building up regional capacity in these areas and increasing the region's export capacity.

MCC, USAID and other U.S. Government agencies will ensure ongoing coordination and optimization of U.S. Government funding by calling on their implementing partners to coordinate activity implementation plans and by continuing to participate in efforts like the trade capacity building process established in support of DR–CAFTA.

(b) Other Donors. Japan, Sweden, Denmark, other Nordic and European countries, the European Union, the Inter-American Development Bank and the World Bank support projects that complement the Rural Business Development Project, such as grants for productive infrastructure (rural roads, electrification, irrigation, reforestation, etc.), competitiveness of the agricultural and light manufacturing sector, and trade capacity building. The Rural Office will strive to improve operational-level coordination among donor programs in the region in relation to rural business development. Specifically, close collaboration with the IDB's ''Rural Productive Infrastructure'' and ''POSAF'' programs could help improve access to financing for the Rural Office's clientele. The World Bank's nation-wide technical assistance project could help strengthen national institutions and expand technical assistance to agriculture.

5. Sustainability

The Rural Office's primary objective is to increase the economic viability of farmers and agribusinesses in León-Chinandega. Initially, the Rural Office will be established as a subsidiary entity to MCA-Nicaragua based on the view that the impacts, rather than the Rural Office itself, must be sustainable. Selection criteria for activities funded under the Project will include potential for self-sustaining business models. Similarly, expanded horticultural production will create economies of scale that reduce the unit costs of inputs and post-harvesting services. The Project is expected to improve rural access to finance through its financial literacy campaign and by promoting ''bankable'' business activities. As bankers understand the profit potential of new demand from Program farmers, they are likely to respond by developing the financial products and services needed.

A sustainable capacity to produce and market products from the region with relatively high earning potential will remain even if the Rural Office itself does not remain in operation at the end of the Compact Term. The Rural Office itself, however, may become a sustainable operation if its services fill a market demand.

The watershed management action plan will provide a basis for improving environmental sustainability of land uses throughout the region. The grants to improve water supply will not only allow more rural households to engage in higher value activities promoted by

the Rural Office, but will also contribute to the sustainability of farming and forest production throughout the region over the long term. Beneficiaries will be assisted in establishing business models that will pay costs associated with maintaining investments over time.

Environmental and social sustainability of the Program will be achieved through ongoing public consultation to ensure optimal design and implementation and to ensure full country-ownership of the Program. The ESI Specialist within MCA-Nicaragua will ensure that environmental and social mitigation measures (including for gender issues) are followed for all Project Activities in accordance with the provisions set forth in the Compact and other documents.

6. Policy and Legal Reform

(a) Performance Criteria. The Parties have identified the following policy, legal and regulatory reforms and actions that the Government shall pursue in support, and to reach the full benefits, of the Rural Business Development Project, the satisfactory implementation of which will be conditions precedent to certain MCC Disbursements as provided in the Disbursement Agreement:

(i) Continue with customs union and tariff harmonization with other Central American countries; and

(ii) Expedite the approval procedures for the importation of seeds for planting.

(b) Indicative Goals. To improve its level of performance under the policy criteria identified in Section 607 of the Act and the MCA Eligibility Criteria, the Government will pursue the following legislative and policy reforms:

(i) Improvement in bankruptcy laws so that creditors and debtors have predictable, equitable and transparent mechanisms for resolving creditor claims;

(ii) Improvement in the efficiency and predictability of contract enforcement, including by enacting effective alternative dispute resolution mechanisms; and

(iii) Legislation governing pledges of moveable and real property collateral so that (among other things):

(1) Such laws are updated, particularly to eliminate uncertainty and unnecessarily formalistic requirements;

(2) In the case of moveable property, the law allows for notice-based perfection of security interests through the filing of a general description of collateral in an easily-accessible centralized registry; and

(3) Such laws allow for enforcement of security interests through extra-judicial self-help and by speedy and reliable judicial processes.

The Government also will consider such other of legal or policy reforms that the Rural Office identifies as needed to improve competitiveness of its potential clients and their access to credit.

Annex II—Financial Plan Summary

This Annex II to the Compact (the *''Financial Plan Annex''*) summarizes the Multi-Year Financial Plan for the Program. Each capitalized term in this Financial Plan Annex shall have the same meaning given such term elsewhere in this Compact.

1. *General.* A multi-year financial plan summary (*''Multi-Year Financial Plan Summary''*) is attached hereto as Exhibit A. By such time as specified in the Disbursement Agreement, MCA-Nicaragua will adopt, subject to MCC approval, a Multi-Year Financial Plan that includes, in addition to the multi-year summary of anticipated estimated MCC Funding and the Government's contribution of funds and resources, an estimated draw-down rate for the first year of the Compact based on the achievement of performance milestones, as appropriate, and the satisfaction or waiver of conditions precedent. Each year, at least 30 days prior to the anniversary of the Entry Into Force, the Parties shall mutually agree in writing to a Detailed Financial Plan for the upcoming year of the Program, which shall include a more detailed plan for such year, taking into account the status of the Program at such time and making any necessary adjustments to the Multi-Year Financial Plan.

2. *Implementation and Oversight.* The Financial Plan shall be implemented by MCA-Nicaragua, consistent with the approval and oversight rights of MCC and the Government as provided in this Compact, the Governance Agreement and the Disbursement Agreement.[4]

3. *Estimated Contributions of the Parties.* The Multi-Year Financial Plan Summary identifies the estimated annual contribution of MCC Funding for Program administration, monitoring and evaluation, and each Project. The Government's contribution of resources to Program administration, monitoring and evaluation, and each Project shall consist of (i) ''in-kind'' contributions in the form of Government Responsibilities and any other obligations and responsibilities of the Government identified in the Compact, including contributions identified in the notes to the Multi-Year Financial Plan Summary, (ii) such other contributions or amounts as identified in notes to the Multi-Year Financial Plan Summary, and (iii) such other contributions or amounts as may be identified in relevant Supplemental Agreements between the Parties or as may otherwise be agreed by the Parties; *provided,* in no event shall the Government's contribution of resources be less than the amount, level, type and quality of resources required to effectively carry out the Government Responsibilities or any other responsibilities or obligations of the Government under or in furtherance of this Compact.

4. *Modifications.* The Parties recognize that the anticipated distribution of MCC Funding between and among the various Program activities and Project Activities will likely require adjustment from time to time during the Compact Term. In order to preserve flexibility in the administration of the Program, the Parties may, upon agreement of the Parties in writing and without amending the Compact, change the designations and allocations of funds between Program administration and a Project, between one Project and another Project, between different activities within a Project, or between a Project identified as of the entry into force of this Compact and a new Project, without amending the Compact; *provided, however,* that such reallocation (i) is consistent with the Objectives, (ii) does not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1(a) of this Compact, (iii) does not cause the Government's obligations, responsibilities or overall contribution of resources to be less than specified in Section 2.2(a) of this Compact, this Annex II or elsewhere in the Compact, and (iv) does not extend the Compact Term.

5. *Conditions Precedent; Sequencing.* MCC Funding will be disbursed in tranches. The obligation of MCC to approve MCC Disbursements and Material Re-Disbursements for the Program and each Project is subject to satisfactory progress in achieving the Objectives and on the fulfillment or waiver of any conditions precedent specified in the Disbursement Agreement for the relevant Program activity, Project or Project Activity. The sequencing of Project Activities and other aspects of how the Parties intend the Projects to be implemented will be set forth in the Implementation Plan, including Work Plans for the applicable

[4] The role of civil society in the implementation of the Compact (including through participation on the Board of Directors), the responsibilities of the Government and MCC in achieving the Objectives, and the process for the identification of beneficiaries are addressed elsewhere in this Compact and therefore are not repeated here.

Project, and MCC Disbursements and Re-Disbursements will be disbursed consistent with that sequencing.

EXHIBIT A - MULTI YEAR FINANCIAL PLAN SUMMARY: FINANCIAL BUDGET (millions of dollars)

ITEM	DESCRIPTION		TIMELINE					Total[4]
			CY1	CY2	CY3	CY4	CY5[5]	
PROPERTY REGULARIZATION PROJECT			**6.4**	**10.2**	**6.4**	**3.5**	**0.0**	**26.5**
Activity A	Institutional Capacity Building		1.7	1.1	0.8	1.5	0.0	5.1
Activity B	Cadastral Mapping		0.3	1.5	1.0	0.6	0.0	3.3
Activity C	Land Tenure Regularization		3.1	4.5	2.2	0.0	0.0	9.8
Activity D	Database Installation		0.1	0.1	0.1	0.1	0.0	0.3
Activity E	Protected Area Demarcation		0.3	0.6	0.1	0.1	0.0	1.1
Activity F	Analysis and Communications		0.4	1.5	1.6	1.0	0.0	4.4
	Contingency		0.6	0.9	0.6	0.3	0.0	2.4
TRANSPORTATION PROJECT		[1]	**4.9**	**18.8**	**30.6**	**27.9**	**10.5**	**92.8**
Activity A	N-I Road (segment of Pacific Corridor)	[2]	1.7	6.5	10.7	9.8	3.2	32.0
Activity B	Secondary Roads	[3]	3.0	12.0	19.8	18.0	7.2	60.0
Activity C_1	Technical Assistance to FOMAV	[8]	0.1	0.1	0.0	0.0	0.0	0.3
Activity C_2	Technical Assistance to MTI	[8]	0.1	0.1	0.1	0.1	0.1	0.5
RURAL BUSINESS DEVELOPMENT PROJECT			**5.2**	**7.9**	**9.3**	**11.1**	**0.3**	**33.7**
Activity A	Rural Business Development Services		2.1	2.2	2.3	2.1	0.2	8.9
Activity B	Technical and Financial Assistance		0.8	2.5	2.5	2.5	0.0	8.5
Activity C	Grants to Improve Water Supply for Farming and Forestry Production	[6]	1.8	2.5	3.6	5.4	0.0	13.3
	Contingency		0.5	0.7	0.8	1.0	0.0	3.1
MCA PROGRAM ADMINISTRATION, MONITORING & EVALUATION			**2.4**	**1.8**	**2.7**	**1.9**	**1.9**	**10.6**
	Establishment and Operation of MCA-Nicaragua		1.0	0.8	0.8	0.8	0.6	4.0
	Monitoring and Evaluation	[7]	0.9	0.2	0.9	0.2	0.9	3.3
	Financial Audits		0.3	0.6	0.7	0.7	0.2	2.5
	Contingency		0.2	0.2	0.2	0.2	0.2	1.0
FISCAL / PROCUREMENT AGENT			**1.5**	**2.7**	**3.4**	**3.1**	**0.7**	**11.5**
TOTAL			**20.4**	**41.3**	**52.5**	**47.5**	**13.3**	**175.0**

Exhibit A: Notes

[1] Costs are based on U.S. Army Corp of Engineers' assessment using a ''rough order of magnitude'' (ROM) cost estimate which includes all feasibility studies and designs, construction (including bridges/drainage), procurement, and contingencies. MCC Funding will be disbursed only upon satisfaction of (i) completion of a detailed Project management plan and coordination plan by MCA-Nicaragua in conjunction with the Infrastructure Specialist, and (ii) other conditions set out in the Disbursement Agreement.

[2] Actual costs for construction of N-I Road will need to be fully developed during the feasibility stage of Project execution. Initial funds will be disbursed for design and feasibility studies. However, funds for construction will only be disbursed upon satisfaction of conditions for road maintenance as set forth in relevant Supplemental Agreements.

[3] Secondary road cost estimates are based on three candidate roads that are typical of the secondary roads that could be funded under the Compact. Actual roads funded may be different based on selection criteria, but the total amount allotted to this Project Activity is capped. Local governments shall dedicate adequate funding for sustainable road maintenance for the secondary roads in their jurisdictions as set forth in the Disbursement Agreement.

[4] Amounts shown are U.S. Dollars in millions.

[5] Although most Project Activities will take place from Year 1 through Year 4 (except for roads), the five-year Compact Term will allow additional time to ensure that Project Activities are completed. Monitoring and Evaluation will continue after the completion of the Project Activities.

[6] These amounts will be disbursed only upon satisfaction of obtaining requisite approvals by a review committee within the Rural Office and MCC as set forth in the Disbursement Agreement.

[7] The Government will provide in-kind contributions in the form of staff time and resources towards data collection and other monitoring and evaluation functions.

[8] The Government will provide in-kind contributions in the form of staff time and resources to work toward the expected results of this Project.

Annex III—Description of the M&E Plan

This Annex III to the Compact (the *''M&E Annex''*) generally describes the components of the M&E Plan for the Program. Each capitalized term used but not defined in this M&E Annex shall have the same meaning given such term elsewhere in this Compact; *provided, however,* that the term *''Parties''* in this M&E Annex shall mean MCC and the Government (or a mutually acceptable Government Affiliate or Permitted Designee).

1. Overview

The Parties shall formulate, agree to, and the Government shall implement, or cause to be implemented, an M&E Plan that specifies (i) how progress toward the Compact Goal, Objectives and Project Activities will be monitored (the *''Monitoring Component''*), (ii) a methodology, process and timeline for the evaluation of planned, ongoing, or completed Project Activities to determine their efficiency, effectiveness, impact and sustainability (the *''Evaluation Component''*), and (iii) other components of the M&E Plan described below. Information regarding the Program's performance, including the M&E Plan, and any amendments or modifications thereto, as well as periodically-generated reports, will be made publicly available on the MCA-Nicaragua Web site and elsewhere.

2. Monitoring Component

To monitor progress toward the achievement of the Project Activities, the Objectives and the Compact Goal, the Monitoring Component of the M&E Plan shall identify (a) the Indicators, (b) the party or parties responsible, the timeline, and the instrument for collecting data and reporting on each Indicator to MCA-Nicaragua, and (c) the method by which the reported data will be validated.

(a) Indicators. The M&E Plan shall measure the results of the Program using quantitative, objective and reliable data (*''Indicators''*). Each Indicator will have one or more expected results that specify the expected value and the expected time by which that result will be achieved (*''Target''*). The M&E Plan will measure and report four types of Indicators. First, the Compact Goal Indicators (each, a *''Goal Indicator''*) will measure the impact of the Program on the incomes of Nicaraguans who participate or are covered by the Program (collectively, ''Beneficiaries''). Second, Objective Indicators (each, an *''Objective Indicator''*) will measure the final results of the Projects in order to monitor their success in meeting the Objectives. Third, Outcome Indicators (each, an *''Outcome Indicator''*) will measure the intermediate results of goods and services delivered under each Project in order to provide an early measure of the likely impact of the Projects on the Objectives. Fourth, Project Activity Indicators (each, an *''Activity Indicator''*) will measure the delivery of key goods and services in order to monitor the pace of Project Activity execution. For each Outcome Indicator, Objective Indicator, and Goal Indicator, the M&E Plan shall define a strategy for obtaining and verifying the value of such Indicator prior to undertaking any activity that affects the value of such Indicator (such value, a *''Baseline''*). All Indicators will be disaggregated by gender, income level and age, to the extent practicable.

(i) Goal Indicator. The M&E Plan shall contain the Goal Indicators listed in the table below. The Project Activities undertaken by the Program are expected to increase the incomes of Beneficiaries. The increase in income that accrues to a group of Beneficiaries as a result of one or more Project Activities over a period of time constitutes expected income gains (*''Expected Income Gains''*). The M&E Plan shall contain Goal Indicators that shall measure the change in the income of Beneficiaries attributable to the relevant Projects. MCA-Nicaragua, with approval from MCC, must define a methodology for estimating an Expected Income Gain prior to the disbursement of funds for any Project Activity that may influence that Expected Income Gain. Such a methodology should measure the difference between the actual income of Beneficiaries and the estimated value of what their income would have been without the Program.

COMPACT GOAL: INCREASED ECONOMIC GROWTH AND REDUCED POVERTY

Indicators (All Year numbers are in millions of USD)	Year 5	Year 6	Year 10
Total Expected Income Gains	$20.94	$48.22	$51.91
Expected Income Gains of N-I Road Upgrade [1]	$5.73	$6.96	$9.86
Beneficiaries: Users of roads and employees of businesses that use roads.			
Expected Income Gains of Secondary Roads Upgrade [2]	$8.59	$7.73	$5.07
Beneficiaries: Communities surrounding secondary roads and users of roads..			
Expected Income Gains of Property Regularization [3]	$3.88	$3.96	$4.21
Beneficiaries: Recipients of registered regularized titles.			
Expected Income Gains of Rural Business Development [4]		$24.52	$27.73
Beneficiaries: Program businesses and employees of program farmers and businesses..			
Expected Income Gains of Rural Business Development [5]	$2.73	$5.05	$5.05
Beneficiaries: Employees of businesses in value chain.			
Expected Income gains of Improvement of Water Supply for Farming and Forest Production [6]	This will be estimated at the end of Year 1 after completion of the Watershed Management Action Plan. All projects financed will require a minimum economic rate of return of 10% and an acceptable financial rate of return (at least 8%).		
Beneficiaries: Communities sourrounding water supply project(s)			

[1] For the N-I Road, the expected income gains are derived from savings due to reduced vehicle operating costs and travel time.

[2] For secondary road upgrading, the expected income gains are calculated based on costs of $30 million per year in years 1 and 2, and benefits beginning in year 2, with a minimum return of 8% and annual depreciation of 10%. This estimate will be revised at the end of Year 1 when the roads selected are confirmed and all design studies and environmental assessments are completed. Income gains are derived from savings due to reduced vehicle operating costs and travel time.

[3] Expected income gains are defined as annual increase in property value per manzana * the number of manzanas registered.

[4] Expected income gains are defined as the increase in Value Added to the Firm, calculated as profits + labor costs, per manzana of a typical horticulture crop minus the value added per manzana of cattle grazing (US$100) * number of manzanas harvesting this typical horticulture crop. A typical horticulture crop is defined as the average of plantain, cashew and organic sesame, crops suitable for Nicaragua. Reporting on this indicator does not begin until Year 6, because tree crops do not produce yields for at least three years after planting.

[5] Expected income gains are defined as Value Added from Employment, calculated as an average annual wage rate of $500 * the number of jobs created * 0.5 (0.5 = discount for wages earned of those previously employed).

[6] Expected income gains will be determined when the specific improvement of water supply activities are specified, and will require a minimum economic rate of return of 10%. Specific improvement of water supply activities are expected to be determined by the end of Year 1.

(ii) Outcome and Objective Indicators. The M&E Plan shall contain the Objective and Outcome Indicators listed in the table below. MCA-Nicaragua, subject to prior written approval from MCC, may only add Objective and Outcome Indicators or refine the Targets of existing Objective and Outcome Indicators prior to any MCC Disbursement or Re-Disbursement for any Project or Project Activity that may influence that Indicator, unless the Parties otherwise agree in writing.

PROPERTY REGULARIZATION PROJECT [1]

[Objective: Increase investment by strengthening property rights]

	Baseline [2]	Year 1	Year 2	Year 3	Year 4	Year 5
Objective Level Indicators (Metric of Project success observable by end of Compact.)						
Value of investment on land.	TBD	.....	.....	16% over baseline	.....	32% over baseline
Value of land (urban) [3].	$519.00	$529.54	$540.30	$551.28	$562.47	$573.90
Value of land (rural) [3].	$404.00	$412.21	$420.58	$429.12	$437.84	$446.74
Outcome Level Indicators (Early indicators of Project Activities impact on objectives.)						
Time to conduct a land transaction [4].	65 days	.....	15.9% decrease from baseline.	29.3% decrease from baseline.	40.5% decrease from baseline.	50% decrease from baseline.
Full cost to conduct a land transaction [4, 5].	6.50%	.....	25% decrease from baseline.	.....	.....	50% decrease from baseline.
Perception of tenure security.	TBD	.....	30% increase over baseline.	.....	.....	50% increase over baseline.

Notes to Property Regularization Project Table:

[1] Information in this table is based on survey data from the World Bank PRODEP Project in Nicaragua.

[2] Final baselines will be established during the initial implementation of the Project.

[3] Values are reported in constant U.S. Dollars.

[4] Baselines for time and cost to conduct a land transaction are preliminary.

[5] Cost to conduct a land transaction targets are expressed as a percent of the value of the transaction.

TRANSPORTATION PROJECT

[Objective: Reduce transportation costs between Leon and Chinandega and national, regional and global markets]

	Baseline	Year 5	Year 10
Objective Level Indicators (Metric of Project success observable by end of Compact.)			
Annual average daily traffic volume \[1, 2	R1 2,146 ..... R2 1,156 ..... Secondary Roads: TBD	R1 2,639 ..... R2 1,422 ..... Secondary Roads: TBD ...	R1 3,416 R2 1,841 Secondary Roads: TBD.
Gap between farm-gate price and free-on-board price [3].	TBD	.....	
Price of basket of goods [4]	TBD	.....	
Outcome Level Indicators (Early indicators of Project Activities impact on objectives.)			
Cost per journey (Travel time) [5]	Secondary Roads: TBD	Secondary Roads: TBD ...	Secondary Roads: TBD
Cost per journey (International roughness index) [6]	R1 7.2 ..... R2 8.3	R1 2.4 ..... R2 2.4	R1 2.7 R2 2.7

Notes to Transportation Project Table:

[1] R1 and R2 represent different sections of the N-I Road being upgraded.

[2] This information will be a requirement of the secondary roads proposals submitted to the Program. Information will be verified as part of the secondary roads selection process, prior to disbursement of Project funds.

[3] Farm-gate prices and free-on-board prices will depend on type of crop grown and will be confirmed by implementing entity(ies) as part of reporting requirements.

[4] Price of basket of goods will depend on where secondary roads are upgraded and will be determined when secondary roads are selected.

[5] Secondary roads.
[6] N–I Road.

RURAL BUSINESS DEVELOPMENT PROJECT

[Objective: Increase the value added of farms and enterprises in the region]

	Baseline [1]	Year 1	Year 2	Year 3	Year 4	Year 5
Objective Level Indicators (Metric of Project success observable by end of Compact):						
Number of program businesses, including farms, engaged in higher profit businesses by year end.	0	.....	720	1,800	3,090	4,720
Number of program manzanas transitioned to higher-value crops by year end.	0	.....	5 manzanas per Farm.	5 manzanas per Farm.	5 manzanas per Farm.	5 manzanas per Farm.
Annual percentage increase in value added of clients of business center [2].	0	.....	17%	17%	17%	17%
Number of jobs created	0	.....	250	1,750	3,850	7,000
Number of program manzanas harvesting higher-value crops or reforesting under improvement of water supply activities [3].	0	.....	1,500	4,000	7,750	10,000
Outcome Level Indicators (Early indicators of Project Activities impact on objectives):						
Number of business plans prepared by clients with assistance of Rural Business Center (year end) [4].	0	790	1,340	1,830	2,280	300
Dollars of new investment in León and Chinandega.						

Notes to Rural Business Development Project Table:
[1] Baseline data for each Indicator will be verified prior to undertaking any activity that affects the value of such Indicator.
[2] Annual percentage increase will be calculated against the baseline value added of client business activity, as reported on intake survey.
[3] These numbers will be revised at the end of Year 1 after completion of the Watershed Management Action Plan.
[4] Project will not work with any new businesses in Year 5.

(iii) Activity Indicators. Prior to the disbursement of MCC Funding for any Project Activity, the Implementing Entity of that Project Activity must propose a set of Activity Indicators that is approved in writing by its Project Manager, MCA-Nicaragua and MCC. The M&E Plan shall be amended to reflect the addition of such Indicators. The table below shows a notional list of Activity Indicators that the M&E Plan may contain.

PROPERTY REGULARIZATION PROJECT

Activity Level Indicators	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Property Regularization:						
Automated registry-cadastre database installed	25%	75%	.....	.....	.....	100%
Number of parcels with a registered title, rural and urban (total of 21,000 and 22,000, rural and urban, respectively)	1,000 978	8,754 8,250	7,400 7,272	3,846 5,500	.....	21,000 22,000
Protected areas demarcated	0.4	3.6	.....	.....	.....	4
Number of protected area management plans implemented	1	1	1	1	.....	4
Number of conflicts resolved by program mediation	500	2,000	1,500	.....	.....	4,000
Number of manzanas covered by cadastral mapping	172,288	394,000	174,286	.....	.....	740,574

TRANSPORTATION PROJECT

Activity Level Indictors	Year 3	Year 5	Total
N–I Road:			
Kilometers of road upgraded	0	58	58
Secondary Roads [1]:			
Kilometers of road upgraded	.....	Up to 100	Up to 100

Notes to Transportation Project Table:
[1] Kilometers of secondary roads upgraded will be confirmed by the end of Year 1, when design studies and environmental assessments are completed.

RURAL BUSINESS DEVELOPMENT PROJECT

Activity Level Indicators	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Rural Business Development Centers:						
Value of TA and support services delivered to program businesses [1].	$344,081	$1,376,323	$2,064,485	$3,096,728	.....	$6,881,617
Improvement of Water Supply for Farming and Forest Production [2]:						
Watershed Management Action Plan	Completed.					
Funds disbursed for improvement of water supply for farming and forest production projects.	.....	1,770,000	2,950,000	4,425,000	2,655,000	11,800,000

Notes to Rural Business Development Project Table:
[1] This indicator will be disaggregated by source of funding, including MCA-Nicaragua.
[2] Indicators will be verified at the end of Year 1, after the Watershed Management Action Plan is completed and projects are developed.

(b) Data Collection and Reporting. The M&E Plan shall establish guidelines for data collection and a reporting framework, including a schedule of Program reporting and responsible parties. The Technical Secretariat shall conduct regular assessments of program performance to inform MCA-Nicaragua, Project Managers and the MCC of progress under the Program and to alert these parties to any problems. These assessments will report the actual results compared to the Targets on the Indicators referenced in the Monitoring Component, explain deviations between these actual results and Targets, and in general, serve as a management tool for implementation of the Program. With respect to any data or reports received by MCA-Nicaragua, MCA-Nicaragua shall promptly deliver such reports to MCC along with any other related documents, as specified in this Annex III or as may be requested from time to time by MCC. With respect to the Rural Business Development Project, the Rural Business Development Center will conduct intake surveys to establish baselines for value added of either farms or firms or value chains. With the assistance of an on-site data quality reviewer, the Center will track the same information over time and use this information for performance evaluations and managing the resources of the Center.

(c) Data Quality Reviews. From time to time, as determined in the M&E Plan or as otherwise requested by MCC, the quality of the data gathered through the M&E Plan shall be reviewed to ensure that data reported are as valid, reliable, and timely as resources will allow. The objective of any data quality review will be to verify the quality and the consistency of performance data across different implementation units and reporting institutions. Such data quality reviews also will serve to identify where those levels of quality are not possible, given the realities of data collection. The data quality reviewer shall enter into an Auditor/Reviewer Agreement with MCA-Nicaragua in accordance with Annex I.

3. Evaluation Component

The Program shall be evaluated on the extent to which the interventions contribute to the Compact Goal. The Evaluation Component shall contain a methodology, process, and timeline for analyzing data in order to assess planned, ongoing, or completed Project Activities to determine their efficiency, effectiveness, impact, and sustainability. This component should use state-of-the-art methods for addressing selection bias and should make provisions for collecting data from both treatment and control groups, where practicable. The Evaluation Component, which shall contain two types of reports, (a) a Final Evaluation and (b) Ad Hoc Evaluations, shall be finalized prior to any MCC Disbursement or Re-Disbursement for specific Project Activities.

(a) Final Evaluation. MCA-Nicaragua, with the prior written approval of MCC, may engage an independent evaluator to conduct an evaluation at the expiration or termination of the Compact Term (*''Final Evaluation''*) at MCC's election, MCC may engage such independent evaluator. The Final Evaluation must at a minimum (i) evaluate the efficiency and effectiveness of the Project Activities; (ii) estimate, in a statistically valid way, the causal relationship between the Projects and the Compact Goal; (iii) determine if and analyze the reasons why the Compact Goal was or was not achieved; (iv) identify positive and negative unintended results of the Program; (v) provide lessons learned that may be applied to similar projects; and (vi) assess the likelihood that results will be sustained over time. To the extent engaged by MCA-Nicaragua, such independent evaluator shall enter into an Auditor/Reviewer Agreement with MCA-Nicaragua in accordance with Annex I.

(b) Ad Hoc Evaluations. Either MCC or MCA-Nicaragua may request ad hoc or interim evaluations or special studies of Projects, Project Activities, or the Program as a whole prior to the expiration of the Compact Term. If MCA-Nicaragua engages an evaluator, the evaluator will be an externally contracted independent source selected by MCA-Nicaragua, subject to the prior written approval of MCC, following a tender in accordance with the Procurement Guidelines, and otherwise in accordance with any relevant Implementation Letter or Supplemental Agreement. The cost of an independent evaluation or special study may be paid from MCC Funding. If MCA-Nicaragua requires an independent evaluation or special study at the request of the Government for any reason, including for the purpose of contesting an MCC determination with respect to a Project or Project Activity or to seek funding from other donors, no MCC Funding or MCA-Nicaragua resources may be applied to such evaluation or independent study without MCC's prior written approval.

4. Other Components of the M&E Plan

In addition to the Monitoring and Evaluation Components, the M&E Plan shall include the following components for the Program and each Project and Project Activity, including, where appropriate, roles and responsibilities of the relevant parties and Providers:

(a) Costs. A detailed cost estimate for all components of the M&E Plan Plan.

(b) Assumptions and Risks. Any assumptions and risks external to the Program that underlie the accomplishment of the Objectives; *provided,* however, such assumptions and risks shall not excuse performance of the Parties, unless otherwise expressly agreed to in writing by the Parties.

5. Implementation of the M&E Plan

(a) Approval and Implementation. The approval and implementation of the M&E Plan, as amended from time to time, shall be in accordance with the Program Annex, this M&E Annex, the Governance Agreement, and any other relevant Supplemental Agreement.

(b) MCC Disbursement and Re-Disbursement for a Project Activity. Unless the Parties otherwise agree in writing, prior to, and as a condition precedent to, any initial MCC Disbursement or Re-Disbursement with respect to a certain Project or Project Activities, the baseline data or report with respect to such Project or Project Activity, as applicable and as specified in the Disbursement Agreement, must be completed in form and substance satisfactory to MCC. As a condition to each MCC Disbursement or Re-Disbursement, there shall be satisfactory progress on the M&E Plan for the relevant Project or Project Activity, and substantial compliance with the M&E Plan, including any reporting requirements, as further specified in the Disbursement Agreement.

(c) Modifications. Notwithstanding anything to the contrary in the Compact, including the requirements of this M&E Annex, MCC and the Government (or a mutually acceptable Government Affiliate or Permitted Designee) may modify or amend the M&E Plan or any component thereof, including those elements described herein, without amending the Compact; *provided,* any such modification or amendment of the M&E Plan has been approved by MCC in writing and is otherwise consistent with the requirements of this Compact and any relevant Supplemental Agreement between the Parties.

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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 "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_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.

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