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# Contents

**Federal Register**

Vol. 71, No. 63

Monday, April 3, 2006

**Agriculture Department**
*See* Animal and Plant Health Inspection Service
*See* Food and Nutrition Service
*See* Forest Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16546–16547

**Animal and Plant Health Inspection Service**
NOTICES
Environmental statements; availability, etc.:
John F. Kennedy International Airport; Gull Hazard Reduction Program, 16547–16548

**Census Bureau**
NOTICES
Meetings:
Census Advisory Committees, 16548–16549

**Centers for Disease Control and Prevention**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16580–16581
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 16581
HIV and STD Prevention and Treatment Advisory Committee, 16581
Immunization Practices Advisory Committee, 16582

**Children and Families Administration**
NOTICES
Meetings:
Head Start Accountability and Educational Performance Measures Advisory Committee, 16582

**Coast Guard**
RULES
Drawbridge operations:
Florida, 16491–16492
Georgia, 16489–16491
Great Lakes pilotage regulations:
Rate adjustments, 16501–16518
Regattas and marine parades:
Chesapeake Bay Bridges Swim Races, MD, 16488–16489
Virginia State Hydroplan Championships, 16488
PROPOSED RULES
Drawbridge operations:
Florida, 16529–16531
South Carolina, 16527–16529
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Georgetown Channel, Potomac River, Washington, DC, 16531–16534
Regattas and marine parades:
2006 Rappahannock River Boaters Association Spring and Fall Radar Shootout, 16525–16527

**Commerce Department**
*See* Census Bureau
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration

**Defense Department**
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 16563
Meetings:
Dose Reconstruction, Veterans' Advisory Board, 16564
Privacy Act; systems of records, 16564–16566
Travel per diem rates, civilian personnel; changes, 16566–16572

**Drug Enforcement Administration**
NOTICES
Registration revocations, restrictions, denials, reinstatements:
Wedgewood Village Pharmacy, 16593–16597

**Employment Standards Administration**
*See* Wage and Hour Division

**Energy Department**
*See* Western Area Power Administration
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Chairs, 16572

**Environmental Protection Agency**
RULES
Air programs:
Fuel and fuel additives—-
Gasoline and diesel fuel test methods, 16492–16500
PROPOSED RULES
Air programs:
Ambient air quality standards, national—
Exceptional events; data treatment; hearings, 16534–16535
Fuels and fuel additives—
Gasoline and diesel fuel test methods, 16535–16541
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16574–16577
Grants and cooperative agreements; availability, etc.:
Pollution Prevention Program, 16577–16578

**Executive Office of the President**
*See* Presidential Documents

**Farm Credit Administration**
NOTICES
Meetings; Sunshine Act, 16578

**Federal Aviation Administration**
RULES
Airworthiness directives:
Boeing, 16477–16481
PROPOSED RULES
Air carrier certification and operations:
Transport category airplanes—
Thermal acoustic insulation; fire penetration resistance, 16678–16682

NOTICES
Committees; establishment, renewal, termination, etc.:
National Parks Overflights Advisory Group Aviation Rulemaking Committee, 16609–16610
Reports and guidance documents; availability, etc.:
High altitude cabin decompression certification policy, 16610
Transport category airplanes; fuel tank flammability reduction, 16611

**Federal Communications Commission**
NOTICES
Meetings:
Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, 16578–16579

**Federal Mine Safety and Health Review Commission**
NOTICES
Meetings; Sunshine Act, 16597

**Federal Motor Carrier Safety Administration**
NOTICES
Meetings:
Protection against shifting or falling cargo; North American standard; implementation, 16611–16612

**Federal Reserve System**
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 16579

**Fish and Wildlife Service**
NOTICES
Endangered and threatened species:
Ash Meadow Amargosa pupfish, etc. (California and Nevada species); 5-year review; correction, 16584–16585

**Food and Drug Administration**
RULES
Animal drugs, feeds, and related products:
Gentamicin sulfate, betamethasone valerate, clotrimazole ointment; technical amendment, 16481
NOTICES
Meetings:
Medical Devices Advisory Committee and Peripheral and Central Nervous System Drugs Advisory Committee, 16582–16583

**Food and Nutrition Service**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16548

**Forest Service**
RULES
National Forest System lands; special uses:
Cabin User Fee Fairness Act—
Recreation residence lots appraisal procedures and recreation residence uses management, 16622–16657
Recreation residences management and fee assessment, 16614–16622

**General Services Administration**
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 16563

**Health and Human Services Department**
*See* Centers for Disease Control and Prevention
*See* Children and Families Administration
*See* Food and Drug Administration
NOTICES
Meetings:
Vital and Health Statistics National Committee, 16579–16580

**Homeland Security Department**
*See* Coast Guard
*See* Immigration and Customs Enforcement Bureau

**Housing and Urban Development Department**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 16583–16584
Public and Indian housing:
Hurricanes Rita and Katrina disaster areas; regulatory and administrative waivers; granted to assist with recovery and relief; Disaster Voucher Program, 16660–16661

**Immigration and Customs Enforcement Bureau**
PROPOSED RULES
Privacy Act; implementation, 16519–16520

**Interior Department**
*See* Fish and Wildlife Service
*See* National Park Service
RULES
Native American Graves Protection and Repatriation Act; implementation:
Technical amendments; correction, 16500–16501

**International Trade Administration**
NOTICES
Antidumping:
Brass sheet and strip from—
Various countries, 16552
Cased pencils from—
China, 16553
Corrosion-resistant carbon steel flat products from—
France, 16553–16556
Frozen warmwater shrimp from—
Ecuador, 16556
Large diameter carbon and alloy seamless standard, line, and pressure pipe from—
Mexico, 16556–16558
Polyester staple fiber from—
Korea and Taiwan, 16558–16559
Small diameter seamless carbon and alloy steel standard, line, and pressure pipe from—
Brazil, 16559
Uranium from—
Russian Federation, 16560–16562
Antidumping and countervailing duties:
Administrative review requests, 16549–16550
Five year (sunset) reviews—
Initiation of reviews, 16550–16552

**International Trade Commission**
NOTICES
Import investigations:
Canned pineapple fruit—
Thailand, 16585–16587
Furfuryl alcohol from—
China and Thailand, 16587–16590

Stainless steel angle from—
Japan, Korea, and Spain, 16590–16592
Meetings; Sunshine Act, 16592

**Justice Department**
*See* Drug Enforcement Administration
*See* Prisons Bureau
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 16592–16593

**Labor Department**
*See* Mine Safety and Health Administration
*See* Occupational Safety and Health Administration
*See* Wage and Hour Division
**RULES**
Technical amendments, 16669–16675

**Mine Safety and Health Administration**
**RULES**
Technical amendments, 16669–16675

**Mine Safety and Health Federal Review Commission**
*See* Federal Mine Safety and Health Review Commission

**National Aeronautics and Space Administration**
**NOTICES**
Committees; establishment, renewal, termination, etc.:
U.S. Space-Based Positioning, Navigation, and Timing Advisory Board, 16597–16598
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 16563

**National Highway Traffic Safety Administration**
**PROPOSED RULES**
Insurer reporting requirements:
Insurers required to file report; list, 16541–16545

**National Oceanic and Atmospheric Administration**
**NOTICES**
Grants and cooperative agreements; availability, etc.:
2006 FY funds availability; omnibus notice; correction, 16562–16563

**National Park Service**
**PROPOSED RULES**
Special regulations:
Golden Gate National Recreation Area, CA; dog managment, 16534

**Nuclear Regulatory Commission**
**NOTICES**
Meetings:
Reactor Safeguards Advisory Committee, 16601
*Applications, hearings, determinations, etc.:*
Amergen Energy Co., LLC, 16598
Nuclear Management Co., 16599–16601

**Occupational Safety and Health Administration**
**RULES**
Technical amendments, 16669–16675

**Presidential Documents**
**PROCLAMATIONS**
*Special observances:*
Cancer Control Month (Proc. 7992), 16683–16686
National Child Abuse Prevention Month (Proc. 7993), 16687–16688
National Donate Life Month (Proc. 7994), 16689

**Prisons Bureau**
**PROPOSED RULES**
Inmate control, custody, care, etc.:
Terrorist inmates; limited communication, 16520–16525

**Railroad Retirement Board**
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 16601

**Securities and Exchange Commission**
**NOTICES**
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 16601–16603
National Association of Securities Dealers, Inc., 16603–16604
Options Clearing Corp., 16604–16605

**Small Business Administration**
**NOTICES**
Disaster loan areas:
Missouri, 16605
New York, 16605–16606

**Social Security Administration**
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 16606–16608

**State Department**
**RULES**
Federal claims collection standards:
Debt collection procedures, 16481–16488
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 16608–16609

**Transportation Department**
*See* Federal Aviation Administration
*See* Federal Motor Carrier Safety Administration
*See* National Highway Traffic Safety Administration

**Wage and Hour Division**
**RULES**
Regulatory review and update, 16669–16675
Technical amendments, 16669–16675

**Western Area Power Administration**
**NOTICES**
Power rates:
Desert Southwest Customer Service Region, 16572–16573

---

**Separate Parts In This Issue**

**Part II**
Agriculture Department, Forest Service, 16614–16657

**Part III**
Housing and Urban Development Department, 16660–16661

**Part IV**
Labor Department, Mine Safety and Health Administration; Labor Department, Occupational Safety and Health Administration, 16664–16669
Labor Department, Wage and Hour Division 16664–16675

**Part V**
Transportation Department, Federal Aviation Administration, 16678–16682

**Part VI**
Executive Office of the President, Presidential Documents, 16683–16689

**Reader Aids**

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

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

## CFR PARTS AFFECTED IN THIS ISSUE

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


**3 CFR**

**Proclamations:**

7992 ..... 16685
7993 ..... 16687
7994 ..... 16689

**6 CFR**

**Proposed Rules:**

5 ..... 16519

**14 CFR**

39 ..... 16477

**Proposed Rules:**

121 ..... 16678

**21 CFR**

524 ..... 16481

**22 CFR**

34 ..... 16481

**28 CFR**

**Proposed Rules:**

540 ..... 16520

**29 CFR**

11 ..... 16664
500 ..... 16664
501 ..... 16664
516 ..... 16664
519 ..... 16664
531 ..... 16664
536 ..... 16664
547 ..... 16664
548 ..... 16664
549 ..... 16664
550 ..... 16664
552 ..... 16664
570 ..... 16664
1910 ..... 16669
1913 ..... 16669
1915 ..... 16669
1926 ..... 16669

**30 CFR**

28 ..... 16664
48 ..... 16664
50 ..... 16664
56 ..... 16664
57 ..... 16664
70 ..... 16664
71 ..... 16664
72 ..... 16664
75 ..... 16664
77 ..... 16664
90 ..... 16664

**33 CFR**

100 (2 documents) ..... 16488
117 (3 documents) ..... 16489, 16491, 16492

**Proposed Rules:**

100 ..... 16525
117 (2 documents) ..... 16527, 16529
165 ..... 16531

**36 CFR**

251 (2 documents) ..... 16614, 16622

**Proposed Rules:**

Ch. I ..... 16534

**40 CFR**

80 ..... 16492

**Proposed Rules:**

50 ..... 16534
51 ..... 16534
80 ..... 16535

**43 CFR**

10 ..... 16500

**46 CFR**

401 ..... 16501

**49 CFR**

**Proposed Rules:**

544 ..... 16541

# Rules and Regulations

Federal Register
Vol. 71, No. 63
Monday, April 3, 2006

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.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2005–21593; Directorate Identifier 2002–NM–328–AD; Amendment 39–14537; AD 2006–07–10]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 727 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD), which applies to certain Boeing Model 727 airplanes. That AD currently requires repetitive visual inspections for cracking of the forward entry doorway forward frame and repair if necessary. That AD also provides an optional modification that constitutes terminating action. This new AD requires adding new post-repair and post-modification inspections for previously repaired or modified airplanes, mandating the optional modification, and adding airplanes to the applicability of the AD. This AD results from reports of cracking of the forward entry doorway forward frame of airplanes previously modified. We are issuing this AD to prevent the loss of the structural integrity of the forward entry doorway due to cracking of the frame at Body Station 303.9, and consequent cracking of the fuselage skin and rapid decompression of the airplane.

**DATES:** This AD becomes effective May 8, 2006.

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

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

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

**FOR FURTHER INFORMATION CONTACT:** Daniel F. Kutz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6456; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Examining the Docket

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

### Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 91–09–07, amendment 39–6982 (56 FR 18687, April 24, 1991). The existing AD applies to certain Boeing Model 727 series airplanes. That NPRM was published in the **Federal Register** on June 22, 2005 (70 FR 36064). That NPRM proposed to require adding new post-repair and post-modification inspections for previously repaired or modified airplanes, mandating the optional modification, and adding airplanes to the applicability of the AD.

### Comments

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

### Request To Revise Paragraph (l) of the NPRM

The Boeing Company requests that paragraph (l) of the NPRM be revised to apply the one-time inspections only to most Group 1 airplanes. The commenter states that operators of most Group 1 airplanes have been planning on doing the modification in accordance with AD 90–06–09, amendment 39–6488 (55 FR 8370, March 7, 1990) and Boeing Document D6–54860. The commenter asserts that mandating the modification in the final rule is redundant because it is already required by AD 90–06–09. The commenter further explains that Revision 7 of Boeing Alert Service Bulletin (ASB) 727–53A0153, dated August 14, 2003, added some new airplanes to the Group 1 list as well as all of the Group 2 airplanes.

We do not agree. We do acknowledge that, for most Group 1 airplanes, AD 90–06–09 also mandates the same modification as paragraph (l) of this AD, in that Boeing ASB 727–53–153 is referenced in Boeing Document D6–54860, ''Aging Airplane Service Bulletin Structural Modification Program—Model 727,'' Revision C, dated December 11, 1989, which is the appropriate source of service information required by AD 90–06–09. We do not agree to require only the inspection for most of Group 1, since the service bulletin does not distinguish those airplanes that were added to Group 1. We have provided an alternative method of compliance statement in paragraph (n)(4) of this AD to allow credit for the modification accomplished in accordance with AD 90–06–09.

### Request To Revise the Compliance Time

The Boeing Company also requests that paragraph (l) of the NPRM be revised to extend the grace period for some Group 1 airplanes and all of the Group 2 airplanes. The commenter suggests using the wording, ''Before the accumulation of 60,000 total flight cycles, or within the earlier of 4 years or 7,200 flight cycles after the effective date of this AD.'' The commenter notes that some Group 1 airplanes and all of the Group 2 airplanes have been added to Revision 7 of Boeing ASB 727–53A0153, and consequently, they were not addressed by Boeing Document D6–54860 or AD 90–06–09. The commenter explains that both Revision 7 of Boeing ASB 727–53A0153 and Boeing Document D6–54860 have a 60,000 flight cycle threshold to do the modification. However, the commenter

states that the grace period in Boeing Document D6–54860 allows up to 4 years beyond the 60,000 flight cycle threshold to allow operators to schedule the airplane modification during a major maintenance check period. The commenter advises that Model 727 airplanes fly an average of 1,800 flight cycles per year or 7,200 flight cycles in 4 years. For those airplanes past the 60,000 flight cycle threshold, safety would be mitigated by the inspections at 3,700 flight cycle intervals until reaching the 7,200 flight cycle or 4-year limit, whichever occurs first. The commenter states that revising the grace period also would provide the consistency with the compliance times specified in Boeing Document D6–54860.

We agree that the compliance time may be revised for the reasons given by the commenter. We have revised paragraph (l) and added a new paragraph (m) of this AD to accommodate revision of the compliance time. This revision does not change the grace period for modification of Group 1 airplanes applicable to AD 90–06–09.

### Editorial Changes

We have revised paragraph (f) of this AD to correctly reference sub-paragraphs (f)(1) and (f)(2) of this AD.

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

In addition, we inadvertently specified in paragraph (k) of the NPRM that any cracking found during any HFEC inspection required certain corrective actions. Our intention was to specify that any cracking found during any inspection would require certain corrective actions. We have revised paragraph (k) of this AD to state that, if any cracking is detected during any inspection, certain corrective actions must be accomplished.

### Explanation of Change To Applicability

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

### Conclusion

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

### Costs of Compliance

There are about 1,038 Model 727 airplanes of the affected design in the worldwide fleet. This AD will affect about 616 airplanes of U.S. registry.

The actions that are required by AD 91–09–07 and retained in this AD take about 58 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the currently required actions is $3,770 per airplane, per inspection cycle.

The new inspections will take about 5 to 6 work hours per airplane, depending on the airplane configuration, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the new actions required by this AD is between $325 and $390 per airplane, per inspection cycle.

The terminating action specified in this AD will affect airplanes on which the previous optional modification has not been accomplished, and will take between 14 and 40 work hours per airplane, depending on the airplane configuration, at an average labor rate of $65 per work hour. Required parts for the terminating modification will cost between $877 and $6,749 per airplane, depending on the airplane configuration. Based on these figures, the estimated cost of the terminating action specified in this AD is between $1,787 and $9,349 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 removing amendment 39–6982 (56 FR 18687, April 24, 1991) and by adding the following new airworthiness directive (AD):

**2006–07–10 Boeing:** Amendment 39–14537. Docket No. FAA–2005–21593; Directorate Identifier 2002–NM–328–AD.

#### Effective Date

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

#### Affected ADs

(b) This AD supersedes AD 91–09–07.

#### Applicability

(c) This AD applies to Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 727–53A0153, Revision 7, dated August 14, 2003.

#### Unsafe Condition

(d) This AD was prompted by reports of cracking of the forward frame of the forward

entry doorway of airplanes previously modified. We are issuing this AD to prevent the loss of the structural integrity of the forward entry doorway due to cracking at Body Station (BS) 303.9, and consequent cracking of the fuselage skin and rapid decompression of the airplane.

**Compliance**

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

**Restatement of Certain Requirements of AD 91–09–07**

(f) For airplanes listed in Boeing Service Bulletin 727–53–0153, Revision 5, dated December 14, 1989: Visually inspect the forward entry doorway frame for cracks in accordance with Boeing Service Bulletin 727–53–0153, dated February 1, 1980, or Revisions 1 through 5, at the earlier of the times indicated in subparagraphs (f)(1) or (f)(2) of this AD. Repeat the inspection at intervals not to exceed 3,700 landings until accomplishment of the one-time high frequency eddy current (HFEC) inspection for cracking and the one-time dimensional inspection for anomalies required by paragraph (i) of this AD, or the one-time dimensional inspection for anomalies and the initial HFEC inspection for cracking of the forward frame of the forward entry doorway at BS 303.9 specified in paragraph (h) of this AD, as applicable.

(1) Within the next 1,850 landings after March 11, 1983 (the effective date of AD 83–03–01, amendment 39–4561), or prior to accumulating a total of 25,000 landings, whichever occurs later; or

(2) Within the next 1,850 landings after May 16, 1986 (the effective date of AD 83–03–01 R1, amendment 39–5283), or prior to accumulating a total of 15,000 landings, whichever occurs later.

(g) For airplanes modified in accordance with Boeing Service Bulletin 727–53–0153, dated February 1, 1980; through Revision 4, dated November 8, 1985; conduct the inspections described in paragraph (f) of this AD prior to the accumulation of 10,000 landings after the modification or within the next 3,700 landings after May 28, 1991 (the effective date of AD 91–09–07), whichever occurs later. Repeat the inspection at intervals not to exceed 3,700 landings until accomplishment of the one-time HFEC inspection for cracking and the one-time dimensional inspection for anomalies required by paragraph (i) of this AD, or the one-time dimensional inspection for anomalies and the initial HFEC inspection for cracking of the forward frame of the forward entry doorway at BS 303.9 specified in paragraph (h) of this AD, as applicable.

**New Requirements of This AD**

*Repetitive Inspections for Certain Airplanes*

(h) For Group 1 airplanes as defined by Boeing Alert Service Bulletin (ASB) 727–53A0153, Revision 7, dated August 14, 2003, with the exception of certain Group 1 airplanes specified in paragraph (i) of this AD: Perform a one-time dimensional inspection for anomalies (e.g., minimum dimension requirements, jagged edges, chafing, nicks, or gouges) of the web cutouts at stringers S–15 and S–16, and HFEC inspections for cracking of the forward frame of the forward entry doorway at BS 303.9; in accordance with Figure 1 of the Accomplishment Instructions of Revision 7 of the ASB at the times specified in paragraph (h)(1) or (h)(2) of this AD, as applicable. With the exception of the one-time dimensional inspection (Step 1 of Figure 1) of the web cutouts at S–15L and S–16L, repeat the HFEC inspections for cracking of the forward frame of the forward entry doorway at BS 303.9 at intervals not to exceed 3,700 flight cycles until the requirements of paragraph (l) of this AD have been accomplished.

(1) For Group 1 airplanes that have not been modified or repaired in accordance with any issue of the service bulletin through Revision 7 inclusive specified in Table 1 of this AD: Perform the inspection before the accumulation of 15,000 total flight cycles, or within 1,800 flight cycles after the effective date of this AD, whichever occurs later.

TABLE 1.—SERVICE BULLETIN REVISIONS

| Service bulletin | Revision level | Date |
|---|---|---|
| Boeing Service Bulletin 727–53–153 | Original | February 1, 1980. |
| Boeing Service Bulletin 727–53–153 | Revision 1 | June 19, 1981. |
| Boeing Service Bulletin 727–53–153 | Revision 2 | December 3, 1982. |
| Boeing Service Bulletin 727–53–153 | Revision 3 | June 17, 1983. |
| Boeing Service Bulletin 727–53–153 | Revision 4 | November 8, 1985. |
| Boeing Service Bulletin 727–53–0153 | Revision 5 | December 14, 1989. |
| Boeing Service Bulletin 727–53–0153 | Revision 6 | August 27, 1992. |
| Boeing Alert Service Bulletin 727–53A153 | Revision 7 | August 14, 2003. |

(2) For Group 1 airplanes that have been modified as specified in Boeing Repair Kit 65C20303–1 in accordance with any issue of the service bulletin through Revision 4 inclusive as specified in Table 1 of this AD: Perform the inspection before the accumulation of 10,000 flight cycles after the modification, or within 1,800 flight cycles after the effective date of this AD, whichever occurs later.

*One-Time Inspections and Terminating Actions for Certain Other Airplanes*

(i) For Group 1 airplanes, as defined by Boeing ASB 727–53A0153, Revision 7, dated August 14, 2003, that have been modified in accordance with Revision 5 or 6 of Boeing Service Bulletin 727–53–0153 as specified in Table 1 of this AD, or that have been repaired in accordance with Boeing Repair Kit 65C20303–8 or –25 as specified in Revision 2 through Revision 6 inclusive of the service bulletin as specified in Table 1 of this AD: Within 4,500 flight cycles after the effective date of this AD, do a one-time HFEC for cracking and a dimensional inspection for any anomaly (e.g., minimum dimension requirements, jagged edges, chafing, nicks or gouges) of the web cutouts at stringers S–15L and S–16L of the forward frame of the forward entry doorway at BS 303.9, in accordance with Step 1 and Step 2 of Figure 1 of the Accomplishment Instructions of Boeing ASB 727–53A0153, Revision 7, dated August 14, 2003. For these airplanes, accomplishment of the HFEC, dimensional inspections, and any applicable corrective actions, constitutes terminating action for all the repetitive inspection requirements of this AD.

*Inspections for Group 2 Airplanes*

(j) For Group 2 airplanes, as defined by Boeing ASB 727–53A0153, Revision 7, dated August 14, 2003, that have not been modified or repaired in accordance with Revision 7 of the ASB: Before the accumulation of 17,000 total flight cycles, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later, perform a one-time dimensional inspection for anomalies (*e.g.*, minimum dimension requirements, jagged edges, chafing, nicks, or gouges) of the web cutouts at stringers S–15 and S–16, and HFEC inspections for cracking of the forward frame of the forward entry doorway at BS 303.9; in accordance with Figure 2 of the Accomplishment Instructions of Revision 7 of the ASB. With the exception of the one-time dimensional inspection (Step 1 of Figure 2) of the web cutouts at S–15L and S–16L, repeat the HFEC inspections for cracking of the forward frame of the forward entry doorway at BS 303.9 at intervals not to exceed 3,700 flight cycles until the requirements of paragraph (l) of this AD have been accomplished.

*Corrective Actions*

(k) If any cracking is detected during any inspection, or any anomaly is detected during any dimensional inspection required by this AD: Before further flight, accomplish the actions in paragraph (k)(1) or (k)(2) of this AD, as applicable.

(1) For any cracking that is within the limits specified in the Accomplishment Instructions of Boeing ASB 727–53A0153, Revision 7, dated August 14, 2003: Repair the cracking in accordance with Revision 7 of the ASB.

(2) For any cracking that is outside the limits specified in the Accomplishment Instructions of Boeing ASB 727–53A0153, Revision 7, dated August 14, 2003, or for any anomaly that is detected during any dimensional inspection required by this AD: Repair in accordance with a method approved by the Manager, Seattle Aircraft Certification (ACO), FAA; or in accordance with the procedures specified in paragraph (n) of this AD.

*Terminating Actions for Certain Airplanes*

(l) For airplanes specified in paragraph (l)(1) or (l)(2) of this AD: At the time specified in paragraph (m) of this AD, perform the inspections specified in Figure 1 or Figure 2, as applicable, of Revision 7 of Boeing ASB 727–53A0153, dated August 14, 2003, and as specified by paragraph (h) or (j) of this AD, as applicable. Before further flight, following the inspections, modify the forward frame in accordance with the Accomplishment Instructions of Revision 7 of the ASB. Concurrent accomplishment of the inspections and modification constitutes terminating action for the repetitive inspections required by this AD.

(1) Group 1 airplanes that have not been modified or repaired in accordance with Boeing Repair Kit 65C20303–8 or –25, as specified in Boeing Service Bulletin 727–53–153, Revision 2, dated December 3, 1982; Revision 3, dated June 17, 1983; or Revision 4, dated November 8, 1985; Boeing Service Bulletin 727–53–0153, Revision 5, dated December 14, 1989; or Revision 6, dated August 27, 1992; or Boeing ASB 727–53A0153, Revision 7, dated August 14, 2003.

(2) Group 2 airplanes that have not been repaired or modified in accordance with Revision 7 of Boeing ASB 727–53A0153, dated August 14, 2003.

**Note 1:** Accomplishment of the terminating actions specified in paragraph (i) or (l) of this AD does not relieve the operator of responsibility to comply with the inspection requirements of the operator's standard structural maintenance program.

*Compliance Times for the Requirements of Paragraph (l) of This AD*

(m) Accomplish the actions required in paragraph (l) of this AD at the later of the times specified in paragraph (m)(1) or (m)(2) of this AD.

(1) Prior to the accumulation of 60,000 total flight cycles.

(2) Within 48 months or 7,200 flight cycles after the effective date of this AD, whichever occurs first.

*Alternative Methods of Compliance (AMOCs)*

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

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

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

(4) AMOCs approved previously in accordance with AD 91–09–07, amendment 39–6982, are approved as AMOCs with the corresponding requirements and provisions of this AD.

(5) Accomplishment of the actions specified in paragraph (l) of this AD constitutes an AMOC with paragraph A. of AD 90–06–09, amendment 39–6488, only for the structural modification requirements of Boeing Service Bulletin 727–53–153, as specified in Boeing Document D6–54860, Revision C, dated December 11, 1989, which is the appropriate source of service information specified by AD 90–06–09.

*Material Incorporated by Reference*

(o) You must use the applicable service bulletins or alert service bulletin specified in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. Boeing Service Bulletin 727–53–153, Revision 1, including Addendum, dated June 19, 1981, contains the following effective pages:

| Page No. | Revision level shown on page | Date shown on page |
|---|---|---|
| 1–25 | 1 | June 19, 1981. |
| 26 | Original | February 1, 1980. |
| **Addendum** | | |
| 1–6 | 1 | June 19, 1981. |

Boeing Service Bulletin 727–53–153, Revision 4, including Addendum, dated November 8, 1985, contains the following effective pages:

| Page number | Revision level shown on page | Date shown on page |
|---|---|---|
| 1–11, 13–19, 21. | 4 | November 8, 1985. |
| 12, 20, 22 | 3 | June 17, 1983. |
| **Addendum** | | |
| 1, 4 | 3 | June 17, 1983. |
| 2, 3, 5, 6 | 4 | November 8, 1985. |

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.*

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

| Service bulletin | Revision level | Date |
|---|---|---|
| 1. Boeing Service Bulletin 727–53–153 | Original | February 1, 1980. |
| 2. Boeing Service Bulletin 727–53–153, including Addendum | Revision 1 | June 19, 1981. |
| 3. Boeing Service Bulletin 727–53–153, including Addendum | Revision 2 | December 3, 1982. |
| 4. Boeing Service Bulletin 727–53–153, including Addendum | Revision 3 | June 17, 1983. |
| 5. Boeing Service Bulletin 727–53–153, including Addendum | Revision 4 | November 8, 1985. |
| 6. Boeing Service Bulletin 727–53–0153, including Addendum | Revision 5 | December 14, 1989. |
| 7. Boeing Alert Service Bulletin 727–53A0153 | Revision 7 | August 14, 2003. |

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

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 06–3065 Filed 3–31–06; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 524

### Ophthalmic and Topical Dosage Form New Animal Drugs; Gentamicin Sulfate, Betamethasone Valerate, Clotrimazole Ointment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Med-Pharmex, Inc. The supplemental ANADA provides for a new container size, a 15-gram bottle, from which gentamicin sulfate, betamethasone valerate, clotrimazole ointment may be dispensed for the treatment of acute and chronic canine otitis externa.

**DATES:** This rule is effective April 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** Christopher Melluso, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0169, e-mail: *christopher.melluso@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767–1861, filed a supplement to ANADA 200–229 that provides for use of TRI-OTIC (gentamicin sulfate, USP; betamethasone valerate, USP; and clotrimazole, USP) Ointment for the treatment of canine otitis externa associated with yeast (*Malassezia pachydermatis*, formerly *Pityrosporum canis*) and/or bacteria susceptible to gentamicin. The supplement provides for a new container size, a 15-gram bottle. The supplemental ANADA is approved as of February 27, 2006, and the regulations are amended in § 524.1044g (21 CFR 524.1044g) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, FDA has noticed that a 215-gram bottle size was approved for this product under ANADA 200–229 but not codified. At this time, that bottle size is being added to § 524.1044g. This action is being taken to improve the accuracy of the regulations.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects in 21 CFR Part 524**

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

## PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

■ 2. In § 524.1044g, revise paragraphs (b)(2) and (c)(1)(i) to read as follows:

**§ 524.1044g Gentamicin sulfate, betamethasone valerate, clotrimazole ointment.**

* * * * *

(b) * * *

(2) No. 054925 for use of 7.5- or 15-g tubes; 10-, 15-, 25-, or 215-g bottles.

* * * * *

(c) * * *

(1) * * *

(i) From 7.5- or 15-g tubes; 10-, 12.5-, 15-, 25-, or 30-g bottles: 4 drops for dogs weighing less than 30 pounds (lb) or 8 drops for dogs weighing 30 lb or more.

* * * * *

Dated: March 24, 2006.

**Bernadette A. Dunham,**

*Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 06–3149 Filed 3–31–06; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF STATE

### 22 CFR Part 34

**[Public Notice: 5310]**

### Debt Collection

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State is revising its debt collection regulations to conform to changes in Federal Government-wide debt collection laws and regulations, including the Debt Collection Improvement Act of 1996 and the revised Federal Claims Collections Standards jointly issued by the Department of the Treasury and Department of Justice in 2000.

**DATES:** This rule is effective May 3, 2006.

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

- E-mail: *AmoryER@state.gov*
- Mail paper submissions to the Deputy Assistant Secretary for Global Financial Services, Charleston Financial Service Center, P.O. Box 150008, Charleston, S.C. 29415–5008.

Persons with access to the internet may also view this notice by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm.*

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Amory, Office of the Legal Adviser, Charleston Financial Service Center, telephone 843–308–5605.

**SUPPLEMENTARY INFORMATION:** This rule revises the Department of State's (State) debt collection regulations found at 22 CFR part 34 to conform to the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321, 1358 (Apr. 26, 1996), the revised Federal Claims Collection Standards, 31 CFR Chapter IX (parts 900 through 904), and other laws applicable to the collection of non-tax debt owed to the Government.

This regulation provides procedures for the collection of debts owed to State entities. State adopts the Government-wide debt collection standards promulgated by the Departments of the Treasury and Justice, known as the Federal Claims Collection Standards (FCCS), as revised on November 22, 2000 (65 FR 70390), and supplements the FCCS by prescribing procedures

consistent with the FCCS, as necessary and appropriate for State operations. Nothing in this regulation precludes the use of otherwise authorized collection remedies not contained in this regulation.

**Regulatory Analysis**

*Administrative Procedures Act*

No notice of proposed rulemaking is required under the Administrative Procedure Act (APA) because these rules relate solely to agency procedure and practice (5 U.S.C. 553(b)(3)(A)).

*Regulatory Flexibility Act*

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

*Unfunded Mandated Reform Act of 1995*

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

*Small Business Regulatory Enforcement Act of 1996*

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

*Executive Order 12866*

The Department does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

*Executive Order 12988*

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Executive Order 13132*

This regulation will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department determines that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

*Executive Order 12372*

This regulation does not require review under Executive Order 12372, Intergovernmental Review of Federal Programs.

*Paperwork Reduction Act*

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

**List of Subjects in 22 CFR Part 34**

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Government employee, Hearing and appeal procedures, Pay administration, Salaries, Wages.

■ In consideration of the foregoing, the State Department amends Title 22 of the Code of Federal Regulations, by revising Part 34 to read:

## PART 34—DEBT COLLECTION

### Subpart A—General Provision

Sec.
34.1 Purpose
34.2 Scope
34.3 Exceptions
34.4 Definitions
34.5 Other procedures or actions
34.6 Interest, penalties, and administrative cost
34.7 Collection in installments

### Subpart B—Collection Actions

34.8 Notice and demand for payment
34.9 Request for internal administrative review
34.10 Collection Methods

### Subpart C—Salary Offset

34.11 Scope
34.12 Coordinating offset with another Federal agency
34.13 Notice requirements before offset
34.14 Request for an outside hearing for certain debts
34.15 Outside hearing
34.16 Procedures for salary offset
34.17 Non-waiver of rights by payment

### Subpart D—Collection Adjustments

34.18 Waiver of indebtedness
34.19 Compromise
34.20 Suspension
34.21 Termination
34.22 Discharge
34.23 Bankruptcy
34.24 Refunds

**Authority:** 31 U.S.C. 3701–3719; 5 U.S.C. 5514; 31 C.F.R. part 285; 31 CFR parts 900–904; 5 CFR 550 subpart K.

## Subpart A—General Provisions

### § 34.1 Purpose.

These regulations prescribe the procedures to be used by the United States Department of State (STATE) in the collection of debts owed to STATE and to the United States.

### § 34.2 Scope.

(a) Except as set forth in this part or otherwise provided by law, STATE will conduct administrative actions to collect debts (including offset, compromise, suspension, termination, disclosure and referral) in accordance with the Federal Claims Collection Standards (FCCS) of the Department of the Treasury and Department of Justice, 31 CFR parts 900–904.

(b) This part is not applicable to STATE claims against another Federal agency, any foreign country or any political subdivision thereof, or any public international organization.

### § 34.3 Exceptions.

(a) Debts arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 shall be determined, collected, compromised, terminated, or settled in accordance with the regulations published at 41 CFR part 102–118.

(b) Debts arising out of acquisition contracts subject to the Federal Acquisition Regulation (FAR) shall be determined, collected, compromised, terminated, or settled in accordance with those regulations (see 48 CFR part 32).

(c) Debts based in whole or in part on conduct in violation of the antitrust laws, or in regard to which there is an indication of fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, shall be referred to the Department of Justice for compromise, suspension, or termination of collection action.

(d) Tax debts are excluded from the coverage of this regulation.

**§ 34.4 Definitions.**

For purposes of the section:

(a) Administrative offset means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the person to the United States.

(b) Administrative wage garnishment means the process by which a Federal agency orders a non-Federal employer to withhold amounts from a debtor's wages to satisfy a debt owed to the United States.

(c) Compromise means that the creditor agency accepts less than the full amount of an outstanding debt in full satisfaction of the entire amount of the debt.

(d) Creditor agency means the Federal agency to which a debt is owed.

(e) Debt or claim means an amount of money which has been determined to be owed to the United States from any person. A debtor's liability arising from a particular contract or transaction shall be considered a single claim for purposes of the monetary ceilings of the FCCS.

(f) Debtor means a person who owes the Federal government money.

(g) Delinquent debt means a debt that has not been paid by the date specified in STATE's written notification or applicable contractual agreement, unless other satisfactory arrangements have been made by that date, or that has not been paid in accordance with a payment agreement with STATE.

(h) Discharge means the release of a debtor from personal liability for a debt. Further collection action is prohibited.

(i) Disposable pay means the amount that remains from an employee's current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; normal premiums for life and health insurance benefits and such other deductions that are required by law to be withheld, excluding garnishments.

(j) FCCS means the Federal Claims Collection Standards published jointly by the Departments of the Treasury and Justice and codified at 31 CFR parts 900–904.

(k) Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of entity other than a Federal agency, Foreign Government, or public international organization.

(l) Salary offset means the withholding of amounts from the current pay account of a Federal employee to satisfy a debt owed by that employee to the United States.

(m) Suspension means the temporary cessation of active debt collection pending the occurrence of an anticipated event.

(n) Termination means the cessation of all active debt collection action for the foreseeable future.

(o) Waiver means a decision to forgo collection of a debt owed to the United States, as provided for by a specific statute and according to the standards set out under that statute.

**§ 34.5 Other procedures or actions.**

(a) Nothing contained in this regulation is intended to require STATE to duplicate administrative proceedings required by contract or other laws or regulations.

(b) Nothing in this regulation is intended to preclude utilization of informal administrative actions or remedies which may be available.

(c) Nothing contained in this regulation is intended to deter STATE from demanding the return of specific property or from demanding the return of the property or the payment of its value.

(d) The failure of STATE to comply with any provision in this regulation shall not serve as defense to the debt.

**§ 34.6 Interest, penalties, and administrative costs.**

Except as otherwise provided by statute, contract or excluded in accordance with the FCCS, STATE will assess:

(a) Interest on delinquent debts in accordance with 31 CFR 901.9.

(b) Penalties at the rate of 6 percent a year or such other rate as authorized by law on any portion of a debt that is delinquent for more than 90 days.

(c) Administrative costs to cover the costs of processing and calculating delinquent debts.

(d) Late payment charges under paragraphs (a) and (b) of this section shall be computed from the date of delinquency.

(e) When a debt is paid in partial or installment payments, amounts received shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and then to outstanding principal.

(f) STATE shall consider waiver of interest, penalties and/or administrative costs in accordance with the FCCS, 31 CFR 901.9(g).

**§ 34.7 Collection in installments.**

Whenever feasible, and except as required otherwise by law, debts owed to the United States, together with interest, penalties, and administrative costs as required by this regulation, should be collected in one lump sum. This is true whether the debt is being collected under administrative offset, including salary offset, or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. If STATE agrees to accept payment in installments, it may require a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of the payments should bear a reasonable relation to the size of the debt and ability of the debtor to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim within 3 years.

## Subpart B—Collection Actions

**§ 34.8 Notice and Demand for Payment.**

(a) STATE shall promptly hand deliver or send by first-class mail to the debtor at the debtor's most current address in the records of STATE at least one written notice. Written demand under this subpart may be preceded by other appropriate actions under this part and or the FCCS, including but not limited to actions taken under the procedures applicable to administrative offset, including salary offset.

(b) The written notice shall inform the debtor of:

(1) The basis of the debt;

(2) The amount of the debt;

(3) The date by which payment should be made to avoid the imposition of interest, penalties and administrative costs, and the enforced collection actions described in paragraph (b)(7) of this section;

(4) The applicable standards for imposing of interest, penalties and administrative costs to delinquent debts;

(5) STATE's readiness to discuss alternative payment arrangements and how the debtor may offer to enter into a written agreement to repay the debt under terms acceptable to STATE;

(6) The name, address and telephone number of a contact person or office within STATE;

(7) STATE's intention to enforce collection by taking one or more of the following actions if the debtor fails to pay or otherwise resolve the debt:

(i) Offset from Federal payments otherwise due to the debtor, including income tax refunds, salary, certain benefit payments, retirement, vendor payments, travel reimbursement and advances, and other Federal payments due from STATE, other Federal agencies, or through centralized disbursing from the Department of the Treasury;

(ii) Referral to private collection agency

(iii) Report to credit bureaus

(iv) Administrative Wage Garnishment

(v) Litigation by the Department of Justice

(vi) Referral to the Financial Management Service of the Department of the Treasury for collection

(vii) Liquidation of collateral

(viii) Other actions as permitted by the FCCS and applicable law;

(8) The debtor's right to inspect and copy records related to the debt;

(9) The debtor's right to an internal review of STATE's determination that the debtor owes a debt or the amount of the debt;

(10) The debtor's right, if any, to request waiver of collection of certain debts, as applicable (see § 34.18);

(11) Requirement that the debtor advise STATE of any bankruptcy proceeding of the debtor; and

(12) Provision for refund of amounts collected if later decision finds that the amount of the debt is not owed or is waived.

(c) Exceptions to notice requirements. STATE may omit from a notice to a debtor one or more of the provisions contained in paragraphs (b)(7) through (b)(12) of this section if STATE determines that any provision is not legally required given the collection remedies to be applied to a particular debt, or which have already been provided by prior notice, applicable agreement, or contract.

**§ 34.9 Requests for Internal Administrative Review.**

(a) For all collection methods for debts owed to STATE, the debtor may request a review within State of the existence or the amount of the debt. For offset of current Federal salary under 5 U.S.C. 5514 for certain debts, debtors may also request an outside hearing. See subpart C of this part.

This subpart rather than subpart C applies to collections by salary offset for debts arising under 5 U.S.C. 5705 (travel advances), 5 U.S.C. 4108 (training expenses), and other statutes specifically providing for collection by salary offset.

(b) A debtor requesting an internal review shall do so in writing to the contact office by the payment due date stated within the initial notice sent under 34.8(b) or other applicable provision. The debtor's written request shall state the basis for the dispute and include any relevant documentation in support.

(1) STATE will provide for an internal review of the debt by an appropriate official. The review may include examination of documents, internal discussions with relevant officials and discussion by letter or orally with the debtor, at STATE's discretion. An oral hearing may be provided when the matter cannot be decided on the documentary record because it involves issues of credibility or veracity. Unless otherwise required by law, such oral hearing shall not be a formal evidentiary hearing. If an oral hearing is appropriate, the time and location of the hearing shall be established by STATE. An oral hearing may be conducted, at the debtor's option, either in-person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of STATE. During the period of review, STATE may suspend collection activity, including the accrual of interest and penalties, on any disputed portion of the debt if STATE determines that suspension is in the Department's best interest or would serve equity and good conscience.

(2) If after review STATE either sustains or amends its determination, it shall notify the debtor of its intent to collect the sustained or amended debt. If previously suspended, collection actions will be re-instituted unless payment of the sustained or amended amount is received or the debtor has made a proposal for a payment plan to which STATE agrees, by the date specified in the notification of STATE's decision.

**§ 34.10 Collection Methods.**

Upon completion of notice and provision of all due process rights as listed in 34.8(b) of this section and upon final determination of the existence and amount of a debt, unless other acceptable payment arrangements have been made or procedures under a specific statute apply, STATE shall collect the debt by one or more of the following methods:

(a) Administrative offset.

(1) Payments otherwise due the debtor from the United States shall be offset from the debt in accordance with 31 CFR 901.3. These may be funds under the control of the Department of State or other Federal agencies. Collection may be made through centralized offset by the Financial Management Service (''FMS'') of the Department of the Treasury.

(2) Such payments include but are not limited to vendor payments, salary, retirement, lump sum payments due upon Federal employment separation, travel reimbursements, tax refunds, loans or other assistance. For offset of Federal salary payments under 5 U.S.C. 5514 for certain types of debt see subpart C of this part.

(3) Administrative offset under this subsection does not apply to debts specified in the FCCS, 31 CFR 901.3(a)(2).

(4) Before administrative offset is instituted by another Federal agency or the FMS, STATE shall certify in writing to that entity that the debt is past due and legally enforceable and that STATE has complied with all applicable due process and other requirements as described in this part and other Federal law and regulations.

(5) Administrative offset of anticipated or future benefit payments under the Civil Service Retirement and Disability Fund will be requested by STATE pursuant to 5 CFR 831.1801–1808.

(6) Expedited offset. STATE may effect an offset against a debtor prior to sending a notice to the debtor as described in § 34.8, when:

(i) The offset is in the nature of a recoupment,

(ii) Offset is executed pursuant to procedures set out in the Contracts Disputes Act,

(iii) Previous notice and opportunity for review have been given, or

(iv) There is insufficient time before payment would be made to the debtor/payee to allow prior notice and an opportunity for review. In such case, STATE shall give the debtor notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the Government.

(7) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be conducted more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.

(b) *Referral to Private Collection Agency.* STATE may contract for collection services to recover delinquent

debts, or transfer a delinquent debt to FMS for private collection action, pursuant to 31 U.S.C. 3718, 22 U.S.C. 2716 and the FCCS, 31 CFR 901.5, as applicable. STATE will not use a collection agency to collect a debt owed by a currently employed or retired Federal employee, if collection by salary or annuity offset is available.

(c) Disclosure to consumer reporting agencies. STATE may disclose delinquent debts to consumer reporting agencies and other automated databases in accordance with 31 U.S.C. 3711(e) and the FCCS, 31 CFR 901.4, and in compliance with the Bankruptcy Code and the Privacy Act 5 U.S.C. 552a.

(d) Liquidation of Collateral, if applicable, in accordance with the FCCS, 31 CFR 901.7.

(e) Suspension or revocation of eligibility for loans and loan guaranties, licenses, permits, or privileges in accordance with the FCCS, 31 CFR 901.6.

(f) *Litigation*. Debts may be referred to the Department of Justice for litigation for collection in accordance with the standards set forth in the FCCS, 31 CFR part 904.

(g) *Transfer to FMS*. Debts delinquent more than 180 days shall be transferred to the Financial Management Service of the Department of the Treasury for collection by all available means. Debts delinquent less that 180 days may also be so transferred.

(h) *Administrative Wage Garnishment*. STATE may collect debts from a non-Federal employee's wages by means of administrative wage garnishment in accordance with the requirements of 31 U.S.C. 3720D and 31 CFR 285.11. All parts of 31 CFR 285.11 are incorporated by reference into these regulations, including the hearing procedures described in 31 CFR 285.11(f).

(i) *Salary Offset*. See subpart C of this part.

## Subpart C—Salary Offset

### § 34.11 Scope.

(a) This subpart sets forth STATE's procedures for the collection of a Federal employee's current pay by salary offset to satisfy certain debts owed to the United States.

(b) This subpart applies to:

(1) Current employees of STATE and other agencies who owe debts to STATE;

(2) Current employees of STATE who owe debts to other agencies.

(c) This subpart does not apply to (1) Offset of a separating employee's final payments or Foreign Service annuity payments which are covered under administrative offset (See § 34.10(a)),

(2) Debts or claims arising under the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.); the Social Security Act (42 U.S.C. 301 et seq.); the tariff laws of the United States.

(3) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over 4 pay periods or less.

(4) Any routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the 4 pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment.

(5) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(d) These regulations do not preclude an employee from requesting waiver of the debt, if waiver is available under subpart D of this part or by other regulation or statute.

(e) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under subpart D of this part or other regulations or statutes.

### § 34.12 Coordinating offset with another Federal agency.

(a) When STATE is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until STATE provides the agency with a written certification that the debtor owes STATE a debt (including the amount and basis of the debt and the due date of payment) and that STATE has complied with these regulations.

(b) When another agency is owed the debt, STATE may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such request must be accompanied by a certification that the person owes the debt (including the amount and basis of the debt and the due date of payment) and that the agency has complied with its regulations as required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

### § 34.13 Notice requirements before offset.

Except as provided in §34.16, salary offset deductions will not be made unless STATE first provides the employee with a written notice that he/she owes a debt to the Federal Government at least 30 calendar days before salary offset is to be initiated. When STATE is the creditor agency, this notice of intent to offset an employee's salary shall be hand-delivered or sent by first class mail to the last known address that is available to the Department and will state:

(a) That STATE has reviewed the records relating to the debt and has determined that the debt is owed, its origin and nature, and the amount due;

(b) The intention of STATE to collect the debt by means of deduction from the employee's current pay until the debt and any and all accumulated interest, penalties and administrative costs are paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) The requirement to assess and collect interest, penalties, and administrative costs in accordance with §34.6, unless waived in accordance with §34.6(f);

(e) The employee's right to inspect and copy any STATE records relating to the debt, or, if the employee or their representative cannot personally inspect the records, to request and receive a copy of such records;

(f) The opportunity to voluntarily repay the debt or to enter into a written agreement (under terms agreeable to STATE) to establish a schedule for repayment of the debt in lieu of offset;

(g) Right to an internal review or outside hearing.

(1) An internal review under §34.9 may be requested in cases of collections by salary offset for debts arising under 5 U.S.C. 5705 (travel advances), 5 U.S.C. 4108 (training expenses), and other statutes specifically providing for collection by salary offset.

(2) For all other debts, an internal review or an outside hearing conducted by an official not under the supervision or control of STATE may be requested with respect to the existence of the debt, the amount of the debt, or the repayment schedule (i.e. the percentage of disposable pay to be deducted each pay period);

(h) That the timely filing of a request for an outside hearing or internal review within 30 calendar days after the date of the notice of intent to offset will stay the commencement of collection proceedings;

(i) The method and time period for requesting an internal review or outside hearing;

(j) That a final decision on the internal review or outside hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the request, unless the employee requests and the outside hearing official grants a delay in the proceedings;

(k) That any knowingly false or frivolous statements, representation, or evidence may subject the employee to disciplinary procedures (5 U.S.C. Chapter 75, 5 CFR part 752 or other applicable statutes or regulations); penalties (31 U.S.C. 3729–3731 or other applicable statutes or regulations); or criminal penalties (18 U.S.C. 286, 287, 1001, and 1002 or other applicable statutes or regulations);

(l) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(m) That the amounts paid on the debt which are later waived or found not owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary; and

(n) The name and address of the STATE official to whom communications should be directed.

**§ 34.14 Request for an outside hearing for certain debts.**

(a) Except as provided in paragraph (d) of this section, an employee must file a request that is received by STATE not later than 30 calendar days from the date of STATE's notice described in § 34.13 if an employee wants an outside hearing pursuant to § 34.13(g)(2) concerning:

(1) The existence or amount of the debt; or

(2) STATE's proposed offset schedule.

(b) The request must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the request should state the objection and the reasons for it.

(c) The employee must also specify whether an oral or paper hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(d) If the employee files a request for an outside hearing later than the required 30 calendar days as described in paragraph (a) of this section, STATE may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

(e) An employee waives the right to an outside hearing and will have his or her pay offset if the employee fails to file a petition for a hearing as prescribed in paragraph (a) of this section.

**§ 34.15 Outside Hearings.**

(a) If an employee timely files a request for an outside hearing under § 34.13(g)(2), pursuant to 5 U.S.C. 5514(a)(2), STATE shall select the time, date, and location of the hearing.

(b) Outside hearings shall be conducted by a hearing official not under the supervision or control of STATE.

(c) *Procedure.* (1) After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, notice shall set forth the date, time and location of the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit arguments in writing to the hearing official by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone (e.g. when an issue of credibility or veracity is involved). The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing.

(3) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, he or she will make a decision based upon a review of the available written record.

(4) *Record.* The hearing official must maintain a summary record of any hearing provided by this subpart. Witnesses who provide testimony will do so under oath or affirmation.

(5) *Content of decision.* The written decision shall include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, or the date salary offset will commence, if applicable.

(6) *Failure to appear.* In the absence of good cause shown (e.g. excused illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent. The hearing official shall schedule a new hearing date upon the request of the creditor agency representative when good cause is shown.

(d) A hearing official's decision is considered to be an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514 only. It does not supersede the finding by STATE that a debt is owed and does not affect the Government's ability to recoup the indebtedness through alternative collection methods under § 34.10.

**§ 34.16 Procedures for salary offset.**

Unless otherwise provided by statute or contract, the following procedures apply to salary offset:

(a) *Method.* Salary offset will be made by deduction at one or more officially established pay intervals from the current pay account of the employee without his or her consent.

(b) *Source.* The source of salary offset is current disposable pay.

(c) *Types of collection.* (1) Lump sum payment. Ordinarily debts will be collected by salary offset in one lump sum if possible. However, if the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, the collection by salary offset must be made in installment deductions.

(2) *Installment deductions.* (i) The size of installment deductions must bear a reasonable relation to the size of the debt and the employee's ability to pay. If possible, the size of the deduction will be that necessary to liquidate the debt in no more than 1 year. However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made, except as provided by other regulations or unless the employee has agreed in writing to a greater amount.

(ii) Installment payments of less than $25 per pay period will be accepted only in the most unusual circumstances.

(iii) Installment deductions will be made over a period of not greater than the anticipated period of employment.

**§ 34.17 Non-waiver of rights by payments.**

So long as there are no statutory or contractual provisions to the contrary, no employee payment (of all or a portion of a debt) collected under this subpart will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

## Subpart D—Collection Adjustments

### § 34.18 Waivers of indebtedness.

(a) Waivers of indebtedness may be granted only as provided for certain types of debt by specific statutes and according to the standards set out under those statutes.

(b) *Authorities.* (1) Debts arising out of erroneous payments of pay and allowances. 5 U.S.C. 5584 provides authority for waiving in whole or in part debts arising out of erroneous payments of pay and allowances, and travel, transportation and relocation expenses and allowances, if collection would be against equity and good conscience and not in the best interests of the United States.

(i) Waiver may not be granted if there exists in connection with the claim an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver.

(ii) Fault is considered to exist if in light of the circumstances the employee knew or should have known through the exercise of due diligence that an error existed but failed to take corrective action. What an employee should have known is evaluated under a reasonable person standard. Employees are, however, expected to have a general understanding of the Federal pay system applicable to them.

(iii) An employee with notice that a payment may be erroneous is expected to make provisions for eventual repayment. Financial hardship is not a basis for granting a waiver for an employee who was on notice of an erroneous payment.

(iv) If the deciding official finds no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim, the employee is not automatically entitled to a waiver. Before a waiver can be granted, the deciding official must also determine that collection of the claim against an employee would be against equity and good conscience and not in the best interests of the United States. Factors to consider when determining if collection of a claim against an employee would be against equity and good conscience and not in the best interests of the United States include, but are not limited to:

(A) Whether collection of the claim would cause serious financial hardship to the employee from whom collection is sought.

(B) Whether, because of the erroneous payment, the employee either has relinquished a valuable right or changed positions for the worse, regardless of the employee's financial circumstances.

(C) The time elapsed between the erroneous payment and discovery of the error and notification of the employee;

(D) Whether failure to make restitution would result in unfair gain to the employee;

(E) Whether recovery of the claim would be unconscionable under the circumstances.

(2) Debts arising out of advances in pay. 5 U.S.C. 5524a provides authority for waiving in whole or in part a debt arising out of an advance in pay if it is shown that recovery would be against equity and good conscience or against the public interest.

(i) Factors to be considered when determining if recovery of an advance payment would be against equity and good conscience or against the public interest include, but are not limited to:

(A) Death of the employee;

(B) Retirement of the employee for disability;

(C) Inability of the employee to return to duty because of disability (supported by an acceptable medical certificate); and

(D) Whether failure to repay would result in unfair gain to the employee.

(ii) [Reserved]

(3) Debts arising out of advances in situations of authorized or ordered departures. 5 U.S.C. 5522 provides authority for waiving in whole or in part a debt arising out of an advance payment of pay, allowances, and differentials provided under this section if it is shown that recovery would be against equity and good conscience or against the public interest.

(i) Factors to be considered when determining if recovery of an advance payment would be against equity and good conscience or against the public interest include, but are not limited to:

(A) Death of the employee;

(B) Retirement of the employee for disability;

(C) Inability of the employee to return to duty because of disability (supported by an acceptable medical certificate); and

(D) Whether failure to repay would result in unfair gain to the employee.

(ii) [Reserved]

(4) Debts arising out of advances of allowances and differentials for employees stationed abroad. 5 U.S.C. 5922 provides authority for waiving in whole or in part a debt arising out of an advance of allowances and differentials provided under this subchapter if it is shown that recovery would be against equity and good conscience or against the public interest.

(i) Factors to be considered when determining if recovery of an advance payment would be against equity and good conscience or against the public interest include, but are not limited to:

(A) Death of the employee;

(B) Retirement of the employee for disability;

(C) Inability of the employee to return to duty because of disability (supported by an acceptable medical certificate); and

(D) Whether failure to repay would result in unfair gain to the employee.

(ii) [Reserved]

(5) Debts arising out of employee training expenses. 5 U.S.C. 4108 provides authority for waiving in whole or in part a debt arising out of employee training expenses if it is shown that recovery would be against equity and good conscience or against the public interest.

(i) Factors to be considered when determining if recovery of a debt arising out of employee training expenses would be against equity and good conscience or against the public interest include, but are not limited to:

(A) Death of the employee;

(B) Retirement of the employee for disability;

(C) Inability of the employee to return to duty because of disability (supported by an acceptable medical certificate); and

(D) Whether failure to repay would result in unfair gain to the employee.

(ii) [Reserved]

(6) Under-withholding of life insurance premiums. 5 U.S.C. 8707(d) provides authority for waiving the collection of unpaid deductions resulting from under-withholding of Federal Employees' Group Life Insurance Program premiums if the individual is without fault and recovery would be against equity and good conscience.

(i) Fault is considered to exist if in light of the circumstances the employee knew or should have known through the exercise of due diligence that an error existed but failed to take corrective action.

(ii) Factors to be considered when determining whether recovery of unpaid deduction resulting from under-withholding would be against equity and good conscience include, but are not limited to:

(A) Whether collection of the claim would cause serious financial hardship to the individual from whom collection is sought.

(B) The time elapsed between the failure to properly withhold and discovery of the failure and notification of the individual;

(C) Whether failure to make restitution would result in unfair gain to the individual;

(D) Whether recovery of the claim would be unconscionable under the circumstances.

(7) Overpayments of Foreign Service Annuities. For waiver of debts arising from overpayments from the Foreign Service Retirement and Disability Fund under the Foreign Service Retirement and Disability System or the Foreign Service Pension System see 22 CFR part 17.

(8) As otherwise provided by law.

(c) Waiver of indebtedness is an equitable remedy and as such must be based on an assessment of the facts involved in the individual case under consideration.

(d) The burden is on the employee to demonstrate that the applicable waiver standard has been met.

(e) *Requests.* A debtor requesting a waiver shall do so in writing to the contact office by the payment due date stated within the initial notice sent under § 34.8(b) or other applicable provision. The debtor's written response shall state the basis for the dispute and include any relevant documentation in support.

(f) While a waiver request is pending, STATE may suspend collection, including the accrual of interest and penalties, on the debt if STATE determines that suspension is in the Department's best interest or would serve equity and good conscience.

**§ 34.19 Compromise.**

STATE may attempt to effect compromise in accordance with the standards set forth in the FCCS, 31 CFR part 902.

**§ 34.20 Suspension.**

The suspension of collection action shall be made in accordance with the standards set forth in the FCCS, 31 CFR 903.1–903.2

**§ 34.21 Termination.**

The termination of collection action shall be made in accordance with the standards set forth in the FCCS, 31 CFR 903.1 and 903.3–903.4.

**§ 34.22 Discharge.**

Once a debt has been closed out for accounting purposes and collection has been terminated, the debt is discharged. STATE must report discharged debt as income to the debtor to the Internal Revenue Service per 26 U.S.C. 6050P and 26 CFR 1.6050P–1.

**§ 34.23 Bankruptcy.**

A debtor should notify STATE at the contact office provided in the original notice of the debt, if the debtor has filed for bankruptcy. STATE will require documentation from the applicable court indicating the date of filing and type of bankruptcy. Pursuant to the laws of bankruptcy, STATE will suspend debt collection upon such filing unless the automatic stay is no longer in effect or has been lifted. In general, collection of a debt discharged in bankruptcy shall be terminated unless otherwise provided for by bankruptcy law.

**§ 34.24 Refunds.**

(a) STATE will refund promptly to the appropriate individual amounts offset under this regulation when:

(1) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(2) STATE is directed by an administrative or judicial order to make a refund.

(b) Refunds do not bear interest unless required or permitted by law or contract.

Dated: February 1, 2006.

**Henrietta H. Fore,**

*Under Secretary for Management, Department of State.*

[FR Doc. 06–3135 Filed 3–31–06; 8:45 am]

BILLING CODE 4710–37–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[CGD05–06–018]**

**RIN 1625–AA08**

## Special Local Regulations for Marine Events; Western Branch, Elizabeth River, Portsmouth, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard is implementing the special local regulations at 33 CFR 100.525 for the Virginia State Hydroplane Championships to be held April 22 and 23, 2006, on the waters of the Western Branch of the Elizabeth River at Portsmouth, Virginia. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the event. The effect will be to restrict general navigation in the regulated area for the safety of event participants, spectators and vessels transiting the event area.

**DATES:** *Effective Dates:* 33 CFR 100.525 will be enforced from 8 a.m. to 6 p.m. on April 22 and 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Petty Officer William Banker, Marine Events Coordinator, Commander, Coast Guard Sector Hampton Roads, 4000 Coast Guard Boulevard, Portsmouth, VA 23703, and (757) 668–5584.

**SUPPLEMENTARY INFORMATION:** The Virginia Boat Racing Association will sponsor the Virginia State Hydroplane Championships on the waters of the Western Branch of the Elizabeth River at Portsmouth, Virginia. The event will consist of high performance hydroplane vessels racing around a one-mile course at high speeds. A fleet of spectator vessels is expected to gather near the event site to view the race. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.525 will be enforced for the duration of the event. Under provisions of 33 CFR 100.525, from 8 a.m. to 6 p.m. on April 22 and 23, 2006 vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

The regulation in 33 CFR 100.525, paragraph (c) ''Effective Dates'' has been modified with respect to weekend days. Specifically, that Sunday will be substituted for Friday on the fourth weekend in April.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, and marine information broadcasts so mariners can adjust their plans accordingly.

Dated: March 23, 2006.

**Larry L. Hereth,**

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

[FR Doc. 06–3175 Filed 3–31–06; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[CGD05–06–022]**

**RIN 1625–AA08**

## Special Local Regulations for Marine Events; Chesapeake Bay Bridges Swim Races, Chesapeake Bay, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard is implementing the special local regulations at 33 CFR 100.507 during the Annual Great Chesapeake Bay Swim and Chesapeake Challenge One Mile Swim events to be held on June 11, 2006. This action is necessary to provide for the safety of life on navigable waters before, during and after the event. The effect will be to restrict general navigation in the regulated area for the safety of event participants, and support vessels in the event area.

**DATES:** *Effective Date:* 33 CFR 100.507 will be enforced from 8:30 a.m. to 5 p.m. on June 11, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ronald Houck, Marine Events Coordinator, Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, and (410) 576–2674.

**SUPPLEMENTARY INFORMATION:** The Great Chesapeake Bay Swim, Inc., will sponsor the ''Great Chesapeake Bay Swim'' and the ''Chesapeake Challenge One Mile Swim'' on the waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridge. Approximately 650 swimmers will start Great Chesapeake Bay Swim from Sandy Point State Park and swim between the spans of the William P. Lane Jr. Memorial Bridge to the Eastern Shore. Approximately 400 swimmers will start the Chesapeake Challenge One Mile Swim following a triangular shaped course beginning and ending at Hemingway's restaurant on the Eastern Shore adjacent to the William P. Lane Jr. Memorial Bridge. A large fleet of support vessels will be accompanying the swimmers. Therefore, to ensure the safety of participants and support vessels, 33 CFR 100.507 will be enforced for the duration of the event. Under provisions of 33 CFR 100.507, from 8:30 a.m. to 5 p.m. on June 11, 2006, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander. Vessel traffic will be allowed to transit the regulated area as the swim progresses, when the Patrol Commander determines it is safe to do so.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, and marine information broadcasts so mariners can adjust their plans accordingly.

Dated: March 23, 2006.

**Larry L. Hereth,**

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

[FR Doc. 06–3178 Filed 3–31–06; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD07–04–124]**

**RIN 1625–AA09**

## Drawbridge Operation Regulation; Skidaway Bridge (SR 204), Intracoastal Waterway, Mile 592.9, Savannah, Chatham County, GA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the operating regulations of the Skidaway Bridge (SR 204) across the Intracoastal Waterway, mile 592.9, in Savannah, Georgia. This rule allows the bridge to open as necessary on the hour from 7 a.m. to 9 a.m. (7, 8, and 9 a.m.) and on the half-hour between 4:30 p.m. to 6.30 p.m. (4:30, 5:30, and 6:30 p.m.), daily; Monday through Friday except Federal holidays. Due to the amount of vehicle traffic and the lack of openings during the requested time period, this action should improve the movement of vehicular traffic while not unreasonably interfering with the movement of vessel traffic. Public vessels of the United States, tugs with tows, and vessels in distress will be passed at any time. At all other times, the draw will open upon signal.

**DATES:** This rule is effective May 3, 2006.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–04–124] and are available for inspection or copying at Commander (dpb), Seventh Coast Guard District, 909 SE 1st Avenue, Suite 432, Miami, Florida 33131, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Bridge Branch (dpb), Seventh Coast Guard District, maintains the public docket for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gwin Tate, Project Manager, Seventh Coast Guard District, Bridge Branch, (305) 415–6747.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

On December 3, 2004, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Skidaway Bridge (SR 204), Intracoastal Waterway, Mile 592.9, Savannah, Chatham County, GA. in the **Federal Register** (69 FR 70209). We received 8 letters commenting on the proposed rule. Due to public comment and the Chatham County Department of Public Works input, this rule was changed to reflect concern regarding opening of the bridge during the morning and evening rush hour periods as discussed below. No public meeting was requested, and none was held.

### Background and Purpose

On January 7, 2004, the General Manager of the Landings Association, a residential development with over 8500 residents, contacted the Chatham County Department of Public Works regarding traffic problems caused by the current bridge schedule. Approximately 90% of the Skidaway Island population lives in the Landings Association, all of which must cross the Skidaway Narrows Bridge (SR 204) to leave the gated community. On April 22, 2004, the Department of Public Works, which operates and maintains the bridge, contacted the Coast Guard requesting assistance in changing the schedule to help ease vehicular traffic on overburdened roadways. The operation of the Skidaway Bridge (SR 204), mile 592.9, at Savannah, is governed by 33 CFR 117.5, which requires the bridge to open on signal. Bridge tender logs indicate that the proposed schedule would improve vehicular traffic flow while still meeting the reasonable needs of navigation. During a twelve-month time period, vessel requests for openings remained at or below an average of two per hour.

### Discussion of Comments and Changes

The Coast Guard received a total of 8 written comments in response to the NPRM. Five comments were in favor of the proposed rule. One comment based on the NPRM, which gave the impression of no openings during the prescribed time period, recommended that the schedule be altered slightly, opening every half hour during the prescribed time period. This concern has been addressed in the final rule. The bridge will open as necessary on the hour in the prescribed morning period (7, 8 and 9 a.m.) and on the half-hour during the prescribed evening period (4:30, 5:30, and 6:30 p.m.).

Also in reference to the above comment, Chatham County's

Department of Public Works letter dated April 22, 2004, failed to include language indicating their intent for the bridge to open on the hour during the morning schedule, and on the half hour during the evening schedule. This schedule change reaches a compromise between the suggested half hour openings and no openings at all during the time periods in question, thereby creating less inconvenience to vessel owners and giving advance notice to vehicle operators when the bridge will be in the open to vessel traffic position.

Another comment recommended that the bridge adopt a half hour schedule between 9 a.m. and 4:30 p.m. during the prescribed time period. However, traffic counts indicate a small number of openings during this time period. Scheduled openings during this period would not appreciably help ease vehicular traffic on overburdened roadways since most residents have already departed the gated Landings Association community for their workplace.

The final comment was unable to determine why a change in the current operating schedule was needed if there were minimal openings during the requested time period. Though there was a lack of significant openings during the period, putting the bridge on a schedule will let vehicle owners know when to expect the bridge to open. This will allow them to plan their commute accordingly and lessen the amount of vehicles waiting at the bridge. Additionally, the test deviation study period disclosed that the Skidaway Bridge opened less than three times hourly during the periods concerned, but that closing the bridge completely during this period would unnecessarily restrict vessel traffic.

**Regulatory Evaluation**

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

We expect the economic impact of this rule to be so minimal on vessel traffic that a full Regulatory Evaluation is unnecessary. The rule affects vessel traffic through this bridge only in that vessels will need to time their passage through this bridge during a very limited time period. The increase in vehicular traffic crossing this bridge is now in excess of 9000 vehicles per day. This rule will have a positive economic impact on vehicular traffic due to a decrease in bridge openings during the affected time periods.

**Small Entities**

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

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

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. The Coast Guard offered small businesses, organizations, or governmental jurisdictions that believed the rule would affect them or that had questions concerning its provisions or options for compliance, to contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect

on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

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

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

**Environment**

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

**List of Subjects in 33 CFR Part 117**

Bridges.

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

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. In § 117.353, paragraph (c) is revised to read as follows:

**§ 117.353 Atlantic Intracoastal Waterway, Savannah River to St. Mary's River.**

* * * * *

(c) *Skidaway Bridge, SR 204, mile 592.9 near Savannah.* The draw will open as necessary on the hour from 7 a.m. to 9 a.m. (7, 8, and 9 a.m.) and on the half-hour between 4:30 p.m. to 6.30 p.m. (4:30, 5:30, and 6:30 p.m.), daily; Monday through Friday except Federal holidays. The draw shall open at any time for Public vessels of the United States, tugs with tows, and vessels in distress. At all other times, the draw will open on signal.

Dated: March 15, 2006.

**D.B. Peterman,**

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

[FR Doc. 06–3172 Filed 3–31–06; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD07–06–048]**

## Drawbridge Operation Regulations; Stickney Point (SR 72), Gulf Intracoastal Waterway, Mile 68.6, Sarasota County, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Stickney Point (SR 72) Bridge, Gulf Intracoastal Waterway, mile 68.6, Sarasota County, Florida. This temporary deviation allows the Coast Guard to test an operating schedule with the bridge opening as necessary on the hour, twenty minutes past the hour and forty minutes past the hour, from 6 a.m. to 10 p.m., Monday through Friday, except Federal holidays. At all other times the bridge will open upon demand. This temporary deviation will allow the Coast Guard to gather data to determine if this schedule meets the reasonable needs of navigation while accommodating vehicle traffic and whether it should be proposed as a permanent change.

**DATES:** This deviation is effective from 6 a.m. on April 24, 2006 until 10 p.m. on July 21, 2006.

**ADDRESSES:** Material received from the public, as well as documents indicated in this preamble as being available in the docket [CGD07–06–048] will become part of this docket and will be available for inspection or copying at Commander (dpb), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, Florida 33131–3050 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Branch at (305) 415–6743.

**SUPPLEMENTARY INFORMATION:** The Stickney Point Bridge (SR 72), Gulf Intracoastal Waterway, mile 68.6, Sarasota County, Florida, is a double-leaf bascule bridge with a vertical clearance of 18 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 90 feet. The current operating regulation in 33 CFR 117.5 requires that the bridge shall open on signal.

The County of Sarasota requested a deviation from the current operating regulations to allow the bridge to open as necessary on the hour, twenty minutes past the hour and forty minutes past the hour from 6 a.m. to 10 p.m., Monday through Friday, except Federal holidays, in order to relieve vehicular traffic delays. In light of the foregoing, the Commander, Seventh Coast Guard District, has granted a temporary deviation from the operating requirements listed in 33 CFR 117.5 to test the 20-minute schedule. Under this deviation, the Stickney Point (SR 72) Bridge, Gulf Intracoastal Waterway, mile 68.6, Sarasota County, Florida shall open as necessary on the hour, twenty minutes past the hour and forty minutes past the hour from 6 a.m. to 10 p.m., Monday through Friday, except Federal holidays, April 24 through July 21, 2006. At all other times the bridge will open upon demand.

Dated: March 14, 2006.

**Greg Shapley,**

*Chief, Bridge Administration, Seventh Coast Guard District.*

[FR Doc. 06–3176 Filed 3–31–06; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[CGD07–06–050]**

### Drawbridge Operation Regulations; Venetian Causeway (West) Drawbridge, Atlantic Intracoastal Waterway, Mile 1088.6, and Venetian Causeway (East) drawbridge, Biscayne Bay, Miami, Miami-Dade County, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Venetian Causeway (West) drawbridge, Atlantic Intracoastal Waterway, mile 1088.6, and Venetian Causeway (East) drawbridge, Biscayne Bay, Miami, Miami-Dade County, Florida. These temporary deviations allow the Coast Guard to test an operating schedule with the drawbridges opening as necessary on a 30-minute schedule from 7 a.m. to 7 p.m., Monday through Friday, except Federal holidays. This deviation will allow the Coast Guard to gather data to determine if these schedules meet the reasonable needs of navigation while accommodating vehicle traffic and whether they should be proposed as permanent changes.

**DATES:** These deviations are effective from 7 a.m. on April 17, 2006 until 7 p.m. on June 14, 2006.

**ADDRESSES:** Material received from the public, as well as documents indicated in this preamble as being available in the docket [CGD07–06–050] will become part of this docket and will be available for inspection or copying at Commander (dpb), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, Florida 33131–3050 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Branch at (305) 415–6744.

**SUPPLEMENTARY INFORMATION:** The Venetian Causeway (West), Atlantic Intracoastal Waterway, mile 1088.6, Miami, Miami-Dade County, Florida is a drawbridge with a vertical clearance of 12 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 90 feet. The current operating regulation in 33 CFR 117.5 requires that the bridge shall open on signal.

The Venetian Causeway (East), Biscayne Bay, Miami, Miami-Dade County, Florida is a drawbridge with a vertical clearance of 5 feet above mean high water (MHW) measured at the fenders in the closed position and a horizontal clearance of 57 feet. The current operating regulation in 33 CFR 117.269 requires that the draw of the East Span of the Venetian Causeway bridge, between Miami and Miami Beach, shall open on signal; except that, from November 1 through April 30 from 7:15 a.m. to 8:45 a.m. and 4:45 p.m. to 6:15 p.m. Monday through Friday, the draw need not be opened. However, the draws shall open at 7:45 a.m., 8:15 a.m., 5:15 p.m., and 5:45 p.m. if any vessels are waiting to pass. The draw shall open on signal on Thanksgiving Day, Christmas Day, New Year's Day and Washington's Birthday. The draw shall open at any time for public vessels of the United States, tugs with tows, regularly scheduled cruise vessels, and vessels in distress.

The residents of Venetian Causeway requested a deviation from the current operating regulations to allow both drawbridges (East and West) to open as necessary on a 30-minute schedule from 7 a.m. to 7 p.m., Monday through Friday, except Federal holidays, in order to relieve vehicular traffic delays.

In light of the foregoing, the Commander, Seventh Coast Guard District, has granted a temporary deviation from the operating requirements listed in 33 CFR 117.5 and 33 CFR 117.269 to test the 30-minute schedule. Under this deviation, the Venetian Causeway (West) Drawbridge, Atlantic Intracoastal Waterway, mile 1088.6, and the Venetian Causeway (East) drawbridge, Biscayne Bay, Miami, Miami-Dade County, Florida shall open as necessary on the hour and half-hour from 7 a.m. to 7 p.m., Monday through Friday, except Federal holidays, April 17 through June 14, 2006. Public vessels of the United States, tugs with tows and vessels in a situation where a delay would endanger life or property shall upon proper signal be passed through the draw.

Dated: March 14, 2006.

**Greg Shapley,**

*Chief, Bridge Administration, Seventh Coast Guard District.*

[FR Doc. 06–3177 Filed 3–31–06; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 80

**[EPA–OAR–2005–0048; FRL–8052–1]**

**RIN 2060–AM42**

### Regulation of Fuel and Fuel Additives: Gasoline and Diesel Fuel Test Methods

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to allow refiners and laboratories to use more current and improved fuel testing procedures for five American Society for Testing and Materials (ASTM) analytical test methods. Once these test method changes are adopted, they will supersede the corresponding earlier versions of these test methods in EPA's motor vehicle fuel regulations. EPA is also taking direct final action to change the designated test method for sulfur in butane. EPA will take direct final action to replace an approved ASTM Committee D.16 sulfur test method with the ASTM Committee D.02 version of the test method for gasoline and diesel fuel, and allow an additional ASTM test method for sulfur in gasoline. EPA is also taking direct final action to remove a September 1, 2004 sunset provision for two alternative ASTM test methods for gasoline. Finally, EPA is taking direct final action to add a new section to the motor vehicle fuels regulations. This new section would reference the rounding method in an ASTM standard practice as the procedure to follow for rounding a test result when determining compliance with EPA's motor vehicle fuels standards listed in the regulations. As explained further below in the preamble of this document, EPA views these changes as non-controversial and we anticipate no adverse comment.

**DATES:** This direct final rule is effective June 2, 2006, unless EPA receives adverse comments or a request for public hearing by May 3, 2006. If the Agency receives adverse comment or a request for public hearing, we will withdraw this direct final rule by publishing a timely withdrawal notice in the **Federal Register**. The incorporation by reference of certain publications in this rule is approved by the Director of the Office of the Federal Register as of June 2, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0048, by one of the following methods:

• *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

• *E-mail: a-and-r-Docket@epa.gov.*

• *Fax:* (202) 566–1741.

• *Mail:* ''EPA–HQ–OAR–2005–0048, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.''

• *Hand Delivery:* EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0048. EPA's policy is that all comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Unit 1.B of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Joe Sopata, Chemist, Transportation and Regional Programs Division, Office of Transportation and Air Quality (6406J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9034; fax number: (202) 343–2801; e-mail address: *sopata.joe@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal if adverse comments are filed. This rule will be effective on June 2, 2006 without further notice unless we receive adverse comment by May 3, 2006. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

The contents of today's preamble are listed in the following outline.

I. General Information
A. Does This Action Apply to Me?
B. What Should I Consider as I Prepare My Comments for EPA?
II. Rule Changes
A. Updating ASTM Test Methods to Their Most Recent Version
B. Replacing ASTM D 6428–99 with ASTM D 6920–03
C. Test Method for Sulfur in Butane
D. Additional Alternative Test Method for Sulfur in Gasoline
E. Removal of Sunset Provision for Alternative Test Methods
F. Using Rounding When Determining Conformance With a Fuels Standard
III. Administrative Requirements
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA)
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 & 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
VI. Statutory Provisions and Legal Authority

## I. General Information

### *A. Does This Action Apply to Me?*

Regulated categories and entities potentially affected by this action include those involved with the production, importation, distribution, sale and storage of gasoline motor fuel and diesel motor fuel.

The table below is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether an entity is regulated by this action, one should carefully examine the existing regulations in 40 CFR part 80. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

| Category | NAICSs codes [a] | SIC codes [b] | Examples of potentially regulated parties |
|---|---|---|---|
| Industry | 324110 | 2911 | Petroleum refiners. |
| Industry | 54138 | 8734 | Testing Laboratories. |
| Industry | 422710<br>422720 | 5171<br>5172 | Gasoline Marketers and Distributors. |

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

*B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part of all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions—The agency may ask you to respond to specific questions or organize comments referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Rule Changes

*A. Updating ASTM Test Methods to Their Most Recent Version*

Refiners, importers and oxygenate blenders producing gasoline and diesel motor vehicle fuel are required to test reformulated gasoline (RFG), conventional gasoline (CG) and diesel fuel for various fuel parameters including sulfur, olefins, aromatics, and oxygenate content. American Society for Testing and Materials (ASTM) test method D2622 is currently a designated test method for measuring sulfur [1] in gasoline. ASTM test method D 3120 and ASTM D 5453 are currently alternative test methods for measuring sulfur [2] [3] in gasoline. ASTM test method D 1319 is currently a designated test method for measuring olefins [4] in gasoline and aromatics [5] in diesel fuel and is also allowed as an alternative test method for measuring aromatics [6] in gasoline. ASTM test method D 4815 is currently an alternative test method for measuring oxygenate content [7] in gasoline.

The American Petroleum Institute (API) recommended in a letter to EPA that EPA update the ASTM test methods mentioned above to their most recent ASTM version.[8] API asked EPA to refer to the 2003 year version of ASTM test method D 2622 in all references involving gasoline and diesel fuels because this version of ASTM D 2622 includes an updated precision statement as determined in a recent ASTM sulfur round robin. API also recommended EPA adopt in the motor vehicle fuels regulations the 2003a version of ASTM 3120, the 2003a version of ASTM D 5453, the 2003 version of ASTM D1319, and the 2003 year version of ASTM D 4815.

Table 1 lists the designated analytical test methods and alternative analytical test methods which are being updated for parameters measured under RFG, CG, and diesel fuels program in today's action. The Agency has reviewed these updated ASTM test methods and we are in agreement with the revisions contained in them which will result in improvements in the utilization of these test methods for the regulated industry. We believe that the revisions in the test method changes in today's action are not significant changes that would cause a user of an older version of the same method to incur significant costs. All of the revisions were deemed necessary by ASTM so that improvements in the test method's procedures would ensure better operation for the user of the test method. Thus, EPA is taking action today to update the regulations for the following ASTM test methods: (1) ASTM D 2622–03, the designated test method for measuring sulfur in RFG, and CG, (2) ASTM D 3120–03a and ASTM D 5453–03a alternative test methods for sulfur in gasoline, (3) ASTM D 1319–03, designated test method for measuring olefins in gasoline and aromatics in diesel fuel, as well as the alternative test method for measuring aromatics in gasoline, and (4) ASTM 4815–03, alternative test method for measuring oxygenate content in gasoline.

TABLE 1.—DESIGNATED AND ALTERNATIVE ASTM ANALYTICAL TEST METHODS UNDER RFG, CG AND DIESEL MOTOR VEHICLE FUEL PROGRAMS

| Fuel parameter | ASTM analytical test method |
|---|---|
| Sulfur (gasoline) | ASTM D 2622–03, entitled "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry". |

[1] 40 CFR 80.46(a)(1).
[2] 40 CFR 80.46(a)(3)(iii).
[3] 40 CFR 80.46(a)(3)(i).
[4] 40 CFR 80.46(b).
[5] 40 CFR 80.2(z).
[6] 40 CFR 80.46(f)(3).
[7] 40 CFR 80.46(g)(2).
[8] See Air Docket # EPA–HQ–OAR–2005–0048–0002.

TABLE 1.—DESIGNATED AND ALTERNATIVE ASTM ANALYTICAL TEST METHODS UNDER RFG, CG AND DIESEL MOTOR VEHICLE FUEL PROGRAMS—Continued

| Fuel parameter | ASTM analytical test method |
|---|---|
| Sulfur (gasoline) | ASTM D 5453–03a, entitled, "Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence". |
| Sulfur (gasoline) | ASTM D 3120–03a, entitled, "Standard Test Method for Trace Quantities of Sulfur in Light Petroleum Hydrocarbons by Oxidative Microcoulometry". |
| Oxygen content (gasoline) | ASTM D 4815–03, entitled "Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and $C_1$ to $C_4$ Alcohols in Gasoline by Gas Chromatography". |
| Olefins (gasoline) | ASTM D 1319–03, entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption". |
| Aromatics (gasoline and diesel) | ASTM D 1319–03, entitled, "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption", for diesel fuel, this method is the designated test method, for gasoline, this method is an alternative test method and if used as an alternative method, its results, must be correlated to ASTM D 5769–98. |

*B. Replacing ASTM D 6428–99 With ASTM D 6920–03*

Refiners, importers and oxygenate blenders producing gasoline and diesel motor vehicle fuels are required to test RFG, CG, and diesel fuel for various fuel parameters including sulfur content. ASTM test method D 6428–99 is currently the designated test method for measuring the sulfur content of on-highway diesel fuel at the 15 ppm level [9], an alternative test method for measuring the sulfur content on-highway diesel fuel at the 500 ppm level [10], and an alternative test method for measuring the sulfur content of gasoline.[11]

ASTM D 6428–99 was developed by the ASTM D.16 Committee for Aromatic Hydrocarbons and Related Chemicals. ASTM D 6428–99 does not contain a precision statement in the test method for its use with gasoline and diesel fuel. ASTM D.02, the Committee for Petroleum Products and Lubricants, recently determined the precision for this method with respect to gasoline and diesel fuels, and named the new method containing the precision statement ASTM D 6920–03. Since ASTM D 6920–03 contains precision statements for the method as it applies to gasoline and diesel, API requested that EPA refer to ASTM D 6920–03 in all references with respect to gasoline and diesel fuel involving test method ASTM D 6428–99.[12] The Agency has evaluated API's request and agrees that since ASTM D 6920–03 contains precision estimates for use of the method with gasoline and diesel fuels, ASTM D 6920–03 is more practical for use with our gasoline and diesel fuels programs compared to ASTM D 6428–99. Thus, EPA is changing the regulations by replacing ASTM D 6428–99 with ASTM D 6920–03 for the alternative test method for measuring the sulfur content of diesel fuel at the 500 ppm level, and the alternative test method for measuring the sulfur content of gasoline.

The regulations state that until December 27, 2004, for 15 ppm diesel fuel, regulated parties may use ASTM D 6428–99, the designated test method, or ASTM D 5453–03a or ASTM D 3120–03a, two alternative test methods, provided the alternative test method results are correlated to the designated test method. After December 27, 2004, regulated parties measuring motor vehicle diesel fuel and fuel additives subject to the 15 ppm diesel sulfur standard must qualify their test method on a site specific basis under the precision and accuracy criteria specified in the regulations at 40 CFR 80.584. Once they have completed this testing, they must submit their precision and accuracy results to the Agency for approval to use their test method as specified in the regulations at 40 CFR 80.585. Thus, after December 27, 2004, regulated parties may only use test methods that have been qualified on a site specific basis that meet the accuracy and precision criteria specified in the regulations at 40 CFR 80.584 and that have been approved under the process specified in the regulations at 40 CFR 80.585. The December 27, 2004, date, provided regulated parties 180 days of lead time to qualify their test methods for use at each site for measuring 15 ppm sulfur diesel fuel. Since today's rule will be effective after December 27, 2004, the Agency is revising the regulations by removing the now irrelevant designated and alternative test method paragraphs that allow the use of ASTM D 6428–99, ASTM D 5453–03a, and ASTM D 3120–03a for 15 ppm sulfur diesel fuel (i.e., 40 CFR 80.580(b)(1) and 40 CFR 80.580(c)(1)). The regulations will then only reflect the present situation in the regulations that all test methods must qualify under the precision and accuracy criteria in the regulations.

*C. Test Method for Sulfur in Butane*

Certain parties blend butane into gasoline which has already been manufactured and certified under EPA regulations. Effective January 1, 2004, the parties that blend butane into already made gasoline were required to test the butane for sulfur content.[13] Currently, ASTM D 3246–96 is the designated test method for measuring the sulfur content of butane.

Recently, API said in a letter to EPA that ASTM D 6667 is more readily available, more reliable, and a better test method than ASTM D 3246.[14] Thus, API requested EPA to change the designated test method for measuring sulfur in butane to ASTM D 6667–01, and to continue to allow ASTM D 3246–96 as an alternative test method. EPA has evaluated API's request on this test method issue and agrees. Thus, EPA is taking action to change the regulations making ASTM D 6667–01 the designated test method for measuring

[9] 40 CFR 80.580(a)(2).

[10] 40 CFR 80.580(a)(3)(ii).

[11] 40 CFR 80.46(a)(3)(ii).

[12] See Air Docket #EPA–HQ–OAR–2005–0048–0002.

[13] 40 CFR 80.46(a)(2).

[14] See Air Docket #EPA–HQ–OAR–2005–0048–0002.

the sulfur content of butane. Additionally, ASTM test method D 3246–96 will continue to be allowed as an alternative test method, provided its test results are correlated to ASTM D 6667–01, the designated test method for sulfur in butane.

In the future, EPA intends to establish a performance-based test method approach (PBTM) rule which would provide criteria for the qualification of alternative test methods. Once a PBTM rule has been established by the Agency, ASTM D 3246–96 may qualify under the PBTM rule's criteria as an alternative test method.

*D. Additional Alternative Test Method for Sulfur in Gasoline*

Refiners, importers and oxygenate blenders producing gasoline and diesel motor vehicle fuel are required to test RFG, CG and diesel fuel for various fuel parameters including sulfur. Test methods for determining sulfur content are specified in the regulation.

Recently, X-Ray Optical Systems, Incorporated (XOS®) requested in a letter to EPA that ASTM D 7039–04 be designated by EPA as an alternative test method in the regulations for sulfur in gasoline.[15] EPA has evaluated XOS®'s request on this test method issue and agrees. Thus, EPA is taking action to allow ASTM D 7039–04 as an alternative test method in the regulations for sulfur in gasoline, provided that its results are correlated to ASTM D 2622. The allowance of this additional alternative test method for sulfur in gasoline will provide the regulated community additional flexibility in meeting their testing requirements.

As stated above, EPA plans to establish a PBTM rule for the qualification of alternative test methods. Once this PBTM rule is effective, ASTM D 7039 may qualify as an alternative test method under the PBTM rule's criteria.

*E. Removal of Sunset Provision for Alternative Test Methods*

As explained previously, ASTM D 1319 is an alternative test method for measuring total aromatics in gasoline, and ASTM D 4815 is an alternative test method for measuring oxygenates in gasoline. Both of these alternative methods have sunset provisions under which their use as an alternative test method expired on September 1, 2004. On June 16, 2004, EPA issued an enforcement discretion letter allowing the use of these two alternative test methods until December 31, 2005, or until such time that a rulemaking was promulgated by the Agency to continue to allow the use of these two alternative test methods, whichever is earlier.[16]

Recently, API requested in a letter that the sunset provisions for these two alternative test methods be removed until a PBTM approach for qualifying analytical test methods is promulgated by EPA.[17] Since EPA believes the use of these two alternative test methods has been effective, we are continuing to allow their use until the PBTM rule mentioned previously is promulgated by the Agency. Once a PBTM rule has been established, these two alternative test methods may qualify under the PBTM rule's criteria. The rule change that is the subject of this notice would remove the current sunset provision of September 1, 2004, for both ASTM D 1319 and ASTM D 4815 and allow their use as alternative test methods until a PBTM rule is established by the Agency.

*F. Using Rounding When Determining Conformance With a Fuels Standard*

Refiners, importers and oxygenate blenders producing gasoline and diesel motor vehicle fuel are required to test RFG, CG and diesel fuel for various fuel parameters to determine compliance with EPA's motor vehicle fuels standards. These fuels standards are listed in the regulations at 40 CFR part 80.

Each of EPA's motor vehicle fuel standards indicates the number of significant digits which should be present in an observed measurement number to be compared to the standard for the purpose of demonstrating compliance. The appropriate number of significant digits to determine compliance with a fuel standard regulation or to report on a reporting form should be determined from the method outlined in section 3.1 of the ASTM standard practice E 29–02$^{\epsilon 1}$, entitled, ''Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications''. Regulated parties measuring a fuel parameter to determine compliance with a fuel standard must report their test result out to the number of significant digits specified in the applicable fuel standard. However, a test method used to measure a certain fuel parameter may provide more significant digits in its output than specified in the standard. When this situation occurs, the regulated party should round their test result to determine if they are in compliance with the standard. The American Society for Testing and Materials (ASTM) has developed the standard practice, ASTM E 29–02$^{\epsilon 1}$, for this situation. The rounding method[18] in this standard practice provides a procedure for rounding a test result to the number of significant digits specified in some standard. After using the rounding method specified in ASTM E 29–02$^{\epsilon 1}$, the regulated party may compare the resulting number to the standard to determine whether they are in compliance.

The Agency has reviewed the rounding method referenced in the standard practice ASTM E 29–02$^{\epsilon 1}$, and we are in agreement with its use for this purpose. The Agency believes referencing the ''rounding'' method (as contrasted with the ''absolute'' method) in this ASTM standard practice in EPA's regulations will help to avoid confusion in the fuels distribution system. Therefore, EPA is adding a new section to the motor vehicle fuels regulations at 40 CFR 80.9. This new section would reference the rounding method in ASTM E 29–02$^{\epsilon 1}$. The rounding method is the procedure to follow for rounding a test result when determining compliance with EPA's motor vehicle fuels standards listed at 40 CFR part 80.

In the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a proposed rule that matches the substance of this direct final rule. If the Agency receives adverse comment or a request for public hearing by May 3, 2006, we will withdraw the direct final rule by publishing a timely withdrawal notice in the **Federal Register**. If the Agency receives no adverse comment or a request for public hearing by May 3, 2006, these test method changes will be effective sixty (60) days after publication of this direct final rule in the **Federal Register**. We are confident that sixty(60) days is sufficient lead time for industry to become familiar and implement these ASTM test methods changes for the applications mentioned above.

[15] See Air Docket #EPA–HQ–OAR–2005–0048–0003.

[16] See Air Docket #EPA–HQ–OAR–2005–0048–0004.

[17] See Air Docket #EPA–HQ–OAR–2005–0048–0005.

[18] The Rounding Method in ASTM E 29–02$^{\epsilon 1}$ applies where it is the intent that a limited number of digits in an observed value or calculated value are to be considered significant for purposes of determining conformance to the number of figures listed in a fuels standard. The rounded value should be compared to the specified limit in the fuels standard, and conformance or non-conformance with the specification in the fuels standard be based on this comparison.

## III. Administrative Requirements

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden. However, the Office of Management and Budget (OMB), under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, has approved the information collection requirements contained in the final RFG and anti-dumping rulemaking and gasoline sulfur control rulemaking, and has assigned OMB control number 2060–0277, EPA ICR number 1591.14. OMB, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, has also approved the information collection requirements contained in the final Tax Exempt (Dyed) Highway Diesel Fuel rulemaking, and has assigned OMB control number 2060–0308, EPA ICR number 1718.03. Copies of the OMB approved Information Collection Requests (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

### *C. Regulatory Flexibility Act (RFA)*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' 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 direct final rule on small entities, EPA has concluded that this action would not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

All of the test method updates in today's action will improve the performance and/or utilization by industry of the test methods. For the two alternative test methods, ASTM D 1319 and ASTM D 4815, today's action will continue to provide flexibility to the regulated community. The allowance of ASTM D 7039–04 will provide additional flexibility to the regulated community in meeting sulfur in gasoline testing requirements. Referencing the rounding method in ASTM E 29–02$^{\epsilon 1}$ provides consistent guidance for the regulated community when determining whether a test result is in conformance with our motor vehicle fuels standards. Finally, for the measurement of sulfur in butane, today's action will provide industry with a more reliable, more readily available and better test method. We have therefore concluded that today's rule 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, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative

was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's direct final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local or tribal governments or the private sector. The rule would impose no enforceable duty on any State, local or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This direct final rule does not have federalism implications. It would 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. All of the test method updates in today's action will improve the performance and/or utilization by industry of the test methods. For the two alternative test methods, ASTM D 1319 and ASTM D 4815, today's action will continue to provide flexibility to the regulated community. The allowance of ASTM D 7039–04 will provide additional flexibility to the regulated community in meeting sulfur in gasoline testing requirements. Referencing the rounding method in ASTM E 29–02$^{\epsilon 1}$ provides consistent guidance for the regulated community when determining whether a test result is in conformance with our motor vehicle fuels standards. Finally, for the measurement of sulfur in butane, today's action will provide industry with a more reliable, more readily available and better test method. Thus, Executive Order 13132 does not apply to this direct final rule.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 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.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.''

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. This direct final rule applies to gasoline refiners, blenders and importers that supply gasoline or diesel fuel. All of the test method updates in today's action will improve the performance and/or utilization by industry of the test methods. For the two alternative test methods, ASTM D 1319 and ASTM D 4815, today's action will continue to provide flexibility to the regulated community. The allowance of ASTM D 7039–04 will provide additional flexibility to the regulated community in meeting sulfur in gasoline testing requirements. Referencing the rounding method in ASTM E 29–02$^{\epsilon 1}$ provides consistent guidance for the regulated community when determining whether a test result is in conformance with our motor vehicle fuels standards. Finally, for the measurement of sulfur in butane, today's action will provide industry with a more reliable, more readily available and better test method. Thus, Executive Order 13175 does not apply to this direct final rule.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045: Protection of Children from Environmental health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets 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 Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks that may disproportionately affect children.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This direct final rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking involves technical standards. EPA has decided to use ASTM standards as described in Units II.A, II.B, II.C, II.D and II.F of the **SUPPLEMENTARY INFORMATION** section of this document. All technical standards included in today's rule are standards

developed by ASTM, a voluntary consensus standards body, and thus raises no issues under the NTTAA.

*J. Congressional Review Act*

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

## VI. Statutory provisions and Legal Authority

Statutory authority for today's direct final rule comes from sections 211(c), 211(i) and 211(k) of the CAA (42.U.S.C. 7545(c) and (k)). Section 211(c) and 211(i) allows EPA to regulate fuels that contribute to air pollution which endangers public health or welfare, or which impairs emission control equipment. Section 211(k) prescribes requirements for RFG and CG and requires EPA to promulgate regulations establishing these requirements. Additional support for the fuels controls in today's rule comes from sections 114(a) and 301(a) of the CAA.

## List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Diesel, Imports, Incorporation by reference, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: March 24, 2006.

**Stephen L. Johnson,**

*Administrator.*

■ For the reasons set forth in the preamble, part 80 of title 40, chapter I of the Code of Federal Regulations is amended as follows:

## PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7545 and 7601(a).

### Subpart A—[Amended]

■ 2. Section 80.2 is amended by revising paragraph (z) to read as follows:

**§ 80.2 Definitions.**

* * * * *

(z) *Aromatic content* is the aromatic hydrocarbon content in volume percent as determined by ASTM standard test method D 1319–03, entitled, ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption''. ASTM test method D 1319–03 is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959. Copies may be inspected at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

* * * * *

■ 3. Section 80.9 is added to Subpart A to read as follows:

**§ 80.9 Rounding a test result for determining conformance with a fuels standard.**

(a) For purposes of determining compliance with the fuel standards of 40 CFR part 80, a test result will be rounded to the nearest unit of significant digits specified in the applicable fuel standard in accordance with the rounding method described in the ASTM standard practice, ASTM E 29–02$^{\epsilon 1}$, entitled, ''Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications''.

(b) ASTM standard practice, E 29–02$^{\epsilon 1}$ is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959. Copies may be inspected at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

* * * * *

### Subpart D—[Amended]

■ 4. Section 80.46 is amended as follows:

■ a. By revising paragraphs (a)(1), (a)(2), (a)(3)(i) through (a)(3)(iii) and (a)(4).

■ b. By adding paragraph (a)(3)(iv).

■ c. Revising paragraph (b).

■ d. Revising paragraph (f)(3)(i).

■ e. Revising paragraph (g)(2)(i).

■ f. Revising paragraph (h).

**§ 80.46 Measurement of reformulated gasoline fuel parameters.**

(a) * * *

(1) The sulfur content of gasoline must be determined by use of American Society for Testing and Materials (ASTM) standard method D 2622–03, entitled ''Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X–Ray Fluorescence Spectrometry'' or by one of the alternative method specified in paragraph (a)(3) of this section.

(2) Beginning January 1, 2004, the sulfur content of butane must be determined by the use of ASTM standard test method D 6667–01, entitled, ''Standard Test Method for Determination of Total Volatile Sulfur in Gaseous Hydrocarbons and Liquefied Petroleum Gases by Ultraviolet Fluorescence'' or by the alternative method specified in paragraph (a)(4) of this section.

(3) * * *

(i) ASTM standard method D 5453–03a, entitled, ''Standard Test Method for Determination of Total Sulfur in Light Hyrdocarbons, Motor Fuels and Motor Oils by Ultraviolet Fluorescence,'' or

(ii) ASTM standard method D 6920–03, entitled, ''Standard Test Method for Total Sulfur in Naphthas, Distillates, Reformulated Gasolines, Diesels, Biodiesels, and Motor Fuels by Oxidative Combustion and Electrochemical Detection,'' or

(iii) ASTM standard method D 3120–03a, entitled, ''Standard Test Method for Trace Quantities of Sulfur in Light Liquid Petroleum Hydrocarbons by Oxidative Microcoulometry.''

(iv) ASTM standard method D 7039–04, entitled, ''Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-ray Fluorescence Spectrometry.''

(4) Beginning January 1, 2004, any refiner or importer may determine the sulfur content of butane using any of the following methods; provided the refiner

or importer test result is correlated with the method specified in paragraph (a)(2) of this section:

(i) ASTM standard method D 4468–85 (Reapproved 2000), ''Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry,'' or

(ii) ASTM standard method D 3246–96, entitled, ''Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulemetry.''

(b) *Olefins.* Olefin content shall be determined using ASTM standard method D 1319B03, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.''

* * * * *

(f) * * *

(3)(i) Any refiner or importer may determine aromatics content using ASTM standard method D 1319–03, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Flourescent Indicator Adsorption,'' for purposes of meeting any testing requirement involving aromatics content; provided that

* * * * *

(g) * * *

(2)(i) When oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol and $C_1$ to $C_4$ alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygen content using ASTM standard method D 4815–03 entitled, ''Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and $C_1$ to $C_4$ Alcohols in Gasoline by Gas Chromatography,'' for purposes of meeting any testing requirement; provided that

* * * * *

(h) *Incorporations by reference.* ASTM standard methods D 3606–99, entitled ''Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography;'' D 1319–03, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption;'' D 4815–03, entitled ''Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and $C_1$ to $C_4$ Alcohols in Gasoline by Gas Chromatography;'' D 2622–03, entitled ''Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X–Ray Fluorescence Spectrometry;'' D 3246–96, entitled ''Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry;'' D 5191–01, entitled, ''Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method);'' D 5599–00, entitled, ''Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection;'' D 5769–98, entitled, ''Standard Test Method for Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry,'' and D 86–01, entitled, ''Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure;'' D 5453–03a, entitled, ''Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence,'' D 6920–03, entitled, ''Standard Test Method for Total Sulfur in Naphthas, Distillates, Reformulated Gasolines, Diesels, Biodiesels, and Motor Fuels by Oxidative Combustion and Electrochemical Detection,'' D 3120–03a, entitled, ''Standard Test Method for Trace Quantities of Sulfur in Light Petroleum Hydrocarbons by Oxidative Microcoulometry,'' D 7039–04, entitled, ''Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-ray Fluorescence Spectrometry,'' D 6667–01, entitled, ''Standard Test Method for Determination of Total Volatile Sulfur in Gaseous Hydrocarbons and Liquefied Petroleum Gases by Ultraviolet Fluorescence,'' and D 4468–85 (Reapproved 2000), ''Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry'' are incorporated by reference in this section. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959. Copies may be inspected at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

## Subpart I—[Amended]

■ 5. Section 80.580 is amended as follows:

■ a. By removing and reserving paragraphs (b)(1) and (c)(1).

■ b. By revising paragraph (c)(2)(i).

■ c. By revising paragraph (e)(1)(v).

### § 80.580 What are the sampling and testing methods for sulfur?

* * * * *

(b) Test method for sulfur. (1) [Reserved]

* * * * *

(c) Alternative test methods for sulfur. (1) [Reserved]

(2) Options for testing sulfur content of 500 ppm diesel fuel. (i) For motor vehicle diesel fuel and diesel fuel additives subject to the 500 ppm sulfur standard of § 80.520(c), and for NRLM diesel fuel subject to the 500 ppm sulfur standard of § 80.510(a), sulfur content may be determined using ASTM D 4294–03, ASTM D 5453–03a, or ASTM D 6920–03, provided that the refiner or importer test result is correlated with the appropriate method specified in paragraph (b)(2) of this section; or

* * * * *

(e) * * *

(1) * * *

(v) D 6920–03, Standard Test Method for Total Sulfur in Naphthas, Distillates, Reformulated Gasolines, Diesels, Biodiesels, and Motor Fuels by Oxidative Combustion and Electrochemical Detection.

* * * * *

[FR Doc. 06–3133 Filed 3–31–06; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF THE INTERIOR

## Office of the Secretary

## 43 CFR Part 10

**RIN 1024–AC84**

## Native American Graves Protection and Repatriation Act Regulations; Correction

**AGENCY:** Department of the Interior.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains corrections to a final rule that was published Friday, September 30, 2005 (70 FR 57177). The regulations related to implementation of the Native American Graves Protection and Repatriation Act of 1990.

**DATES:** *Effective Date:* September 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sherry Hutt, Manager, National NAGPRA Program, National Park Service, 1849 C Street, NW., (2253), Washington, DC 20240, telephone (202) 354–1479, facsimile (202) 371–5197, e-mail: *Sherry_Hutt@nps.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is published by the authority of the Secretary, granted under 25 U.S.C. 3001 *et seq.*

### Background

On November 16, 1990, President George H.W. Bush signed the Native American Graves Protection and Repatriation Act of 1990 (the Act) into law. The Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony with which they are affiliated. The Act assigns implementation responsibilities to the Secretary of the Interior.

### Need for Correction

As published, the final rule mistakenly cited the affected subpart as Subpart D of Part 10. The correct reference should have been Subpart B and C of Part 10.

### List of Subjects in 43 CFR Part 10

Historic preservation, Indians-lands.

■ For the reasons stated in the preamble, the Department of the Interior amends part 10 of title 43, Code of Federal Regulations, as follows:

## PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT REGULATIONS

■ 1. The authority citation for part 10 continues to read as follows:

**Authority:** 25 U.S.C. 3001 *et seq.*

### § 10.2 [Corrected]

■ 2. In § 10.2 (c)(3), remove the phrase ''(MS 2253 MIB)'' and replace with the phrase ''(2253).''

■ 3. In Subparts B and C, remove the words ''Departmental Consulting Archeologist'' wherever they appear and add in their place the words ''Manager, National NAGPRA Program.''

**Julie MacDonald,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 06–3147 Filed 3–31–06; 8:45 am]

BILLING CODE 4312–50–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 46 CFR Part 401

**[USCG–2002–11288]**

**RIN 1625–AA38 (Formerly RIN 2115–AG30)**

## Rates for Pilotage on the Great Lakes

**AGENCY:** Coast Guard, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is finalizing the March 2005 interim rule changing the rates for pilotage on the Great Lakes. That rate adjustment became effective on April 11, 2005. The Coast Guard is also finalizing the December 2003 interim rule. This final rule incorporates modifications to the interim rule in response to comments posted in the public docket. This rule is necessary to generate sufficient revenues for allowable expenses and to ensure that the pilots receive target compensation.

**DATES:** This final rule is effective May 3, 2006.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2002–11288 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Paul Wasserman, Director, Great Lakes Pilotage, Office of Waterways Management Plans and Policy (G–MWP), U.S. Coast Guard, telephone 202–267–2856 or e-mail him at *pwasserman@comdt.uscg.mil.* Suggestions and proposed changes to the ratemaking methodology should be addressed to the Great Lakes Pilotage Advisory Committee at Commandant (G–MW), Executive Director, Great Lakes Pilotage Advisory Committee, Room 1406, 2100 Second St., SW., Washington, DC 20593–0001. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Program History
II. Discussion of Comments and Changes
A. Beyond the Scope of this Rulemaking
B. Number of Pilots Needed
C. Target Pilot Compensation
D. AMO Monthly Multiplier
E. Family Leave and Restorative Rest
F. Training Funds
G. Health Insurance
H. Expenses
I. General Comments
III. Discussion of the Rule
A. Ratemaking Process and Methodology
B. Modifications to the Rate
C. Summary of Modifications to Expense Adjustments
D. Summary of Modifications to the Projection of Operating Expenses
E. Summary of Modifications to the Benefit Calculation
F. Summary of Modifications to the Number of Pilots Needed
G. Summary of Modifications to the Projection of Target Pilot Compensation
H. Summary of Modifications to the Projections of Revenue
I. Summary of Modifications to the Projected Rates of Return on Investment
J. Summary of Modifications to Projected Rates of Return on Investment versus Target Rates of Return on Investment
K. Summary of Modifications to the Revenue Needed Adjustment Determination
L. Summary of Modifications to the Adjustment of Pilotage Rates
M. Summary of Seven-Step Rate Calculation
IV. Regulatory Evaluation
A. Small Entities
B. Assistance for Small Entities
C. Collection of Information
D. Federalism
E. Unfunded Mandates Reform Act
F. Taking of Private Property
G. Civil Justice Reform
H. Protection of Children
I. Indian Tribal Governments
J. Energy Effects
K. Technical Standards
L. Environment

### I. Program History

The Great Lakes Pilotage Act of 1960 requires foreign-flag vessels and U.S.-flag vessels in foreign trade to use Federal Great Lakes registered pilots while transiting the St. Lawrence Seaway and the Great Lakes system. 46 U.S.C. Chapter 93. The Coast Guard is responsible for administering this pilotage program, which includes setting rates for pilotage service.

The Coast Guard pilotage regulations require that the Coast Guard annually review pilotage rates and establish new rates at least once every five years, or sooner, if the annual reviews show a need to do so. 46 CFR part 404.

On January 23, 2003, the Coast Guard published a notice of proposed rulemaking (NPRM). 68 FR 3202. That NPRM recommended a 25 percent average increase in pilotage rates. That recommended increase was based on a

number of factors relating to projections of ship traffic, pilot expenses, returns on investment, and compensation received by first mates on the Great Lakes under the 2002 American Maritime Officers (AMO) union contract, adjusted for inflation. Two public meetings were held and the comment period of that NPRM was extended.

The Coast Guard received comments from the pilots, the Great Lakes maritime community, and the St. Lawrence Seaway Development Corporation that raised issues that had not been addressed by the Coast Guard in earlier rulemakings. These comments included the impact of pilotage rates on foreign-flag shipping in the Great Lakes, the method for calculating components of the rate multiplier, target pilot compensation, and projection of revenues and expenses.

In response, the Coast Guard issued an interim rule establishing a rate adjustment of five percent to implement the uncontested parts of the rate increase early in the 2004 season, and allow the Coast Guard time to evaluate the remaining issues. 68 FR 69564. Corrections to the first interim rule were published the following January. 69 FR 128 and 69 FR 533, respectively.

On March 10, 2005, the Coast Guard issued a second interim rule that established a rate adjustment resulting in an additional average increase of 20 percent across all Districts over the 2004 rate adjustment. 70 FR 12082. Corrections to the March 2005 interim rule were published on March 21, 2005 and March 29, 2005. 70 FR 13574 and 70 FR 15779, respectively. In issuing the March 10, 2005 interim rule, the Coast Guard followed the ratemaking methodology in 46 CFR part 404 and Appendix A of that part.

## II. Discussion of Comments and Changes

The Coast Guard received eight comments in response to the March 2005 interim rule by the close of the comment period on June 8, 2005. Three of these comments requested a 30-day extension of the comment period to permit the pilots' associations and industry to continue discussions on the submission of ''mutually beneficial comments to further improve the Great Lakes pilotage system.'' After considering these requests, the Coast Guard agreed to extend the comment period to July 8, 2005. Twenty-two additional comments were received before the close of the extended comment period.

We received comments from individual pilots, district pilots' associations, a law firm representing the interests of pilots, the Shipping Federation of Canada and its members—the U.S. Great Lakes Shipping Association, the Canadian Chamber of Maritime Commerce, and the American Great Lakes Ports Association, Inc. We also received comments from the American Pilots' Association and the Canadian Great Lakes Pilotage Authority (GLPA). To the extent that these comments raised issues previously addressed in the two preceding interim rules and the NPRM, no further responses will be made to these comments. However, certain comments have raised new issues, which are addressed in the preamble of this document.

### *A. Beyond the Scope of This Rulemaking*

A number of comments raised issues that are beyond the scope of this rulemaking, including issues related to the bridge hour study. The bridge hour study is currently under review and any changes to the current regulations that may arise from that study will be the subject of a separate rulemaking.

Other comments that are beyond the scope of this rulemaking include a comment stating that the use of the AMO union collective-bargaining agreement to set compensation levels for the pilots is ''highly questionable and is the root of substantial disagreement on the appropriate level of target compensation.'' One comment stated that the current methodology for determining pilotage rates is too vulnerable to interpretation. Another comment stated that the use of the AMO union contracts should be either eliminated or that all union contracts applicable to masters and mates on the Great Lakes be reviewed.

*Response:* The Coast Guard is bound by 46 CFR part 404 to calculate rates based upon the provisions of Appendices ''A'' and ''C.'' We have not proposed to change the formulas in Appendices ''A'' and ''C'' in this rulemaking. However, since the regulations require that pilot target compensation estimate that of masters and mates on the Great Lakes and since the two services work quite differently as explained later in this preamble, the use of the union contracts have been a source of ''substantial disagreement on the appropriate level of target compensation.'' The Coast Guard encourages continued discussion among the parties to consider alternative ratemaking methodologies. Suggestions and proposed changes to the ratemaking methodology should be addressed to the Great Lakes Pilotage Advisory Committee found in the **FOR FURTHER INFORMATION CONTACT** section.

### *B. Number of Pilots Needed*

We received 14 comments concerning the number of pilots necessary to properly service the St. Lawrence Seaway and the Great Lakes system for the balance of the 2005 navigation season. Five comments were received from individual pilots, four comments were received from industry associations, two comments each were received from the pilots' associations and the pilots' representative, and one comment was received from the GLPA.

Each of these comments expressed concern that the March 2005 interim rule provided too few pilots in certain pilotage Areas. Several comments, including a comment from an industry representative, stated that the Director must consult with pilots and industry and use his discretion to correct this shortcoming.

Nine comments stated that the number of pilots should not be fractionalized in the ratemaking process and that all partial pilot numbers should be rounded up to the nearest whole number. One of these comments stated that by using partial pilot calculations, the Director has systematically prevented each pilot from earning target pilot compensation. This same comment stated that the number of pilots in each Area must be expressed in whole numbers and accompanied by correspondingly equal compensation. We received these comments from pilot and industry representatives. No comments suggested that the number of pilots should be fractionalized.

*Response:* Since the methodology provides an estimate of the number of pilots needed, the Coast Guard believes that in practical terms, a fractionalized number should be rounded up to ensure efficient and adequate pilotage services. Accordingly, this final rule modifies total target pilot compensation, revenue, and expense components of the ratemaking equations of the March 2005 interim rule to compensate for rounding fractionalized pilot numbers to the next whole number.

*Comments:* Two comments stated that it is up to the Director to determine the number of pilots needed to meet shipping demands, not the individual associations, as stated in the March 2005 interim rule. Another comment stated that the Coast Guard should ensure that the number of pilots authorized in the rate actually be hired and not just used to increase the rates.

One comment from an industry representative stated that ''the [interim] rule does not have an adequate number

of pilots for the St. Lawrence River and Lake Ontario, nor is there an adequate number of pilots for International District 2.'' The comment also recommended that there be five pilots assigned on Lake Ontario instead of the currently authorized 3.7 pilots.

Another comment stated that there are an inadequate number of pilots provided in the rate for the St. Lawrence River and Lake Ontario to meet the needs of traffic and to avoid costly delays to vessels. The comment recommended that 11 pilots should be the rate benchmark. This would represent an increase of two pilots over that presently provided.

The District Two Pilots' Association commented that the number of pilots in District Two should be increased from 10.9 to 14—nine pilots in designated waters and five pilots in the undesignated waters.

Comments from District Three pilots stated additional pilots should be allotted in their Areas as follows: 12 for Lakes Michigan and Huron (Area 6) instead of the current 10; eight in Lake Superior (Area 8) instead of the current 6.3; and five in Area 7 instead of the current 3.9.

One comment stated that if the Coast Guard is going to set pilot numbers based on seasonal averages, then the Coast Guard and industry must accept the fact that there will be delays when vessel transits exceed average volumes.

*Response:* For purposes of establishing rates, the Coast Guard agrees that it is the Director's responsibility to determine the number of pilots needed to provide adequate and efficient pilotage taking into account the vessel traffic projections and other factors listed in 46 CFR Appendix A to part 404, Step 2.B(3). It is also the Director's responsibility to establish pilotage rates that will allow pilots to earn target compensation assuming the actual traffic meets or exceeds projections. However, the actual pilots employed at any time must be determined by the pilot associations as long as they are able to provide safe, efficient, and adequate pilotage. Consistent with the comments we have received, we have reassessed the number of pilots required in the rate to efficiently and effectively handle projected traffic volumes through the end of the 2005 season. Analysis reveals that our original traffic estimates for the 2005 season are accurate. However, recent changes in Areas 1 and 2 require that we reassess the number of pilots in those Areas. In Area 1, the night relief program for the St. Lawrence River was expanded for the 2005 season. In Area 2, the Rochester-to-Toronto fast ferry was resumed in June 2005. Therefore, we are increasing by one the number of pilots in each of these Areas pursuant to the Director's discretion, 46 CFR Appendix A to part 404, Step 2.B(3), as discussed in the following paragraphs.

The night relief program, which was recently expanded for the 2005 season, allows a pilot to request night relief between the hours of 4 p.m. and 6 a.m. if the pilot becomes concerned about fatigue. The night relief program was initially introduced in 2001 by the Canadian Great Lakes Pilotage Authority on behalf of Canadian pilots to ensure the safety of shipping on the river during evening hours. The U.S. Office of Great Lakes Pilotage adopted the program later that year. The program has proven beneficial to both pilots and industry.

While the program has the beneficial effect of enhancing safety of vessels transiting the river at night, it also increases pilot turnover on the tour de roll (the order of rotation of pilots for ship assignments), increases the number of rest periods each pilot is required to take, and decreases pilot availability. Thus, the program's continuation, and the 2005 expansion of hours that night relief is available, has made it necessary to increase the number of pilots on the St. Lawrence Seaway from five to six.

As we stated in the March 10, 2005 interim rule, we did not make rate adjustments at that time for fast ferry needs in Area 2 because the fast ferry was not in operation. However, the Rochester-to-Toronto fast ferry on Lake Ontario was resumed in June 2005. This added service creates a need for an additional pilot in that Area even though the pilots' association has assigned four pilots to that Area.

We conservatively estimate, based on past Area 2 traffic volume, that for the balance of the 2005 season and for the 2006 season, the ferry service on Lake Ontario (Area 2) will require a minimum increase of 127 bridge hours per month, or 1,144 additional U.S. bridge hours per nine-month season, which equates to .64 of a pilot. Adding .64 pilots to the 3.7 pilots currently in the second interim rule (equaling 4.34 pilots) and rounding to the nearest whole pilot, raises the total number of pilots in Area 2 to five.

In addition, if the pilot service on board the ferry again ceases operation, the level of delays experienced on Lake Ontario during the 2005 season indicate that an increase of one pilot is the most prudent and appropriate action to take at this time. This increase is consistent with industry and pilot comments requesting five pilots on Lake Ontario.

We disagree with the comment that it is up to the Director to determine the number of pilots to be actually employed to meet shipping demands, not the individual associations, as stated in the March 2005 interim rule. The numbers of pilots that appear in these calculations are simply part of a mathematical model used to arrive at a proper rate structure. It is not an authorization by the Coast Guard of the number of pilots that must actually be hired to provide basic pilotage service. We also disagree with the comment stating that the Coast Guard should ensure that the number of pilots authorized in the rate actually be hired. The associations are responsible for hiring the number of pilots necessary to provide safe, effective, and efficient pilotage services in their Districts.

*C. Target Pilot Compensation*

We received 13 comments on the calculation of target pilot compensation, not including comments concerning the AMO union contract monthly multiplier (the 54-day multiplier), which is discussed separately below. Of those comments, six were from individual pilots, while there were two each from pilots' associations and industry representatives.

*Comments:* Five comments stated that the Coast Guard has failed to use the most recent AMO union contracts in calculating target pilot compensation and urged that we update our calculations to include these increases.

*Response:* We disagree. We used the AMO union contracts, effective August 1, 2002, in the January 2003 NPRM and the December 2003 interim rule. 68 FR 3202 and 68 FR 69571. In the March 2005 interim rule, in response to numerous comments, we updated the data and used the AMO union contracts effective for 2003. 70 FR 12082. We did this because it allowed for a more accurate rate calculation and because the new data would be available to the public for comment prior to publishing a final rule. Updating the base data now would require that we issue another interim rule and allow still more time for additional public comment. We are at an appropriate stage in the ratemaking process to publish a final rule. In publishing this final rule, we are constrained to rely on this base data for our final calculations. The more recent AMO union contracts will be used as part of the 2006 rate review.

*Comments:* Four comments stated the Coast Guard improperly calculated target pilot compensation for pilots on designated waters. According to these comments, the Coast Guard's regulations (Step 2.A. of Appendix A to

part 404) require that first mate's wages and benefits (derived from the AMO union contracts) be added together and then multiplied by 150 percent to determine target pilot compensation, instead of multiplying wages by 150 percent and adding benefits to that total, as the Coast Guard has done.

Comments from the pilots' representatives and industry stated that the Coast Guard must multiply daily wage and benefit rates (derived from the AMO union contracts) by the full 270-day navigation season, instead of multiplying the wage rate by 270 days and the benefit rate by 180 days, as the Coast Guard has done. The comment also said that by multiplying the wage rate by 270 days and the benefit rate by 180 days the Coast Guard is departing from precedence established since the first rate was calculated under the present methodology in 1997. Finally, the comment said that the Coast Guard had misstated its earlier position on this issue by stating that in each of its previous rulemakings it had calculated benefits based on 180 days vice 270 days. The representative of the pilots' associations agreed with the views expressed by industry on this issue.

*Response:* Based upon these comments, we have reexamined our position in the March 2005 interim rule and determined that the most accurate way to calculate target pilot compensation is to multiply both the daily wage and benefit rates by 270 days. We have modified our calculations accordingly. We agree with the comments from the pilots' representatives and industry that this modification is a return to the traditional way the Coast Guard has calculated target pilot compensation.

We disagree that the first mate's wages and benefits must be added together and then multiplied by 150 percent to determine target pilot compensation on designated waters, instead of multiplying wages by 150 percent and adding benefits to that total, as the Coast Guard has done. Our computation method was recently upheld in *Lake Pilots Assoc., Inc* v. *United States Coast Guard,* 257 F.Supp.2d 148 (D.D.C. April 4, 2003).

*D. AMO Monthly Multiplier*

*Comments:* Three comments addressed the monthly multiplier used in calculating target pilot compensation. An industry comment stated that the Director must resolve the dispute regarding the 44-day and 54-day multiplier and stated that the multiplier used by the Director in the IR ''is admittedly suspect.''

An industry representative commented that the monthly multiplier should be 43.5 days, not the 54 days used by the Coast Guard. The comment states that the use of the 54-day multiplier is not consistent with the AMO union contract because officers under the contract must take at least 60 days off per season while the Coast Guard's formula presumes that the approximate annual compensation is based on officers working 270 days. The comment additionally states that the Coast Guard has been inconsistent in its analysis of the multiplier in noting that it is inappropriate to assume that masters and mates work every day of the shipping season. The comment continues that rather than recognizing a seasonal average of 210 days worked, as opposed to 270 days, and reducing the multiplier accordingly, the Coast Guard's solution was to limit monthly benefits to six months. The comment concludes by stating, ''The Coast Guard must take into account, and not ignore, all required elements of the contract in order to determine the appropriate monthly multiplier and reduce the multiplier accordingly. Thus, the Coast Guard must correct this error and reduce the multiplier accordingly taking into account benefits for a nine-month period.''

*Response:* The Coast Guard's decision to use a 54-day multiplier, as required under the existing AMO union collective bargaining agreements, in computing target pilot compensation has been fully discussed in the December 2003 and March 2005 interim rules. However, the comments received in response to the March 2005 interim rule raised additional issues that require supplemental responses.

We disagree with the comment that use of the 54-day multiplier used by the Director in the IR ''is admittedly suspect.'' The 54-day multiplier is derived from the AMO union contracts and it has been confirmed as accurate for use in the rate making process by AMO union officials. See document number 196 in the public docket number USCG–2002–11288. This docket can be found at the Department of Transportation Docket Management System Web site at *http://dms.dot.gov/*.'' In that comment dated October 22, 1997, the Vice President of the Great Lakes American Maritime Officers' Union, stated that under the collective bargaining agreement in effect for the period 1997 to 1999, the daily wage rate for first mates must be multiplied by 54 days to arrive at a monthly wage rate figure. This advice was again confirmed by the Vice President of the AMO in a letter to the Director dated January 23, 2004, as accurate through the 2004 season.

We also disagree with the comments stating that the monthly multiplier should be 43.5 days, not the 54 days used by the Coast Guard; that use of 54-day multiplier is not consistent with the AMO union contract because officers under the contract must take at least 60 days off per season while the Coast Guard's formula presumes that the approximate annual compensation is based on officers working 270 days; that the Coast Guard should recognize a seasonal average of 210 days worked, as opposed to 270 days, and reduce the multiplier accordingly; and that the Coast Guard has been inconsistent in its analysis of the multiplier in noting that it is inappropriate to assume that masters and mates work every day of the shipping season.

As discussed in the preambles to the two preceding interim rules, the Coast Guard recognizes that masters and mates who are members of the AMO union work differently than U.S. Registered pilots. Adjustments in calculating compensation must take these differences into consideration.

According to industry, masters and mates generally work 60 straight days aboard ship followed by 30 consecutive days off. They are paid for days actually worked. During their 30-day leave periods, masters and mates have no responsibility to their employers, and they are not subject to mandatory recall. Pilots, however, do not work like masters and mates.

The working rules for each of the three pilots' associations, as approved by the Coast Guard, establish that once the tour de roll is set at the beginning of a navigation season, until the conclusion of the season in late December, each pilot must remain continuously available for assignment. The only permissible exceptions to this requirement include statutory and regulatory periods of mandatory rest, limited sick and life-event days, and very limited periods of leave only if traffic conditions permit. When leave is granted, pilots must still remain close to home, and cannot plan time out of the general geographic area, because they are subject to immediate mandatory recall should traffic require. Throughout the season, as traffic warrants, pilots are frequently recalled to pilot vessels, and frequently take ''short rests'' to meet traffic needs. Masters and mates are not subject to these working conditions. For these reasons, pilots are paid not for days actually worked, as masters and mates are paid, but they are paid instead for days available to service vessels. Pilots, being required to be available for

all 270 days of each navigation season, are compensated accordingly. Pilots' wages and benefits are each multiplied by 270 days (9 months) as opposed to 270 days (9 months) for wages and 180 days (6 months) for benefits.

The Coast Guard's regulations require that pilots' compensation ''approximate the average annual compensation'' of mates and masters on the Great Lakes. 46 CFR part 404, Appendix A, Step 2. The regulations do not require the Coast Guard to duplicate this compensation or duplicate the way masters and mates are compensated—we are only required to approximate it.

The use of this formula is consistent with the way compensation has been computed for pilots since the current methodology became effective in 1997.

Most importantly, however, these comments raise a distinction without a difference. If pilots were compensated based upon the 43.5-day multiplier instead of the 54-day multiplier they would also be entitled to 10.5 days off per month, or 95.4 full days of leave per season, during which they would not be subject to recall. To maintain the same levels of service, additional pilots would have to be added to the tour de rolls to make up for these mandatory days off. So, while each pilot would be available for service fewer days per month and earn less money per season there would be more pilots for the ship owners and operators to pay. In the end, industry would pay approximately the same in pilotage fees.

*E. Family Leave and Restorative Rest*

*Comments:* Three comments stated that because the current union contract for Great Lakes deck officers allows for ''Family Leave'' (or ''Restorative Rest,'' the term used by District One pilots) at a rate of 30 days for every 60 days worked, consideration should be given to allowing pilots a similar entitlement instead of requiring pilots to be available continuously for all 270 days of the navigation season. These comments recommend that each pilot should receive 10 days off each month with the schedule being determined by the individual district associations. One of these three comments additionally stated that pilot numbers should be increased to allow for regular periods of ''restorative rest.''

*Response:* As stated in our response to the comments above, the current pilots' association work rules for each district, approved by the U.S. Coast Guard, establish a system where pilots are required, with limited exceptions, to be available for service aboard ships for the full 270 days of each navigation season. These work rules were proposed to the Coast Guard by each pilots' association as a condition of receiving a certificate of authorization to form a pilotage pool. The rate calculations are based, in part, upon these approved work requirements. Absent change to these work rules, the Coast Guard will continue to calculate days available and the applicable multipliers based upon those standards. Should the pilots' associations desire a change to this work standard, and opt for mandatory days off, the Coast Guard will give such requests its full consideration. As indicated above, however, should the pilots' associations desire to change the existing work rules, adjustments would have to be made that would reduce individual pilot compensation from current levels.

*F. Training Funds*

*Comments:* We received two comments expressing concern that training funds for District Three were not included in the interim rule. The comment asked that the Coast Guard restore the district's training funds to the final rule, as the Coast Guard did in the July 2001 final rule, so pilots could attend training sessions. 66 FR 36848. A pilots' association representative stated that in the July 2001 final rule the Coast Guard allotted training funds for District One in the amount of $30,000, District Two $40,000 and District Three $50,000.

*Response:* The March 2005 interim rule and this final rule reimburses the pilots' associations for reasonable and necessary training expenses actually incurred during the 2002 navigation season. This is the expense base used in all rate-related calculations. Accordingly, District One was reimbursed training expenses of $15,945. Districts Two and Three did not report training expenses during this review; therefore, none were included in our review and subsequent rate adjustments.

The regulations are clear that expenses are recognized on a reimbursable basis only. Includable expenses are those that have been incurred and are both reasonable and necessary for the provision of pilotage service. This determination is made by reviewing each association's financial statements. Based upon that review, the Director is required to project the amount of vessel traffic annually and forecast the amount of fair and reasonable expenses that pilotage rates should recover. See, ''Projection of Operating Expenses'' in Appendix A to 46 CFR part 404. There is no provision in the ratemaking regulations or either Appendices ''A'' or ''C'' authorizing training expenses that have not previously been incurred.

We will no longer fund anticipated future expenses as we did in the 2001 rate. Only reasonable and necessary expenses actually incurred in the course of a pilotage season are subject to reimbursement. Expense projections are to be based on those expense bases. Pilot training is essential, but training expenses must be handled in accordance with the existing regulations. All reasonable and necessary training expenses incurred in future years should be accounted for in each association's annual financial statements for the year they are incurred. Future ratemakings will account for these expenses.

*G. Health Insurance*

*Comments:* One comment stated that the current computation of the benefit component of target compensation significantly underfunds the cost of health insurance because pilots must expend higher sums to obtain health insurance comparable to what is provided under the union contract. Another comment stated that the monthly health insurance component of target pilot compensation must be multiplied by 12 months to accurately reflect, and not under fund, target pilot compensation. Industry commented that the inclusion of health insurance benefits for retired pilots in the March 2005 interim rule ''is without precedent and entirely unsupported.'' The comment continued that because the union does not collect additional funds from the employer to enable them to pay health insurance benefits to their retired members, the Coast Guard should not include the cost of health insurance for retired pilots within the expense base. Finally, the comment stated that ''the IR would allow all retired pilots to receive medical benefits for life with no years of service requirement. In other words, a pilot could work for one year and retire with lifetime insurance benefits.'' According to this comment, AMO union members should meet a service requirement before being eligible for lifetime health insurance benefits. An industry comment stated, in addition to the above, that an allowance of lifetime benefits for health insurance contradicts the reality of pilots being self employed.

*Response:* We disagree with the comment stating that the health insurance benefit component of the AMO union contract must be multiplied by 12 months, instead of nine, to avoid under funding target pilot compensation. We also disagree with the comments that the current health insurance computation of target

compensation significantly underfunds the cost of health insurance because pilots must expend higher sums to obtain health insurance comparable to what is provided under the union contract.

Under the regulations, pilot compensation is computed based upon the AMO union contract to approximate compensation earned by masters and mates serving aboard lake vessels. Appendix A to 46 CFR part 404. To achieve this, we calculate target pilot compensation by multiplying both wages and benefits, which includes health benefits, by 270 days or 9 months. This is consistent with the way compensation has been computed for pilots since 1997 when the ratemaking methodology came into effect. The actual cost of health insurance to pilots is not relevant to these computations.

We disagree with the comment by industry that the inclusion of health insurance benefits for retired pilots in the March 2005 interim rule ''is without precedent and entirely unsupported.'' This comment continued that because the union does not collect additional funds from the employer to enable them to pay health insurance benefits to their retired members, the Coast Guard should not include the cost of health insurance for retired pilots within the expense base. These comments have been fully addressed in the preamble to the March 2005 interim rule. 70 FR 12086, March 10, 2005. No further response is necessary.

However, the comment raised an independent issue concerning service requirements under the union contract for a master or mate to become eligible for the lifetime health insurance benefit. This comment states that the interim rule would allow all retired pilots to receive medical benefits for life with no service requirement. In other words, a pilot could work for one year and retire with lifetime insurance benefits. We disagree. The same requirements that a master or mate must meet to become eligible for the benefit apply equally to pilots. The AMO Medical Plan provides that members with 20 years of creditable service are entitled to lifetime medical benefits, subject to an annual earnings limitation.

We disagree that an allowance of lifetime benefits for health insurance contradicts the reality of pilots being self employed. As stated above, pilot compensation is required to approximate that received by masters and mates serving on lake vessels. Part of that compensation is lifetime health insurance for eligible union members. Therefore, the inclusion of the costs of insurance for retired pilots is consistent with the union contract.

*H. Expenses*

*Comments:* Six comments were received concerning components of the expense base used in the March 2005 interim rule. An industry comment stated that the legal and lobbying expenses should not have been included, nor should they have been considered recurring expenses, because this was a base year rate review. Another industry comment said that the Coast Guard must disallow any legal fees that are non-recurring and provide a detailed explanation on how legal fees were allowed when corresponding bills omitted significant details necessary to properly determine the scope of legal services rendered. The comment also stated that the ''Coast Guard continues not to provide any explanation addressing why the legal fees that were allowed are reasonable and directly related to pilotage in accordance with the section 404.5(8) standard.''

Other comments said that the Coast Guard must scrutinize all non-recurring expenses and remove expenses that are not reasonable to include in the expense base for the final rule. Other comments stated that single, non-recurring expenses, such as those related to leasing, operating or maintaining pilot boats should not be included.

Three comments were received stating that because a pilots' association is a trade association and not a union, dues paid for membership by each pilot association should be allowable as a reasonable and necessary expense of operating the pilotage associations.

Two comments were received addressing travel expenses. One comment protested the reclassification of $8,600 of travel expenses as compensation in District Two. The comment stated that these travel expenses, if not allowed, should be considered non-reimbursed expenses and added back into the rate. Another comment by the same pilot, stated that District Two pilots should be reimbursed for mileage incurred from a pilot's home to his assignment. This comment stated that the Districts One and Three pilots receive such a reimbursement.

Two comments were received concerning the asset or investment base component of the rate. Both comments stated that unlike previous ratemakings, the Coast Guard changed the method of calculating the investment base in the March 2005 interim rule by allowing cash to be included. According to these comments, this inflated the return on investment portion of the March 2005 interim rule and, consequently, pilotage rates. One of these comments stated that the Coast Guard must remove all cash assets from its calculations to properly determine the asset base and adjust the return on investment calculation to properly adjust pilot rates.

One comment received from a pilots' association urged the Coast Guard to consider establishing segregated funding for capital improvements, such as pilot boats.

*Response:* The issues raised in comments concerning Coast Guard's inclusion of legal fees and non-recurring expenses, investment base calculations, and the disallowance of travel expenses in District Two, were fully addressed in the March 2005 interim rule. No additional responses are necessary.

Regarding the issue of whether pilot association dues are reimbursable as an expense in the rate, some clarification is necessary to our response to comments received to the March 2005 interim rule addressing the issue of whether pilot association dues are reimbursable as an expense in the rate. In our response, we stated that ''American Pilot Association dues are not an expense. Union pilots who work for domestic shipping companies must pay their own dues, and the amounts paid by the pilotage organizations for the benefit of pilots have been correctly reclassified as pilot compensation, the use of which to pay dues is discretionary and personal to the pilots.'' Our response appears limited to payment of union dues by employers. While our response remains correct, it was under-inclusive. Our response applies to both union and pilot association dues.

We disagree with the comment received from the pilots' association stating the Coast Guard should establish segregated funding for capital improvements, such as pilot boats. As with pilot training, it is the responsibility of the pilot associations to establish their own accounts and make provision for set asides from revenues generated. Funding for capital improvements, which are reasonable and necessary costs of operating a pilotage pool, derive from two sources: reimbursable expenses and depreciation of capital assets. How the associations choose to account for these expenses are exclusively within the discretion of each association.

*Comments:* A pilots' association and its representative commented that the Coast Guard must immediately increase pilotage rates to match Canadian rates in accordance with the provisions of the Memorandum of Arrangements, Great Lakes Pilotage, Between The Secretary of Transportation (now, Department of

Homeland Security) and the Minister of Transport Canada, dated January 17 and 18, 1977(MOA). This MOA, according to the comments, requires that the United States and Canada set identical rates.

*Response:* We disagree. When the 2005 rate adjustment was first proposed, Canadian and U.S. pilotage rates were within a reasonable range of each other. To recast the rate now would require the Coast Guard to issue an additional interim rule or, more likely, a supplemental notice of proposed rulemaking (SNPRM). The current ratemaking process has been ongoing since January 23, 2003. This rulemaking process is now postured to proceed to a final rule. Issues relating to identical rates between the U.S. and Canada will be reviewed during the next ratemaking process.

*I. General Comments*

*Comments:* Several comments of a general nature were received. One comment stated that by ''rushing'' to an interim rule, instead of providing adequate notice and public comment through a SNPRM, the Coast Guard has breached its obligation to maintain ''a fair and efficient pilotage system'' and to follow the statutory requirements to ensure rates accurately reflect the costs of providing pilotage services under the Great Lakes Pilotage Act.

An industry comment stated that the Coast Guard should give serious consideration to the rate making methodology, which it believes to be flawed.

*Response:* We disagree that we were ''rushing'' to an interim rule. We have fully met the requirements of the Administrative Procedure Act to provide public notice and comment in connection with modifications of existing regulations.

With regard to the comment that the Coast Guard should give serious consideration to the ratemaking methodology, we invite all interested parties to submit their suggestions to the Great Lakes Pilotage Advisory Committee.

## III. Discussion of the Rule

*A. Ratemaking Process and Methodology*

In the December 2003 (68 FR 69568) and March 2005 (70 FR 12082) interim rules, we described the analysis performed, and the seven-step methodology followed, in the development of the rate adjustment. We will not repeat this description here. The following shows the rate calculations for this final rule and provides explanations of the adjustments made to the March 2005 interim rule based on the comments received.

*B. Modifications to the Rate*

The pilotage rates for Federal pilots on the Great Lakes contained in the March 2005 interim rule have been adjusted in accordance with the methodology appearing at Appendix A to 46 CFR part 404, based upon comments received in the public docket relating to that interim rule.

Based on the comments received, the March 2005 interim rule is being modified by rounding pilot numbers in each Area up to the next whole pilot. We are also increasing by one each the number of pilots serving the St. Lawrence Seaway and Lake Ontario, bringing the total number of pilots servicing District One to 11, instead of the current nine. We are also amending our computation of target pilot compensation by multiplying both the daily wage rate and the daily benefit rate by 270 days, to more accurately reflect compensation received by masters and mates on the Great Lakes. To effect these adjustments, we must adjust the expense bases of each association to reflect additional costs associated with increased pilots, and we are increasing the number of bridge hours necessary to round up and add the additional pilots. We are also adjusting projected revenues based upon the increase in bridge hours referred to above.

We have made adjustments to the District Two expense base to reflect costs associated with the operation of the Huron Maid, the pilot boat obtained to replace the Westcott II that sank in 2001. These adjustments are being made to include these costs in the rate and to end the current surcharge.

For the 2002 fiscal year, the Coast Guard's independent accountant reduced the District Two association's total reported pilot boat expense by subtracting revenues received in the form of surcharges from vessel owners and operators. These surcharges were used to defray the cost of operating the Huron Maid. This adjustment was necessary to avoid double charging for the pilot boat expense. If the surcharge remained in place, and the adjustment not made to the expense base, the costs would have been recovered twice: once in the form of the surcharge, and second by including that charge in the rate structure. Since we are ending the surcharge effective with this final rule, we are reversing this adjustment in an amount equal to the actual 2002 costs of operating this vessel.

In 2002, $129,162 was paid to the District Two association in surcharges for the Huron Maid. The actual expense of operating the replacement pilot boat was $121,865. As stated, the Coast Guard's independent accountant reduced the District Two association's total pilot boat expense by the full amount of the surcharge collected for the operation of the Huron Maid. For the purposes of this ratemaking, we are adding back to the total pilot boat expense the actual cost incurred by the District Two association to operate this vessel. The difference between the total fees collected as surcharges and the actual costs, totaling $7,297, remains a reduction to expenses.

We have analyzed the District Two association's total pilot boat expense, both as reported by the association and as adjusted by the independent accountant, from 1999 through 2004. Average adjusted total pilot boat expense over that six-year period is $130,205, annually. The 2002 adjusted total pilot boat expense calculated for inclusion in this final rule is $121,865, which is below the six-year average. We have determined that these costs are both reasonable and necessary to the operation of pilotage service within the District. These costs were not included in the 2002 expense base because a surcharge was implemented to cover these costs. Effective with this final rule, the surcharge applied by the District Two association for the cost of operating the Huron Maid will cease.

As the tables in this final rule show, the percentage rate increase over the March 2005 interim rule, for Area 5 of District Two is 12 percent. Eight percent of that number reflects the adjustment made to include the surcharge that vessel owners and operators have been paying since 2002 to cover the cost of the Huron Maid. As a consequence, the effective rate increase for Area 5 is actually just 4 percent.

In addition, the costs of transportation incurred by District One in connection with the night relief program on the St. Lawrence River has similarly not been included within their expense base because these charges have been collected by a surcharge applied to the rates by the District One pilots' association. These costs are being added to the expense base and surcharges collected to recover these expenses will also end with the effective date of this final rule. We have determined that this additional travel cost is both reasonable and necessary for the safe, efficient, and reliable provision of pilotage service within District One.

As the tables in this final rule show, the percentage rate increase over the

March 2005 interim rule, for Area 1 of District One is 7 percent. Four percent of that number reflects the adjustment made to include the surcharge that vessel owners and operators have been paying since 2001 to cover the cost of transportation in connection with the night relief at Iroquois Lock. As a consequence, the effective rate increase for Area 1 is actually just 3 percent.

*C. Summary of Modifications to Expense Adjustments*

FICA and travel expense projections were increased by $42,919 for District One, $18,413 for District Two, and $11,332 for District Three to account for additional bridge hours required to round up the fractionalized pilot numbers and for adding one additional pilot each to the St. Lawrence Seaway and Lake Ontario. The projected dollar amounts were computed by taking the average expense figures for FICA and travel by Area, as reported in the ''Independent Accountant's Reports on Applying Agreed Upon Procedures, Financial Statement Analysis, Supplementary Financial Information and Report of Findings and Recommendations, 31 December 2002'' and computing a cost per bridge hour. We then multiplied this number by the increase in bridge hours to arrive at a revised projection of expenses for ratemaking purposes.

In addition, $121,865 was added to the expense base of District Two to cover the costs of pilot boat operations occasioned by the loss of the Westcott II that were not included within the association's expense base for 2002. We also included $48,694 to the expense base of District One to cover the additional costs of transportation associated with the night relief program that has not previously been reported in that association's expense base. These amounts were generated by reference to the reports of the Coast Guard's independent auditor and the associations' financial statements, which are contained in the public docket. As mentioned, on the date this final rule goes into effect, surcharges for these expenses will end.

The following summarizes the expense adjustments made to the rate calculations to accommodate these modifications.

SUMMARY OF MODIFICATIONS TO 2002 OPERATING EXPENSES

| | District one | District two | District three |
|---|---|---|---|
| 1. Reported Expenses for 2002 | $658,913 | $1,295,595 | $1,242,847 |
| Adjustments | (41,210) | (410,381) | 93,526 |
| Total Adjusted Expenses for 2002 | 617,703 | 885,214 | 1,336,373 |
| 2. Inflation Adjustments: | | | |
| (2003)—1.9% | 11,736 | 16,819 | 25,391 |
| (2004)—1.9% | 11,959 | 17,139 | 25,874 |
| 3. 2005 Adjustments for Foreseeable Circumstances: | | | |
| a. Increased Travel and FICA expenses associated with additional bridge hours resulting from the rounding of pilot numbers and the addition of two additional pilots for Area 1 and Area 2 | 51,005 | 18,413 | 11,332 |
| b. Increased Travel Expenses in connection night relief program | 48,694 | ..... | ..... |
| c. Increased Pilot Boat operating costs in connection with sinking of Westcott II | ..... | 121,865 | ..... |
| 4. Total Adjustments to 2002 Expenses | 741,097 | 1,059,450 | 1,398,970 |

*D. Summary of Modifications to the Projection of Operating Expenses*

The projection of operating expenses for this final rule is adjusted based upon the modifications made to pilotage expenses in the entry titled ''2005 Adjustments of Foreseeable Circumstances,'' above, and appears, as follows:

| District one | Area 1 St. Lawrence River | Area 2 Lake Ontario | Total district one |
|---|---|---|---|
| Projection of operating expenses | $368,186 | $372,911 | $741,097 |

| District two | Area 4 Lake Erie | Area 5 Southeast Shoal to Port Huron, MI | Total district two |
|---|---|---|---|
| Projection of operating expenses | $427,333 | $632,117 | $1,059,450 |

| District Three | Area 6 Lakes Huron and Michigan | Area 7 St. Mary's River | Area 8 Lake Superior | Total district three |
|---|---|---|---|---|
| Projection of operating expenses | $693,924 | $271,563 | $433,484 | $1,398,971 |

*E. Summary of Modifications to the Benefit Calculation*

Based on comments received to the March 2005 interim rule, the Coast Guard has modified its calculation of benefits by multiplying that portion of pilot compensation by 270 days, instead of the 180 days used in the March 2005 interim rule, which is the same multiplier used for the wage portion, to calculate target pilot compensation. The table below summarizes the effect of changing this calculation on target pilot compensation.

MODIFIED CALCULATION OF BENEFITS

| Monthly Component | (First mate) Pilots on undesignated waters | (Master) Pilots on designated waters |
|---|---|---|
| Employer Contribution—401(k) Plan | $552.64 | $828.96 |
| Clerical | 330.53 | 330.53 |
| Health | 2,064.79 | 2,064.79 |
| Pension | 1,283.10 | 1,283.10 |
| Monthly Total Benefits | 4,231.05 | 4,507.37 |
| Monthly Total Benefits × 9 | 38,079 | 40,566 |
| Total Wages Plus Benefits | 145,170 | 201,201 |

*F. Summary of Modifications to the Number of Pilots Needed*

The following table, ''Number of Pilots Needed'', shows the revised calculation of the number of pilots needed in each Area for the remainder of the 2005 navigation season, based upon rounding up fractionalized pilot numbers in the March 2005 interim rule and adding one pilot each to Areas 1 and 2:

NUMBER OF PILOTS NEEDED

| Pilotage area | Projected 2005 bridge hours | Divided by bridge-hour target | Pilots needed |
|---|---|---|---|
| Area 1 | 6,000 | 1,000 | 6.0 |
| Area 2 | 9,000 | 1,800 | 5.0 |
| Area 4 | 9,000 | 1,800 | 5.0 |
| Area 5 | 7,000 | 1,000 | 7.0 |
| Area 6 | 18,000 | 1,800 | 10.0 |
| Area 7 | 4,000 | 1,000 | 4.0 |
| Area 8 | 12,600 | 1,800 | 7.0 |

*G. Summary of Modifications to the Projection of Target Pilot Compensation*

The projection of target pilot compensation has also been modified to reflect the changes discussed above. The projection of target pilot compensation was adjusted by multiplying the increased number of pilots in each Area by the increase in compensation, as calculated above, as follows:

| District one | Area 1 St. Lawrence River | Area 2 Lake Ontario | Total district one |
|---|---|---|---|
| Projection of target pilot compensation | $1,207,209 | $725,848 | $1,933,057 |

| District two | Area 4 Lake Erie | Area 5 Southeast Shoal to Port Huron, MI | Total district two |
|---|---|---|---|
| Projection of target pilot compensation | $725,848 | $1,408,410 | $2,134,258 |

| District three | Area 6 Lakes Huron and Michigan | Area 7 St. Mary's River | Area 8 Lake Superior | Total district three |
|---|---|---|---|---|
| Projection of target pilot compensation | $1,451,696 | $804,806 | $1,016,187 | $3,272,689 |

*H. Summary of Modifications to the Projections Of Revenue*

Similarly, the projections of revenue for each District appearing in the March 2005 interim rule must be modified to take into consideration the increase in bridge hours. This has been done by calculating the revenue earned per bridge hour and multiplying that by the increase in bridge hours, as follows:

| District one | | Area 1 St. Lawrence River | Area 2 Lake Ontario | Total district one |
|---|---|---|---|---|
| Projection of revenue | | $1,246,800 | $985,140 | $2,231,940 |
| District two | | Area 4 Lake Erie | Area 5 Southeast Shoal to Port Huron, MI | Total district two |
| Projection of revenue | | $912,150 | $1,463,770 | $2,375,920 |
| District three | Area 6 Lakes Huron and Michigan | Area 7 St. Mary's River | Area 8 Lake Superior | Total district three |
| Projection of revenue | $1,760,947 | $895,480 | $1,251,936 | $3,908,363 |

*I. Summary of Modifications to the Projected Rates of Return on Investment*

Using the methodology below, and inserting the revised numbers referred to above, the Adjustment Determination is modified, yielding revised projected rates of return on investment. This step considers the modifications made to revenues, expenses, pilot compensation, and rates of return on investment, as set out below:

ADJUSTMENT DETERMINATION

[Projected rate of return on investment]

| Line | Ratemaking projections for basic pilotage |
|---|---|
| 1 | + Revenue (from Step 3). |
| 2 | − Operating Expenses (from Step 1). |
| 3 | − Pilot Compensation (from Step 2). |
| 4 | = Operating Profit/(Loss). |
| 5 | − Interest Expense (from financial reports). |
| 6 | = Earnings Before Tax. |

ADJUSTMENT DETERMINATION—Continued

[Projected rate of return on investment]

| Line | Ratemaking projections for basic pilotage |
|---|---|
| 7 | − Federal Tax Allowance. |
| 8 | = Net Income. |
| 9 | Return Element (Net Income + Interest). |
| 10 | ÷ Investment Base (from Step 4). |
| 11 | = Projected Rate of Return on Investment. |

DISTRICT ONE—PROJECTED RATE OF RETURN ON INVESTMENT

| Line | Area 1 | Area 2 | Total District One |
|---|---|---|---|
| 1 | $1,246,800 | $985,140 | $2,231,940 |
| 2 | $368,186 | $372,911 | $741,097 |
| 3 | $1,207,209 | $725,848 | $1,933,057 |
| 4 | ($328,595) | ($113,619) | ($442,214) |
| 5 | $0 | $0 | $0 |
| 6 | ($328,595) | ($113,619) | ($442,214) |
| 7 | $0 | $0 | $0 |
| 8 | ($328,595) | ($113,619) | ($442,214) |
| 9 | ($328,595) | ($113,619) | ($442,214) |
| 10 | $142,622 | $179,637 | $322,259 |
| 11 | (2.304) | (0.632) | (1.468) |

DISTRICT TWO—PROJECTED RATE OF RETURN ON INVESTMENT

| Line | Area 4 | Area 5 | Total District 2 |
|---|---|---|---|
| 1 | $912,150 | $1,463,770 | $2,375,920 |
| 2 | $427,333 | $632,117 | $1,059,450 |
| 3 | $725,848 | $1,408,410 | $2,134,258 |
| 4 | ($241,031) | ($576,757) | ($817,788) |
| 5 | $9,028 | $9,028 | $18,056 |
| 6 | ($250,059) | ($585,785) | ($835,844) |
| 7 | $4,282 | $4,282 | $8,564 |
| 8 | ($254,341) | ($590,067) | ($844,408) |
| 9 | ($245,313) | ($581,039) | ($826,352) |
| 10 | $358,974 | $428,132 | $787,106 |
| 11 | (0.683) | (1.357) | (1.020) |

DISTRICT THREE—PROJECTED RATE OF RETURN ON INVESTMENT

| Line | Area 6 | Area 7 | Area 8 | Total District |
|---|---|---|---|---|
| 1 | $1,760,947 | $895,480 | $1,251,936 | $3,908,363 |
| 2 | $693,924 | $271,563 | $433,484 | $1,398,971 |
| 3 | $1,451,696 | $804,806 | $1,016,187 | $3,272,689 |
| 4 | ($384,673) | ($180,889) | ($197,735) | ($763,297) |

DISTRICT THREE—PROJECTED RATE OF RETURN ON INVESTMENT—Continued

| Line | Area 6 | Area 7 | Area 8 | Total District |
|---|---|---|---|---|
| 5 | $1,235 | $1,235 | $1,235 | $3,705 |
| 6 | ($385,908) | ($182,124) | ($198,970) | ($767,002) |
| 7 | $0 | $0 | $0 | $0 |
| 8 | ($385,908) | ($182,124) | ($198,970) | ($767,002) |
| 9 | ($384,673) | ($180,889) | ($197,735) | ($767,002) |
| 10 | $445,915 | $172,274 | $272,507 | $890,696 |
| 11 | (0.863) | (1.050) | (0.726) | (0.879) |

*J. Summary of Modifications To Projected Rates of Return on Investment Versus Target Rates of Return on Investment*

The following table, ''Comparison of Projected Rates of Return on Investment and Target Rates of Return on Investment'', recalculates for the final rule the difference between the Projected Rates of Return on Investment and Target Rates of Return on Investment to compute the revised revenue needed component of the methodology to determine the rate adjustment.

COMPARISON OF PROJECTED RATES OF RETURN ON INVESTMENT AND TARGET RATES OF RETURN ON INVESTMENT

| | Projected returns on investment | Target returns on investment | Difference in returns on Investment |
|---|---|---|---|
| District One | (1.468) | .0567 | (1.412) |
| District Two | (1.020) | .0567 | (0.964) |
| District Three | (0.879) | .0567 | (0.823) |

*K. Summary of Modifications to the Revenue Needed Adjustment Determination*

The formula used to recalculate the revenue needed adjustment determination is similar to the formula used in determining the recalculated projected rates of return on investment.

REVENUE NEEDED ADJUSTMENT DETERMINATION

| Line | Ratemaking projections for basic pilotage |
|---|---|
| 1 | + Revenue (Revenue Needed). |
| 2 | − Operating Expenses (from Step 1). |

REVENUE NEEDED ADJUSTMENT DETERMINATION—Continued

| Line | Ratemaking projections for basic pilotage |
|---|---|
| 3 | − Pilot Compensation (from Step 2). |
| 4 | = Operating Profit/(Loss). |
| 5 | − Interest Expense (from financial reports). |
| 6 | = Earnings Before Tax. |
| 7 | − Federal Tax Allowance. |
| 8 | = Net Income. |
| 9 | Return Element (Net Income + Interest). |
| 10 | ÷ Investment Base (from Step 4). |
| 11 | = Revenue Needed Adjustment Rate. |

To find the proper revised adjustment determination, projected revenue, as determined in Step 3, is adjusted in each Area until the formula used in determining the projected rates of return on investment yields projected rates of return on investment equal to the target rates of return on investment from Step 5. The following tables show the results of these revised calculations:

DISTRICT ONE—ADJUSTMENT DETERMINATION

| Line | Area 1 | Area 2 | Total district one |
|---|---|---|---|
| 1 | $1,583,482 | $1,108,944 | $2,692,426 |
| 2 | 368,186 | 372,911 | 741,097 |
| 3 | 1,207,209 | 725,848 | 1,933,057 |
| 4 | 8,087 | 10,185 | 18,272 |
| 5 | 0 | 0 | 0 |
| 6 | 8,087 | 10,185 | 18,272 |
| 7 | 0 | 0 | 0 |
| 8 | 8,087 | 10,185 | 18,272 |
| 9 | 8,087 | 10,185 | 18,272 |
| 10 | 142,622 | 179,637 | 322,259 |
| 11 | 0.0567 | 0.0567 | 0.0567 |

DISTRICT TWO—ADJUSTMENT DETERMINATION

| Line | Area 4 | Area 5 | Total district two |
|---|---|---|---|
| 1 | $1,177,817 | $2,069,085 | $3,246,902 |
| 2 | 427,333 | 632,117 | 1,059,450 |
| 3 | 725,848 | 1,408,410 | 2,134,258 |
| 4 | 24,636 | 28,557 | 53,193 |
| 5 | 9,028 | 9,028 | 18,056 |
| 6 | 15,608 | 19,529 | 35,137 |
| 7 | 4,282 | 4,282 | 8,564 |
| 8 | 11,326 | 15,247 | 26,573 |
| 9 | 20,354 | 24,275 | 44,629 |
| 10 | 358,974 | 428,132 | 787,106 |
| 11 | 0.0567 | 0.0567 | 0.0567 |

DISTRICT THREE—ADJUSTMENT DETERMINATION

| Line | Area 6 | Area 7 | Area 8 | Total district |
|---|---|---|---|---|
| 1 | $2,170,903 | $1,086,137 | $1,465,122 | $4,722,162 |
| 2 | 693,924 | 271,563 | 433,484 | 1,398,971 |
| 3 | 1,451,696 | 804,806 | 1,016,187 | 3,272,689 |
| 4 | 25,283 | 9,768 | 15,451 | 50,502 |
| 5 | 1,235 | 1,235 | 1,235 | 3,705 |
| 6 | 24,048 | 8,533 | 14,216 | 46,797 |
| 7 | 0 | 0 | 0 | 0 |
| 8 | 24,048 | 8,533 | 14,216 | 46,797 |
| 9 | 25,283 | 9,768 | 15,451 | 50,502 |
| 10 | 445,915 | 172,274 | 272,507 | 890,696 |
| 11 | 0.0567 | 0.0567 | 0.0567 | 0.0567 |

*L. Summary of Modifications to the Adjustment of Pilotage Rates*

Revised pilotage rate adjustments are calculated for each Area by multiplying the pilotage rates in each Area by the rate multiplier. The rate multiplier is calculated by inserting the result from the steps detailed above into the following formula:

RATE MULTIPLIER

| Line | Rate multiplier |
|---|---|
| 1 | Revenue Needed (from Step 6(C)). |
| 2 | ÷ Projected Revenue (from Step 3). |
| 3 | = Rate multiplier. |

The following are the revised calculations for the rate multiplier by District and Area:

DISTRICT ONE—RATE MULTIPLIER

[Revenue Needed ÷ Projected Revenue = Rate Multiplier]

| | | | |
|---|---|---|---|
| Area 1 | $1,583,482 | $1,246,800 | 1.27 |
| Area 2 | 1,108,944 | 985,140 | 1.13 |
| District Total | 2,692,426 | 2,231,940 | 1.21 |

DISTRICT TWO—RATE MULTIPLIER

[Revenue Needed ÷ Projected Revenue = Rate Multiplier]

| | | | |
|---|---|---|---|
| Area 4 | $1,177,817 | $912,150 | 1.29 |
| Area 5 | 2,069,085 | 1,463,770 | 1.41 |
| District Total | 3,246,901 | 2,375,920 | 1.37 |

DISTRICT THREE—RATE MULTIPLIER

[Revenue Needed ÷ Projected Revenue = Rate Multiplier]

| | | | |
|---|---|---|---|
| Area 6 | $2,170,903 | $1,760,947 | 1.23 |
| Area 7 | 1,086,137 | 895,480 | 1.21 |
| Area 8 | 1,465,122 | 1,251,936 | 1.17 |
| District Total | 4,722,162 | 3,908,363 | 1.21 |

TOTAL ALL DISTRICTS—RATE MULTIPLIER

[Revenue Needed ÷ Projected Revenue = Rate Multiplier]

| | | | |
|---|---|---|---|
| District One Total | $2,692,426 | ÷$2,231,940 | 1.21 |
| District Two Total | 3,246,901 | ÷ 2,375,920 | 1.37 |
| District Three Total | 4,722,162 | ÷ 3,908,363 | 1.21 |
| All Districts | 10,661,489 | ÷ 8,516,223 | 1.25 |

*M. Summary of Seven-Step Rate Calculation*

The revised seven-step calculation of the methodology is summarized in the tables below by Area and for each District.

| District One | Area 1 St. Lawrence River | Area 2 Lake Ontario | Total district one |
|---|---|---|---|
| Step 1, Projection of operating expenses | $368,186 | $372,911 | $741,097 |
| Step 2, Projection of target pilot compensation | 1,207,209 | 725,848 | 1,933,057 |
| Step 3, Projection of revenue | 1,246,800 | 985,140 | 2,231,940 |
| Step 4, Calculation of investment base | 142,622 | 179,637 | 322,259 |
| Step 5, Determination of target return on investment | 5.67% | 5.67% | 5.67% |
| | 8,087 | 10,185 | 18,272 |
| Step 6, Adjustment determination | 1,583,482 | 1,108,944 | 2,692,426 |
| Step 7, Adjustment of pilotage rates | 1.27 | 1.13 | 1.21 |

| District two | Area 4 Lake Erie | Area 5 Southeast Shoal to Port Huron, MI | Total district two |
|---|---|---|---|
| Step 1, Projection of operating expenses | $427,333 | $632,117 | $1,059,450 |
| Step 2, Projection of target pilot compensation | 725,848 | 1,408,410 | 2,134,258 |
| Step 3, Projection of revenue | 912,150 | 1,463,770 | 2,375,920 |
| Step 4, Calculation of investment base | 358,974 | 428,132 | 787,106 |
| Step 5, Determination of target return on investment | 5.67% | 5.67% | 5.67% |
| | 20,354 | 24,275 | 44,629 |
| Step 6, Adjustment determination | 1,177,817 | 2,069,085 | 3,246,901 |
| Step 7, Adjustment of pilotage rates | 1.29 | 1.41 | 1.37 |

| District three | Area 6 Lakes Huron and Michigan | Area 7 St. Mary's River | Area 8 Lake Superior | Total district three |
|---|---|---|---|---|
| Step 1, Projection of operating expenses | $693,924 | $271,563 | $433,484 | $1,398,971 |
| Step 2, Projection of target pilot compensation | 1,451,696 | 804,806 | 1,016,187 | 3,272,689 |
| Step 3, Projection of revenue | 1,760,947 | 895,480 | 1,251,936 | 3,908,363 |
| Step 4, Calculation of investment base | 445,915 | 172,274 | 272,507 | 890,696 |
| Step 5, Determination of target return on investment | 5.67% | 5.67% | 5.67% | 5.67% |
| | 25,283 | $9,768 | 15,451 | 50,502 |
| Step 6, Adjustment determination | 2,170,903 | 1,086,137 | 1,465,122 | 4,722,162 |
| Step 7, Adjustment of pilotage rate | 1.23 | 1.21 | 1.17 | 1.21 |

Based on the above calculations and all the documents and records used in this rate adjustment, the Coast Guard has determined it is appropriate to adjust the rates in accordance with the above tables.

The Coast Guard amends the pilotage rates for the waters treated in 46 CFR 401.405 through 46 CFR 401.410 by multiplying the current pilotage rates by the difference between the rate multiplier calculated for the March 2005 interim rule and the calculations for this final rule for each pilotage Area. The following table shows the percentage changes in rates by Area.

2005 FINAL RULE AREA RATE ADJUSTMENTS

| | March 10, 2005 IR rate adjustments (percent) | Final rule modified rate adjustments (percent) | Difference in rate adjustments based on modifications to March 10, 2005 IR (percent) |
|---|---|---|---|
| Area 1 | 20 | 27 | +7 |
| Area 2 | 16 | 13 | −3 |
| Area 4 | 26 | 29 | +3 |

2005 FINAL RULE AREA RATE ADJUSTMENTS—Continued

| | March 10, 2005 IR rate adjustments (percent) | Final rule modified rate adjustments (percent) | Difference in rate adjustments based on modifications to March 10, 2005 IR (percent) |
|---|---|---|---|
| Area 5 | 29 | 41 | +12 |
| Area 6 | 16 | 23 | +7 |
| Area 7 | 16 | 21 | +5 |
| Area 8 | 13 | 17 | +4 |

The overall percentage rate increase for ''Cancellation, delay or interruption in rendering services (§ 401.420)'' and ''Basic rates and charges for carrying a U.S. pilot beyond [the] normal change point, or for boarding at other than the normal boarding point (§ 401.428)'' are increased by 5 percent over the March 2005 interim rule. This increase applies to all Areas equally.

## IV. Regulatory Evaluation

Executive Order 12866, ''Regulatory Planning and Review'', 58 FR 51735, October 4, 1993, requires a determination whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and subject to the requirements of the Executive Order. This rule is not significant under Executive Order 12866 and has not been reviewed by OMB.

This rule makes final the 20 percent average rate adjustment for the Great Lakes system provided by the March 2005 interim rule (70 FR 12082), and makes final the five percent average rate adjustment for the Great Lakes system provided by the December 2003 interim rule (68 FR 69564). This rule also provides for an additional five percent average increase in pilotage rates. This additional increase is the result of changes made in response to industry and public comments on the ratemaking process and the elimination of surcharges in District One and District Two as discussed in the ''Modifications to the Rate'' section of this final rule.

These adjustments to Great Lakes pilotage rates meet the requirements set forth in 46 CFR part 404 for similar compensation levels between Great Lakes pilots and industry. They also include adjustments for inflation, wages and benefits, and changes in association expenses, such as FICA, travel costs, and pilot boats. The rate adjustments in this final rule use financial data from the 2002 base accounting year, which is the last year of available data from the independent accountant's reports of the Districts' financial statements. The last full-rate adjustment occurred in 2001 and used financial data from the 1997 base accounting year.

The increase in pilotage rates will be an additional cost for shippers to transit the Great Lakes system. This rule results in a distributional effect that transfers payments (income) from vessel owners and operators to Great Lake pilot associations through Coast Guard regulated pilotage rates.

The shippers affected by these rate adjustments are those owners and operators of domestic vessels operating on register (employed in the foreign trade) and owners and operators of foreign vessels on a route within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. However, the Coast Guard issued a policy position several years ago stating that the statute applies only to commercial vessels and not to recreational vessels.

Owners and operators of other vessels that are not affected by this final rule, such as recreational boats and vessels only operating within the Great Lakes system, may elect to purchase pilotage services. However, this election is voluntary and does not affect the Coast Guard's calculation of the rate increase and is not a part of our estimated national cost to shippers.

For instance, after a review of some pilot source forms, the forms used to record the actual pilotage transaction on the vessel, we discovered a case of a U.S. Great Lakes vessel, a small tanker without registry, that purchased pilotage services in District One to presumably leave the Great Lakes. This vessel, however, is recorded in the Coast Guard's data as a vessel operating only in the Great Lakes, which would make it exempt from the pilotage requirements. After consulting with the Coast Guard's Office of Great Lakes Pilotage, the determination was made that this vessel voluntarily chose to use pilots because of the type of cargo it was carrying, possibly hazardous, and the inexperience of the vessel's crew to navigate the locks and passages of District One.

We used recent arrival data from the Coast Guard's National Vessel Movement Center (NVMC) to estimate the annual number of vessels affected by the rate adjustment to be 217 vessels that, for some, make several journeys or trips into the Great Lakes system. These vessels entered the Great Lakes by transiting through or in part of at least one of the three pilotage Districts before leaving the Great Lakes system. These vessels often make several stops docking, offloading, and onloading at facilities in Great Lakes ports. Of the total trips for the 217 vessels, there were a total of 1,095 distinct U.S. port arrivals before the vessels left the Great Lakes system, based on an average of 2002 and 2003 vessel arrival data from the NVMC.

We used district pilotage revenues from the independent accountant's reports of the Districts' financial statements to estimate the additional cost to shippers of the rate adjustments in this final rule. These revenues represent the direct and indirect pilotage costs that shippers must pay for pilotage services in order to transit their vessels in the Great Lakes. Table 1 shows historical pilotage revenues by District.

TABLE 1.—DISTRICT REVENUES

[$US]

| Year | District One | District Two | District Three | Total |
|---|---|---|---|---|
| 1998 | 2,127,577 | 3,202,374 | 4,026,802 | 9,356,753 |
| 1999 | 2,009,180 | 2,727,688 | 3,599,993 | 8,336,861 |

TABLE 1.—DISTRICT REVENUES—Continued

[$US]

| Year | District One | District Two | District Three | Total |
|---|---|---|---|---|
| 2000 | 1,890,779 | 2,947,798 | 4,036,354 | 8,874,931 |
| 2001 | 1,676,578 | 2,375,779 | 3,657,756 | 7,710,113 |
| 2002 | 1,686,655 | 2,089,348 | 3,460,560 | 7,236,563 |

Source: Annual independent accountant's reports of the Districts to the Coast Guard's Office of Great Lake Pilotage.

While the revenues have decreased over time, the Coast Guard adjusts pilotage rates to achieve a target pilot compensation similar to masters and first mates working on U.S. vessels engaged in the Great Lakes trade.

In this final rule, we have included the cost of transportation incurred by District One in connection with the night relief program and the cost of pilot boat operations incurred by District Two in connection with the operation of the Huron Maid (see the ''Summary of Modifications to Expense Adjustments'' section). Prior to this final rule, pilot associations were assessing these costs to vessel owners and operators in the form of surcharges. We have added these costs to the operating expenses of the pilotage rate methodology. The surcharges collected to recover these expenses will end with the effective date of this final rule.

The elimination of the practice of surcharges and the addition of these surcharges into the operating expenses used in the rate determination of the final rule has the net effect of increasing the overall rate by approximately two percent. Without these additional operating costs, the overall rate increase for the final rule would have been two percent less. These additional operating costs that vessel owners and operators paid in the form of surcharges total $170,559 annually.

Industry previously incurred these costs outside of the operating expenses used for pilotage rate adjustments and now they are included in the associations' operating expenses used in the rate adjustment determination. Since industry incurred these expenses before and will incur the same expenses after the effective date of this final rule, we do not include them as additional costs of the rule to industry. Therefore, we have removed the surcharges from the cost estimate of the final rule.

We estimate the additional cost of the rate adjustments in this final rule to be the difference between the projected revenue and the rate adjustment revenue (revenue needed by the associations) less revenue from surcharge operating expenses (surcharge payments). These revenue values and surcharges are described and calculated in the ''Discussion of the Rule'' section of this final rule. The projected revenue uses the 2002 revenues in Table 1 adjusted for the 2003 rate adjustment interim rule, the 2005 rate adjustment interim rule, and the revenue changes from the additional rate adjustment of this final rule in response to public comments and the removal of surcharges as discussed above. Table 2 compares projected and adjusted revenues and costs of the rule to industry by district (**Note:** Some values may not total due to rounding).

TABLE 2.—REVENUES, RATE ADJUSTMENT FACTORS AND ADDITIONAL COST OF FINAL RULE

[$U.S.] [1]

| Year | District one | District two | District three | Total [2] |
|---|---|---|---|---|
| Base Revenue | 1,686,655 | 2,089,348 | 3,460,560 | 7,236,563 |
| Projected Revenue [3] | 2,231,940 | 2,375,920 | 3,908,363 | 8,516,223 |
| Total Revenue Needed [4] | 2,692,426 | 3,246,901 | 4,722,162 | 10,661,489 |
| Total Revenue Needed Less Surcharge Payments [5] | 2,643,732 | 3,125,036 | 4,722,162 | 10,490,930 |
| Additional Revenue or Cost of this Final Rule [6] | 411,792 | 749,116 | 813,799 | 1,974,707 |

[1] For the calculation of projected and adjusted pilotage revenues, see the ''Discussion of Rule'' section of this final rule.
[2] Some values may not total due to rounding.
[3] Projected revenue = '2002 base revenue' + '2003 rate adjustment revenue' + '2005 rate adjustment revenue' + 'revenue changes from the additional rate adjustment of this final rule'.
[4] Total revenue needed = 'projected revenue' × 'total rate adjustment factors in this final rule'.
[5] Total revenue needed less surcharge payments = 'total revenue needed' − 'total annual surcharges'; where total annual surcharges equal $170,559 (see above).
[6] Additional revenue or cost of this final rule = 'total revenue needed less surcharge payments' − 'projected revenue'.

After applying the rate adjustments in this final rule, the resulting difference between the revenue projected and the revenue needed less revenue from surcharge payments is the annual cost for the affected population of this final rule. This figure will be equivalent to the total additional payments that shippers will make for pilotage services from this final rule.

The annual cost of the rate adjustments in this final rule to shippers is approximately $1.97 million (non-discounted). The annual cost of the additional five percent rate adjustment to shippers in this final rule is approximately $470,520 (non-discounted). To calculate an exact cost per vessel is difficult because of the variation in vessel types, routes, port arrivals, commodity carriage, time of season, conditions during navigation, and preferences for the extent of pilotage services on designated and undesignated portions of the Great Lakes system. Some owners and operators will pay more and some will pay less depending on the distance and port arrivals of their vessels' trips. However, the annual cost reported above does capture all of the additional cost the shippers will face as a result of the rate adjustments in this final rule.

We estimated the total cost to shippers of the rate adjustments in this final rule over a five-year period, because the Coast Guard is required to determine and, if necessary, adjust Great Lakes pilotage rates at a minimum of at

least once every five years from the last rate adjustment. However, the Coast Guard does evaluate and analyze the Great Lakes pilotage rates every year, regardless of whether an adjustment is needed or not. The total five-year (2006–2010), present value cost estimate of this final rule to shippers is $8.7 million discounted at a seven percent discount rate, and $9.3 million discounted at a three percent discount rate.

The cost to shippers of this final rule is minimal compared with the travel cost shippers save when they use the Great Lakes system. The alternative to Great Lakes waterborne transportation is to choose coastal delivery, such as East Coast and Gulf Coast ports which are more expensive, and extra-modal transportation overland, which is far less practical and has additional transportation costs for all commodity groups. See Coast Guard docket number USCG–2002–11288 for an assessment of alternatives to Great Lakes waterborne transportation and the associated costs entitled ''Analysis of Great Lakes Pilotage Costs on Great Lakes Shipping and the Potential Impact of Pilotage Rate Increases'' (October 1, 2004).

*A. Small Entities*

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

There are two U.S. entities, which are large shipping firms that operate foreign-flag vessels, engaged in foreign trade, in the Great Lakes system that will be affected by the rate adjustments in this final rule and pay additional costs for pilotage services. The North American Industry Classification System (NAICS) code subsector for these shippers is 483–Water Transportation, and includes one or all of the following 6-digit NAICS codes for freight transportation: 483111–Deep Sea Freight Transportation, 483113–Coastal and Great Lakes Freight Transportation, and 483211–Inland Water Freight Transportation. According to the Small Business Administration's definition, a U.S. company with these NAICS codes and employing less than 500 employees is considered a small entity. These shippers do not qualify as small entities because their number of employees exceeds 500. We assume that new industry entrants will be comparable in size to these shippers with a large enough employee base and the financial resources to support long international trade routes and, thus, will not be small businesses.

There are three U.S. entities that are affected by the final rule that will receive the additional revenues from the rate adjustments. These are the three pilot associations that are the only entities providing pilotage services within the Great Lakes Districts. Two of the associations operate as partnerships and one operates as a corporation. These associations are classified with the same NAICS industry classification and small entity size standards as the U.S. shippers above, but they have far less than 500 employees: approximately 65 total employees combined. However, they are not adversely impacted with the additional costs of the rate adjustments, but instead receive the additional revenue benefits for operating expenses and pilot compensation.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of U.S. small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

*B. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Paul Wasserman, Director, Office of Great Lakes Pilotage, (G–MWP–2), U.S. Coast Guard, telephone 202–267–2856 or send him e-mail at *pwasserman@comdt.uscg.mil.* Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

*C. Collection of Information*

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

*D. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism because there are no similar State regulations, and the States do not have the authority to regulate and adjust rates for pilotage services in the Great Lakes system.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Taking of Private Property*

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

*G. Civil Justice Reform*

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

*H. Protection of Children*

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

*I. Indian Tribal Governments*

This rule does not have tribal implications under Executive Order

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

*J. Energy Effects*

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

*K. Technical Standards*

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*L. Environment*

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(a), of the Instruction, from further environmental documentation. An ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are available in the docket where indicated under the section of this preamble on ''Public Participation and Request for Comments.''

■ The interim rule amending 46 CFR part 401 which was published at 70 FR 12082 on March 10, 2005, and corrected at 70 FR 13574 on March 21, 2005, and at 70 FR 15779 on March 29, 2005, is adopted as a final rule with the following change(s):

## PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 1. The authority citation for part 401 continues to read as follows:

**Authority:** 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

■ 2. In § 401.405, revise paragraphs (a) and (b) to read as follows:

**§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.**

* * * * *

(a) *Area 1 (Designated Waters):*

| Service | St. Lawrence River |
|---|---|
| Basic Pilotage | [1] $11 per kilometer or $19 per mile. |
| Each Lock Transited | [1] $238 |
| Harbor Movage | [1] $779 |

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $520 and the maximum basic rate for a through trip is $2,281.

(b) *Area 2 (Undesignated Waters):*

| Service | Lake Ontario |
|---|---|
| Six-Hour Period | $368 |
| Docking or Undocking | 351 |

■ 3. In § 401.407, revise paragraphs (a) and (b) to read as follows:

**§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.**

* * * * *

(a) *Area 4 (Undesignated Waters):*

| Service | Lake Erie (east of Southeast Shoal) | Buffalo |
|---|---|---|
| Six-Hour Period | $525 | $525 |
| Docking or Undocking | 405 | 405 |
| Any Point on the Niagara River below the Black Rock Lock | N/A | $1,033 |

(b) *Area 5 (Designated Waters):*

| Any point on or in | Southeast Shoal | Toledo or any Port on Lake Erie west of Southeast Shoal | Detroit River | Detroit Pilot Boat | St. Clair River |
|---|---|---|---|---|---|
| Toledo or any port on Lake Erie west of Southeast Shoal | $1,356 | $801 | $1,760 | $1,356 | N/A |
| Port Huron Change Point | [1] 2,361 | [1] 2,735 | 1,774 | 1,380 | $981 |
| St. Clair River | [1] 2,361 | N/A | 1,774 | 1,774 | 801 |
| Detroit or Windsor Or the Detroit River | 1,356 | 1,760 | 801 | N/A | 1,774 |
| Detroit Pilot Boat | 981 | 1,356 | N/A | N/A | 1,774 |

[1] When pilots are not changed at the Detroit Pilot Boat.

■ 4. In § 401.410, revise paragraphs (a), (b), and (c) to read as follows:

**§ 401.410 Basic rates and charges on Lakes Huron, Michigan, and Superior, and the St. Mary's River.**

* * * * *

(a) *Area 6 (Undesignated Waters):*

| Service | Lakes Huron and Michigan |
|---|---|
| Six-Hour Period | $417 |
| Docking or Undocking | $396 |

(b) *Area 7 (Designated Waters):*

| Area | De tour | Gros cap | Any other harbor |
|---|---|---|---|
| Gros Cap | $1,452 | N/A | N/A |
| Algoma Steel Corporation Wharf at Sault Ste. Marie Ontario | $1,452 | $547 | N/A |
| Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf | $1,217 | $547 | N/A |
| Sault Ste. Marie, MI | $1,217 | $547 | N/A |
| Harbor Movage | N/A | N/A | $547 |

(c) *Area 8 (Undesignated Waters):*

| Service | Lake Superior |
|---|---|
| Six-Hour Period | $365 |
| Docking or Undocking | $347 |

**§ 401.420 [Amended]**

■ 5. In § 401.420—

a. In paragraph (a), remove the number ''$67'' and add, in its place, the number ''$70''; and remove the number ''$1,048'' and add, in its place, the number ''$1,100''.

■ b. In paragraph (b), remove the number ''$67'' and add, in its place, the number ''$70''; and remove the number ''$1,048'' and add, in its place, the number ''$1,100''.

■ c. In paragraph (c)(1), remove the number ''$396'' and add, in its place, the number ''$416''; in paragraph (c)(3), remove the number ''$67'' and add, in its place, the number ''$70''; and, also in paragraph (c)(3), remove the number ''$1,048'' and add, in its place, the number ''$1,100''.

**§ 401.428 [Amended]**

■ 6. In § 401.428, remove the number ''$404'' and add, in its place, the number ''$424''.

Dated: March 23, 2006.

**T.H. Gilmour,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention.*

[FR Doc. 06–3173 Filed 3–29–06; 2:33 pm]

BILLING CODE 4910–15–P

# Proposed Rules

Federal Register
Vol. 71, No. 63
Monday, April 3, 2006

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

## DEPARTMENT OF HOMELAND SECURITY

### United States Immigration and Customs Enforcement

### 6 CFR Part 5

**[DHS–2006–0012]**

### Privacy Act of 1974: Implementation of Exemptions

**AGENCY:** Office of the Principal Legal Advisor, United States Immigration and Customs Enforcement, Department of Homeland Security.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security, Bureau of Immigration and Customs Enforcement, is giving notice of a new system of records pursuant to the Privacy Act of 1974 for the Office of the Principal Legal Advisor, the General Counsel Electronic Management System. In this proposed rulemaking, the Department proposes to exempt portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil and administrative enforcement requirements.

**DATES:** Comments must be received on or before May 3, 2006.

**ADDRESSES:** You may submit comments, identified by docket number DHS–2006–0012, by one of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Fax:* 202–514–0455.

*Mail:* William C. Birkett, Chief, Knowledge Management Division, Office of the Principal Legal Advisor, Immigration and Customs Enforcement, 425 I Street, NW., Washington, DC 20536 Hand Delivery. Courier: William C. Birkett, Chief, Knowledge Management Division, Office of the Principal Legal Advisor, Immigration and Customs Enforcement, 425 I Street, NW., Washington, DC 20536.

*Instructions:* All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** William C. Birkett, Chief, Knowledge Management Division, Office of the Principal Legal Advisor, Immigration and Customs Enforcement, 425 I Street, NW., Washington, DC 20536; Maureen Cooney, Acting Chief Privacy Officer, Department of Homeland Security, 601 South 12th Street, Arlington, VA 22202 by telephone (571) 227–3813 or facsimile (571) 227–4171.

**SUPPLEMENTARY INFORMATION:**

### Background

The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals in finding such files within the agency. That description appears elsewhere in today's **Federal Register**.

The Privacy Act allows government agencies to exempt certain records from its access and amendment and certain other provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

The Bureau of Immigration and Customs Enforcement (ICE) of the Department of Homeland Security (DHS) is publishing a new system of records under the Privacy Act of 1974, 5 U.S.C. 552a. This system, the General Counsel Electronic Management System (GEMS), will consist of information that is created or acquired and used by attorneys working in ICE in the preparation and presentation of cases for a court or adjudicative body before which ICE or DHS is authorized or required to appear. Attorneys for the Department of Justice will also be able to access the system if they have a need for the information in the performance of their official duties.

ICE attorneys work closely with investigators throughout the process of adjudicating immigration cases. ICE attorneys must have access to investigative documents and related materials in order to inform their decisions about how to handle particular cases. Additionally, of course, ICE attorneys create attorney work product associated with immigration proceedings. The GEMS system will facilitate the collection and maintenance of materials used by ICE attorneys in immigration adjudications. It will supplement and ultimately replace the current attorney work product paper files that are primarily stored and managed in the hardcopy alien file commonly known as the ''A-file.''

In this notice of proposed rulemaking, DHS is proposing to exempt this system, in part, from certain provisions of the Privacy Act and to add that exemption to Appendix C to Part 5, DHS Systems of Records Exempt from the Privacy Act. Given the nature and purpose of the proposed system of records, a significant portion of the records are likely to be exempt from disclosure under the Privacy Act pursuant to 5 U.S.C. 552a(d)(5). This record system, however, will also derive information or incorporate investigative materials from Privacy Act exempt files. In order to ensure that the exemptions applicable to such investigative materials carry over when those materials are incorporated into the GEMS system, DHS is claiming those exemptions in this notice of proposed rulemaking. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the litigation-related purposes of this system and the overall law enforcement process, the applicable exemptions may be waived.

### List of Subjects in 6 CFR Part 5

Privacy; Freedom of information.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

## PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

**Authority:** Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. At the end of Appendix C to Part 5, which was proposed to be added at 70 FR 14428, March 22, 2005, add the following new paragraph ''4'':

**Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act**

* * * * *

4. The General Counsel Electronic Management System (GEMS) consists of records and information created or collected by attorneys for the Bureau of Immigration and Customs Enforcement, which will be used in the preparation and presentation of cases before a court or other adjudicative body. ICE attorneys work closely with their investigators throughout the process of adjudicating immigration cases. GEMS allows ICE attorneys to store all the materials pertaining to immigration adjudications, including documents related to investigations, case notes and other hearing related information, and briefs and memoranda of law related to cases. Having this information in one system should not only facilitate the work of the ICE attorneys involved in the particular case, but also will provide a legal resource for other attorneys who are adjudicating similar cases. The system will also provide management capabilities for tracking time and effort expended in the preparation and presentation of cases.

Pursuant to exemptions 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f)(2) through (5); and (g). Pursuant to 5 U.S.C. 552a (k)(1) and (k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, which in some cases may be classified, and reveal investigative interest on the part of DHS or ICE. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, tamper with witnesses or evidence, and avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation pertaining to an immigration matter, which in some cases may be classified, and prematurely reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, tamper with witnesses or evidence, and avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal immigration law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement and for the protection of national security, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject of the nature or existence of an investigation, which could cause interference with the investigation, a related inquiry or other law enforcement activities, some of which may be classified.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G) and (H) (Agency Requirements), (f) (Agency Rules), and (g) (Civil Remedies) because portions of this system are exempt from the individual access provisions of subsection (d).

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with ICE's ability to obtain, serve, and issue subpoenas, warrants and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: March 23, 2006.

**Maureen Cooney,**

*Acting Chief Privacy Officer.*

[FR Doc. E6–4693 Filed 3–31–06; 8:45 am]

BILLING CODE 4410–10–P

## DEPARTMENT OF JUSTICE

### Bureau of Prisons

### 28 CFR Part 540

**[BOP Docket No. 1135–P]**

**RIN 1120-AB35**

## Limited Communication for Terrorist Inmates

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Bureau of Prisons (Bureau) proposes a new regulation that allows for limiting the communication opportunities of inmates charged with, convicted of, or detained in relation to, an offense under Title 18 U.S.C. chapters 113B or 115; or are charged with having engaged in, have engaged in, are detained in relation to, or who have an identifiable link to terrorist-related activity. The Warden may only impose communication restrictions under this regulation, when the Federal Bureau of Investigation (FBI), or other Federal law enforcement agency, makes a request to the Bureau to have an individual inmate's communications limited, unless Bureau of Prisons information indicates a similar need to impose the communication restriction. Once this request by the FBI or other Federal law enforcement agency is made, the Warden of the facility where the inmate is housed will consider whether such a limitation is necessary to ensure the

safety and security of the institution; protection of the public; or national security. If the Warden deems it necessary, the inmate's communications will be limited after approval by the Regional Director and the Assistant Director, Correctional Programs Division.

**DATES:** Comments are due by June 2, 2006.

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

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

**SUPPLEMENTARY INFORMATION:** In this document, the Bureau issues a new regulation that allows for limiting the communication opportunities of inmates charged with, convicted of, or detained in relation to an offense under Title 18 U.S.C. Chapters 113B or 115; or are charged with having engaged in, have engaged in, are detained in relation to, or who have an identifiable link to terrorist-related activity.

Under this regulation, when the Federal Bureau of Investigation (FBI), or other Federal law enforcement agency, makes a request to the Bureau to have an individual inmate's communications limited, the Warden of the facility where the inmate is housed will consider whether such a limitation is necessary to ensure the safety and security of the institution; protection of the public; or national security. The Warden may also initiate the process if Bureau of Prisons information indicates a similar need to impose communication restrictions. If the Warden deems it necessary, the inmate's communications will be limited after approval by the Regional Director and the Assistant Director, Correctional Programs Division.

While this regulation may allow for limiting the communication of inmates to whom it is applied, it will not extinguish their monitored communication abilities absent abuse or violations committed by the inmate. With this regulation, the Bureau seeks, when warranted, on a case-by-case basis, to minimize communication while still accommodating the rights guaranteed by the First Amendment to petition for redress of grievances. By limiting the communications of these inmates, the Bureau seeks to balance First Amendment rights with its obligations to ensure the safety and security of the institution; protection of the public; and/or national security.

The proposed regulation would give the Bureau authority for imposing limits and restrictions on the communications of inmates in the Bureau's custody based on criteria or evidence, either from outside sources (such as other federal agencies) or from internal sources (such as intelligence gained through observation of inmates in Bureau custody). Communications would be limited if such evidence indicates, inter alia, a high degree of potential risk to national security. However, this regulation will be applied differently from regulations in 28 CFR part 501, which authorize the Attorney General to impose special administrative measures (SAMs).

Under 28 CFR part 501, SAMs are imposed after approval by the Attorney General and are generally based on information from the FBI and the U.S. Attorney's Office (USAO), but are typically not based solely on information from internal Bureau of Prisons sources. Unlike 28 CFR part 501, the proposed regulations allow the Bureau to impose communication limits upon request from FBI or other Federal law enforcement agency, or if Bureau of Prisons information indicates a similar need to impose communication restrictions, evidence which does not rise to the same degree of potential risk to national security or risk of acts of violence or terrorism which would warrant the Attorney General's intervention by issuance of a SAM.

Furthermore, while SAMs have the potential to restrict communication entirely, this regulation delineates a floor of limited communication, beneath which the Bureau cannot restrict unless precipitated by the inmate's violation of imposed limitations, and then only as a disciplinary sanction following due process procedures in 28 CFR part 541.

Past behaviors of terrorist inmates provide sufficient grounds to suggest a substantial risk that they may inspire or incite terrorist-related activity, especially if communicated to groups willing to become martyrs, or to provide equipment or logistics to carry out terrorist-related activities. The potential ramifications of this activity outweigh the inmate's interest in unlimited communication with persons in the community other than immediate family members, U.S. courts, Federal judges, U.S. Attorney's Offices, members of U.S. Congress, the Bureau, other Federal law enforcement entities, verified consular officers of the inmate's country if the inmate is a national of a foreign country, and the inmate's attorney.

Communication related to terrorist-related activity can occur in codes which are difficult to detect and extremely time-consuming to interpret. Inmates involved in such communication, and other persons involved or linked to terrorist-related activities, take on an exalted status with other like-minded individuals. Their communications acquire a special level of inspirational significance for those who are already predisposed to these views, causing a substantial risk that such recipients of their communications will be incited to unlawful terrorist-related activity.

The danger of coded messages from prisoners has been recognized by the courts. *See Turner* v. *Safley*, 482 U.S. 78, 93 (1987) (''In any event, prisoners could easily write in jargon or codes to prevent detection of their real messages.''); *United States* v. *Salameh,* 152 F.3d 88, 108 (2nd Cir. 1998) (''Because Ajaj was in jail and his telephone calls were monitored, Ajaj and Yousef spoke in code when discussing the bomb plot.''); *United States* v. *Johnson,* 223 F.3d 665, 673 (7th Cir. 2000) (''And we know that anyone who has access to a telephone or is permitted to receive visitors may be able to transmit a lethal message in code.''); *United States* v. *Hammoud,* 381 F.3d 316, 334 (4th Cir. 2004) (''A conversation that seems innocuous on one day may later turn out to be of great significance, particularly if the individuals are talking in code.''); *United States* v. *Moncivais,* 401 F.3d 751, 757 (6th Cir. 2005) (noting police testimony that seemingly nonsensical conversations could be in code and interpreted as indicative of drug dealing activity). Also, an Al Qaeda training manual contains the following advice regarding communications from prison: ''Take advantage of visits to communicate with brothers outside prison and exchange information that may be helpful to them in their work outside prison. The importance of mastering the art of hiding messages is self evident here.''

There have been cases of imprisoned terrorists communicating with their followers regarding future terrorist activity. For example, after El Sayyid Nosair assassinated Rabbi Kahane, he was placed in Rikers Island, where ''he began to receive a steady stream of

visitors, most regularly his cousin El-Gabrowny, and also Abouhalima, Salameh, and Ayyad. During these visits, as well as subsequent visits once Nosair was at Attica, Nosair suggested numerous terrorist operations, including the murders of the judge who sentenced him and of Dov Hikind, a New York City Assemblyman, and chided his visitors for doing nothing to further the jihad against the oppressors. Nosair also tape recorded messages while in custody * * *'' *United States* v. *Rahman,* 189 F.3d 88, 105–06 (2d Cir. 1999). Imprisoned, Sheikh Abdel Rahman had urged his followers to wage jihad to obtain his release. Violent attacks and murders followed. *United States* v. *Sattar*, 314 F.Supp.2d 279, 288–89 (S.D.N.Y. 2004).

To minimize the risk of terrorist-related communication being sent to or from inmates in Bureau custody, this regulation allows the Bureau, upon request from FBI or other Federal law enforcement agency or if Bureau of Prisons information indicates a similar need to impose communication restrictions, to limit the communication of inmates, individually identified under this regulation, to immediate family members, U.S. courts, Federal judges, U.S. Attorney's Offices, members of U.S. Congress, the Bureau, other Federal law enforcement entities, verified consular officers of the inmate's country if the inmate is a national of a foreign country, and the inmate's attorney. The Bureau allows communication with these individuals to help inmates maintain family ties, and to protect inmates' access to courts and other government officials in order to raise issues related to their incarceration or their conditions of confinement, while minimizing the threat to the safety and security of the institution and protecting the public and national security.

The proposed regulation provides that the initial decision regarding whether an inmate's communication will be limited will be made when FBI or another Federal law enforcement agency makes a request to the Bureau to have an inmate's communication limited, or if Bureau of Prisons information indicates a similar need to impose communication restrictions.

Upon receiving such a request from the FBI or other Federal law enforcement agency, the Warden of the facility where the inmate is housed will consider whether such limitations are necessary to ensure the safety and security of the institution; protection of the public; or national security.

If the Warden deems such limitations necessary, that inmate's communications will be so limited after approval by the Regional Director and the Assistant Director, Correctional Programs Division.

The Warden is in the unique position of having access to a wide variety of information regarding an inmate's past and present activity and propensities, and can analyze the totality of an inmate's circumstances to determine whether to limit communications. The Warden will also be aware of national security concerns, and can assess the propensity of inmates to act in a way that presents a national security risk, such as attempting to recruit others, based on available information.

Currently, there are several Bureau regulations which underscore the Warden's authority and unique ability to make determinations and take action to ensure protection of the public. For instance, in the Bureau's Federal regulations in volume 28 of the Code of Federal Regulations:

- Sections 524.70–524.76, regarding the Central Inmate Monitoring (CIM) System, allows the Warden to evaluate and determine whether certain inmates present special needs for management and therefore require a higher level of review for transfers, temporary releases, or community activities, not to preclude such inmates from such activities where otherwise eligible, but to provide necessary protection to all concerned. Section 540.14(d) states that the Warden may reject correspondence sent by or to an inmate if it is determined detrimental to the security, good order, or discipline of the institution, to the protection of the public, or if it might facilitate criminal activity.
- Section 540.15 allows the Warden to place an inmate on restricted general correspondence for several reasons, including if the inmate is a security risk, threatens a government official, or otherwise attempts to commit illegal activities.
- Section 540.100(a) states that inmate telephone use is subject to those limitations which the Warden determines are necessary to ensure the security or good order, including discipline, of the institution or to protect the public. More specifically, § 540.101(a)(3) allows the Associate Warden to deny placement of a telephone number on an inmate's telephone list if she/he determines that there is a threat to the public. § 540.102 allows for monitoring of inmate telephone calls, also to protect the public.
- Section 545.23(d) provides that, when making inmate work assignments, Wardens must consider the institution's security and operational needs, and [the assignment] should be consistent with the safekeeping of the inmate and protection of the public.
- Section 570.35(a) requires the Warden to make a determination regarding whether granting an inmate a furlough if the presence of that inmate in the community could attract undue public attention or create unusual concern.

When applied to individual inmates under this regulation, the Bureau will actively monitor the frequency, volume, and content of their limited communications, except those to/from the inmate's attorney or a verified consular officer. To effectively and efficiently allow monitoring and review of these inmates' communications with immediate family members, those communications may be limited in frequency and volume as follows:

- Written correspondence may be limited to three pieces of paper, double-sided, once per week to and from a single recipient;
- Telephone communication may be limited to a single completed call per calendar month for up to 15 minutes; and
- Visiting may be limited to one hour each calendar month.

Absent abuse or violations by the inmate, this regulation does not limit the frequency or volume of written communication with U.S. courts, Federal judges, U.S. Attorney's Offices, members of U.S. Congress, the Bureau, other Federal law enforcement entities, verified consular officers of the inmate's country if the inmate is a national of a foreign country, and the inmate's attorney.

By limiting the frequency and volume of the communication to/from inmates identified under this regulation, we will reduce the amount of communication requiring monitoring and review. Reducing the volume of communications will help ensure the Bureau's ability to provide heightened scrutiny in reviewing communications, and thereby reducing the terrorism threat to the public and national security.

Inmates may incur additional limitations on their communications as the direct result of abusing or violating individualized communication limits imposed under this subsection, but additional limitations will occur only to the extent possible under this regulation and according to the procedures in this subsection. Unmonitored communications with verified attorneys and consular officers may be further limited in the form of monitoring only as provided in part 501 and 28 CFR part 543. Inmates may also be subject to disciplinary action or criminal prosecution for abusing or violating limits imposed under this subsection.

**Executive Order 12866**

This regulation falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was reviewed by OMB.

The Bureau of Prisons has assessed the costs and benefits of this regulation as required by Executive Order 12866 Section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. There will be no new costs associated with this regulation.

**Executive Order 13132**

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this regulation does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

**Regulatory Flexibility Act**

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of offenders and immigration detainees committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

**Unfunded Mandates Reform Act of 1995**

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This regulation is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**List of Subjects in 28 CFR Part 540**

Prisoners.

**Harley G. Lappin,**

*Director, Bureau of Prisons.*

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we propose to amend 28 CFR part 540 as follows.

## SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

## PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 551, 552a; 18 U.S.C. Chapters 113b and 115, 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510, 530C(b)(6).

2. Add a new subpart J, to read as follows:

### Subpart J—Limited Communication of Terrorist Inmates

Sec.
540.200 Purpose and Scope.
540.201 Definitions.
540.202 Limited Written Correspondence.
540.203 Limited Telephone Communication.
540.204 Limited Visiting.
540.205 Procedures.

### Subpart J—Limited Communication of Terrorist Inmates

**§ 540.200 Purpose and Scope.**

(a) This subpart authorizes and defines the Federal Bureau of Prisons' (Bureau) authority to limit the communication of inmates (as defined in 28 CFR 500.1(c)) who have an identifiable link to terrorist-related activity as provided in paragraph (b) of this section.

(b) This subpart may be applied to inmates in Bureau custody who are not under special administrative measures as described in 28 CFR part 501, who meet the criteria in § 540.205(b), and who:

(1) Are charged with, convicted of, or detained in relation to, an offense under Title 18 U.S.C. Chapters 113B or 115, or

(2) Are charged with having engaged in, have engaged in, are detained in relation to, or have an identifiable link to terrorist-related activity.

(c) The regulations in this subpart supercede and control to the extent they conflict with, are inconsistent with, or impose greater limitations than the regulations in 28 CFR part 540, or any other regulations in this chapter, except 28 CFR part 501.

**§ 540.201 Definitions.**

As used in this subpart:

(a) *Terrorist-related activity* means any activity that—

(1) Involves violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; and

(2) Appears to be intended—

(i) To intimidate or coerce a civilian population;

(ii) To influence the policy of a government by intimidation or coercion; or

(iii) To affect the conduct of a government by mass destruction, assassination, or kidnaping.

(b) *Engaging in terrorist-related activity* means, in an individual capacity or as a member of an organization:

(1) To commit, or to incite to commit activity described in paragraph (a) of this regulation;

(2) To prepare or plan activity described in paragraph (a) of this regulation;

(3) To gather information on potential targets for activity described in paragraph (a) of this regulation;

(4) To contribute, donate or solicit funds or other things of value for:

(i) Activity described in paragraph (a) of this regulation; or

(ii) A terrorist-related organization;

(5) To solicit any individual:

(i) To engage in conduct otherwise described in this subpart; or

(ii) For membership in a terrorist-related organization; or

(6) To commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training:

(i) For the commission of activity described in paragraph (a) of this regulation;

(ii) To any individual who the actor knows, or reasonably should know, has committed or plans to commit activity described in paragraph (a) of this regulation; or

(iii) To a terrorist-related organization.

(c) *Terrorist-related organization* means an organization:

(1) Designated under section 1189 of Title 8;

(2) Otherwise designated, via publication in the **Federal Register**, by the Secretary of State in consultation with or upon the request of the Attorney General, as a terrorist organization, after finding that the organization engages in terrorist-related activities; or

(3) That is a group of two or more individuals, whether organized or not, which engages in terrorist-related activities.

(d) *Immediate family members* means spouse, mother, father, siblings, and children.

**§ 540.202 Limited Written Correspondence.**

The ability of inmates covered by this subpart to engage in written correspondence may be limited as follows:

(a) *General correspondence.* All general correspondence, as defined by part 540, may be limited to immediate family members. Correspondence to and/or from U.S. courts, Federal judges, U.S. Attorney's Offices, members of U.S. Congress, the Bureau, and other Federal law enforcement entities will be considered general correspondence, for the purposes of this regulation, as described below.

(1) *Correspondence with immediate family members.* Volume and frequency of outgoing and incoming general correspondence with immediate family members only, may be limited to three pieces of paper (not larger than 8½ x 11 inches), double-sided writing permitted, once per calendar week to and from a single recipient.

(2) *Correspondence with U.S. courts, Federal judges, U.S. Attorney's Offices, members of U.S. Congress, the Bureau, and other Federal law enforcement entities.* There is no frequency or volume limitation on this type of correspondence, unless the quantity to be processed becomes unreasonable or the inmate abuses or violates these regulations. This correspondence is subject to staff inspection for contraband and for content.

(b) *Special mail,* as defined in part 540, is limited to privileged communication with the inmate's attorney and, if the inmate is a national of a foreign country, a verified consular officer of that country. There is no frequency or volume limitation on this type correspondence, unless necessary as a result of the inmate's abuse or violation of these regulations. All special mail is subject to staff inspection in the inmate's presence for contraband and to ensure its qualification as special mail.

**§ 540.203 Limited Telephone Communication.**

The ability of inmates covered by this subpart to engage in telephone communication may be limited as follows:

(a) *Monitored telephone communication* may be limited to immediate family members only. The frequency and duration of this communication may be limited to a single connected call per calendar month lasting no longer than 15 minutes. Communication must be in English or simultaneously translated by an approved interpreter.

(b) *Unmonitored telephone communication* is limited to privileged communication with the inmate's attorney and, if the inmate is a national of a foreign country, to telephone conversations with verified consular representatives of that country. Unmonitored privileged telephone communication with the inmate's attorney is permitted:

(1) For pretrial inmates (as defined in 28 CFR part 551), upon request of the inmate, as available resources permit; and

(2) For convicted inmates (as defined in 28 CFR part 551), as necessary in furtherance of active litigation, after establishing that communication with the verified attorney by confidential correspondence or visiting, or monitored telephone use, is not adequate due to an urgent or impending deadline.

**§ 540.204 Limited Visiting.**

The ability of inmates covered by this subpart to visit with persons from the community may be limited as follows:

(a) *Regular visiting* may be limited to immediate family members.

(1) The frequency and duration of regular visiting may be limited to one hour each calendar month. The number of visitors permitted during any visit is within the Warden's discretion. Such visits may occur through contact or non-contact visiting facilities, at the discretion of the Warden.

(2) Regular visits may be simultaneously monitored and/or recorded, both visually and auditorily, either in person or electronically.

(3) Communication during such visits must occur either in English, or be simultaneously translated by an approved interpreter.

(b) *Attorney visiting* is limited to attorney-client privileged communication as provided in part 540. Attorney visiting is permitted for the inmate's verified attorney only, unless the inmate is in the process of obtaining an attorney. These visits may be visually, but not auditorily, monitored.

(1) For pretrial inmates (as defined in 28 CFR part 551), regulations and policies previously established under 28 CFR part 551 are applicable.

(2) For convicted inmates (as defined in 28 CFR part 551), regulations and policies previously established under 28 CFR part 543 are applicable.

(c) *Consular visiting* is limited to the inmate's verified consular officer, for inmates who are nationals of a foreign country, as provided in 28 CFR part 540. Consular officer visits may be visually, but not auditorily, monitored.

**§ 540.205 Procedures.**

When warranted, limited communication under this subpart will be implemented according to the following procedures:

(a) *Initiation.* The process of limiting communications under this subpart may begin either when:

(1) The Federal Bureau of Investigation, or other Federal law enforcement agency, makes an initial request to the Bureau of Prisons to have an inmate's communications limited under this subpart; or

(2) The Bureau deems it necessary to limit an inmate's communications under this subpart based on consideration of factors described in (b).

(b) *Consideration of factors.* In addition to the criteria provided in § 540.200(b) and any request made by a Federal law enforcement agency under (a), the Warden must also make a determination that limiting the inmate's communication is necessary to ensure the safety and security of the institution; protection of the public; or national security. This determination will be made after considering factors including, but not limited to, the following:

(1) Information that leads the Warden, while using sound correctional judgment, to reasonably believe that the inmate may attempt to, or has a propensity to, communicate messages harmful to the safety and security of the institution, the protection of the public, or national security;

(2) Actual charges, convictions and/or reasons for detention;

(3) Past or present conduct either before or during incarceration, including, but not limited to, terrorist alliances or possession of terrorist-related material;

(4) Confirmed membership or leadership role in a terrorist-related organization;

(5) Admission by inmate of terrorist-related conduct;

(6) Information provided by a law enforcement and/or intelligence entity,

or determined by the Bureau in any other manner, including, but not limited to, threat assessments prepared by the Federal Bureau of Investigation, court documents, pre-sentence reports, and similar official documents;

(7) Information relating to past practice or attempted past practice of the inmate to communicate messages to others that, if not intercepted, could cause harm to the safety, security, or good order of the institution, the protection of the public, or national security; or

(8) The significance of the operational role the inmate had (such as planning, directing, executing, or assisting in actual terrorist acts) or material support role (such as training, arming, transporting, recruiting, communicating for, or providing safe harbor for terrorist operators) in terrorist or terrorist-related activities.

(c) *Decision authority.* If the Warden deems it necessary, the inmate's communications will be limited after approval by the Regional Director and the Assistant Director, Correctional Programs Division, or any of their respective designees.

(d) *Written notice.* Inmates designated for limited communication under this subpart will receive written notice from the Warden, or designee, which will:

(1) Explain the specific limitations imposed and communication privileges allowed, which should be tailored to the particular circumstances of the inmate;

(2) Explain the reasons for the limitations, unless providing such information would jeopardize the safety or security of the institution; protection of the public; or national security; and

(3) Indicate the inmate's ability to challenge the decision through the Bureau's administrative remedy program.

(e) *Annual review.* Individual inmate limitations will be reviewed annually from the date of imposition under the same criteria required for the initial determination in paragraphs (b) and (c) of this section. A determination to renew, modify, or remove the limitations must be communicated to the inmate through written notice, as described in paragraph (d) of this section. Failure to provide such notice to the inmate of renewal or modification of the limitations at least annually from the date of imposition will result in expiration of those limitations.

(f) *Further Limitations Possible.* Inmates may incur additional limitations on their communications as the direct result of abusing or violating individualized communication limits imposed under this subpart. Further limitations for these purposes may only occur as part of a temporary disciplinary sanction pursuant to procedures in 28 CFR part 541 or according to the procedures in this section for initially imposing the limitations. Unmonitored communications with verified attorneys and consular officers may be further restricted only as provided in part 501 and 28 CFR part 543. Inmates may also be subject to disciplinary action or criminal prosecution.

[FR Doc. E6–4766 Filed 3–31–06; 8:45 am]

BILLING CODE 4410–05–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[CGD05–06–024]**

**RIN 1625–AA08**

## Special Local Regulations for Marine Events; Rappahannock River, Essex County, Westmoreland County, Layton, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes a temporary special local regulation for ''2006 Rappahannock River Boaters Association Spring and Fall Radar Shootout'', power boat races to be held on the waters of the Rappahannock River near Layton, VA. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Rappahannock River during the event.

**DATES:** Comments and related material must reach the Coast Guard on or before June 2, 2006.

**ADDRESSES:** You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Coast Guard Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dennis Sens, Marine Events Coordinator, Fifth Coast Guard District, at (757) 398–6204.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–06–024), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

### Public Meeting

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to the Coast Guard at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

On June 3 and 4, 2006; and October 7 and 8, 2006, the Rappahannock River Boaters Association (RRBA) will sponsor the ''2006 RRBA Spring and Fall Radar Shootout'', on the waters of the Rappahannock River near Layton, Virginia. The event will consist of approximately 35 powerboats participating in high-speed competitive races, traveling along a 3-mile strait line race course. Participating boats will race individually within the designated course. A fleet of spectator vessels is anticipated to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

### Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Rappahannock River. The temporary special local regulations will be enforced from 11:30 a.m. to 4:30 p.m. on June 3 and 4, 2006; and October 7 and 8, 2006, and will

restrict general navigation in the regulated area during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

**Regulatory Evaluation**

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation will prevent traffic from transiting a portion of the Rappahannock River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

**Small Entities**

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

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

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 11:30 a.m. to 4:30 p.m. on June 3 and 4, 2006; and October 7 and 8, 2006. Although the regulated area will apply to a 3 mile segment of the Rappahannock River immediately east of Layton, Virginia, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard patrol commander. In the case where the patrol commander authorizes passage through the regulated area during the event, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.** The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant

energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

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

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

**Environment**

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

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

**List of Subjects in 33 CFR Part 100**

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233, Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary *§ 100.35–T05–024* to read as follows:

**§ 100.35–T05–024 Rappahannock River, Essex County, Westmoreland County, Layton, Virginia.**

(a) Regulated area. The regulated area is established for the waters of the Rappahannock River, adjacent to Layton, VA, from shoreline to shoreline, bounded on the west by a line running along longitude 076°58′30″ W, and bounded on the east by a line running along longitude 076°56′00″ W. All coordinates reference Datum NAD 1983.

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

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

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

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

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

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

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

(d) Enforcement period. This section will be enforced from 11:30 a.m. to 4:30 p.m. on June 3 and 4, 2006; and 11:30 a.m. to 4:30 p.m. on October 7 and 8, 2006.

Dated: March 23, 2006.

**Larry L. Hereth,**

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

[FR Doc. E6–4788 Filed 3–31–06; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD07–06–011]**

**RIN 1625–AA09**

## Drawbridge Operation Regulations; Little River (S–20) Bridge, Atlantic Intracoastal Waterway Mile 347.3, Horry County, SC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the request to open regulation of the Little River (S–20) Bridge across the Atlantic Intracoastal Waterway, mile 347.3 in Horry County, South Carolina. This proposed rule will allow the swingbridge to open as necessary on the hour, twenty minutes past the hour and forty minutes past the hour from 6 a.m. through 6 p.m., Monday through Friday except Federal holidays. At all other times, the bridge will open upon demand. This proposed action should improve the movement of vehicular traffic while not unreasonably interfering with the movement of vessel traffic.

**DATES:** Comments and related material must reach the Coast Guard on or before June 2, 2006.

**ADDRESSES:** You may mail comments and related material to Commander (dpb), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131, who maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and are available for inspection or copying at the Seventh Coast Guard District Bridge Branch, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6743.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–06–011], indicate the specific section of this document to which each comment applies, and give the reason for each

comment. Please submit all comments and related material in an unbound format, no larger than 8 × by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Bridge Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

**Background and Purpose**

The existing regulations of the Little River (S–20) Bridge, mile 347.3, at Horry County, published in 33 CFR 117.5 require the span to open on signal.

On December 20, 2005, the officials of South Carolina Department of Transportation (SCDOT) requested that the Coast Guard review the existing regulation governing the request to open operation of the Little River Bridge due to increased vehicular traffic on the bridge. The SCDOT provided traffic count and bridge opening information of a typical summer week and a typical winter week along with the most current 12 month period bridge opening data. The data collected showed an increase in vehicular traffic along the bridge during 6 a.m. to 6 p.m. This proposed rule should improve the movement of vehicular traffic from 6 a.m. to 6 p.m., Monday through Friday, while not unreasonably interfering with the movement of vessel traffic.

**Discussion of Proposed Rule**

This proposed rule will allow as necessary the Little River (S–20) bridge, mile 347.3, at Horry County to open on the hour, twenty minutes past the hour and forty minutes past the hour, from 6 a.m. to 6 p.m., Monday through Friday, except Federal holidays. At all other times, the bridge will open upon demand. This schedule will allow the local vehicular traffic the ability to plan for crossing the bridge while providing for the reasonable needs of navigation.

**Regulatory Evaluation**

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This proposed rule would modify the existing bridge schedule and should allow for improved vehicle traffic flow and provide scheduled openings for vessel traffic.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels needing to transit the Intracoastal Waterway in the vicinity of Little River Bridge, persons intending to drive over the bridge and nearby business owners. Vehicle traffic and small business owners in the area might benefit from the increased traffic flow that regularly scheduled openings will offer this area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

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

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. In § 117.911, paragraph (b) is revised to read as follows:

**§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.**

* * * * *

(b) Little River Bridge Intracoastal Waterway mile 347.3, Horry County, S.C. The draw of the Little River (S–20) bridge, mile 347.3 at Horry County will open as necessary on the hour, twenty minutes past the hour, and forty minutes past the hour, from 6 a.m. to 6 p.m., Monday through Friday, except Federal holidays. At all other times, the bridge will open upon demand.

* * * * *

Dated: March 15, 2006.

**D. B. Peterman,**

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

[FR Doc. E6–4787 Filed 3–31–06; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD07–06–041]**

**RIN 1625–AA09**

## Drawbridge Operation Regulations; 63rd Street Bridge, Indian Creek, Miami, Miami-Dade County, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to temporarily change the operating regulation of the 63rd Street Bridge across Indian Creek, mile 4.0 in Miami-Dade County, Florida. This proposed rule will allow the bridge to remain closed during certain periods. This proposed temporary regulation is needed while the bridge undergoes rehabilitation. It will require the bridge to open on a regulated schedule during the rehabilitation project.

**DATES:** Comments and related material must reach the Coast Guard on or before May 15, 2006.

**ADDRESSES:** You may mail comments and related material to Commander (dpb), Seventh Coast Guard District, 909 SE 1st Avenue, Room 432, Miami, FL, 33131, who maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and are available for inspection or copying at the Seventh Coast Guard District Bridge Branch, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6744.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–06–041], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed temporary rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Bridge Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

The existing regulations of the 63rd Street bridge, mile 4.0, Miami-Dade County is published in 33 CFR 117.5 and requires the span to open on signal.

On January 17, 2006, the owner of the bridge requested that the Coast Guard temporarily change the existing regulations of the 63rd Street Bridge to allow for rehabilitation in a safe and efficient manner. The bridge closure dates detailed below have been staggered to allow for the movement of navigation before and after each closure period.

**Discussion of Proposed Rule**

This proposed temporary rule would require the draw of the 63rd Street bridge, mile 4.0 across Indian Creek, Miami-Dade County, Florida to open as necessary a single-leaf on the hour from 8 a.m. to 12:10 a.m. and to remain closed from 12:11 a.m. to 7:59 a.m. except that from July 14 to July 17, 2006, August 1 to August 4, 2006, January 10 to January 13, 2007, and January 29 to February 1, 2007, the bridge will be closed to navigation.

From June 19 to June 24, July 5 to July 10, December 4 to December 9, and December 18 to December 23, 2006 the waterway will remain closed to navigation except for hourly openings as necessary between 8 a.m. to 6 p.m.

The bridge closure dates have been staggered to allow for the movement of navigation before and after each closure period.

**Regulatory Evaluation**

This proposed temporary rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This proposed temporary rule would modify the existing bridge schedule to allow for the rehabilitation of the bridge and provide scheduled openings for vessel traffic.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed temporary rule would not have a significant economic impact on a substantial number of small entities. This proposed temporary rule would affect the following entities, some of which may be small entities: the owners or operators of vessels needing to transit from the marinas on the south of the bridge to the Intracoastal Waterway, persons intending to drive over the bridge and nearby business owners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.** The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed temporary rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this proposed temporary rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office

of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

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

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

**Environment**

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

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Add § 117.T293 to read as follows:

**§ 117.T293 Indian Creek.**

(a) The draw of the 63rd Street bridge, mile 4.0 across Indian Creek, Miami-Dade County, Florida will open a single-leaf as necessary on the hour from 8 a.m. to 12:10 a.m. and will remain closed from 12:11 a.m. to 7:59 a.m. except that the bridge will be closed to navigation on the following dates: July 14 to July 17, 2006; August 1 to August 4, 2006; January 10 to January 13, 2007; and January 29 to February 1, 2007.

(b) Notwithstanding paragraph (a) of this section, from June 19 to June 24, July 5 to July 10, December 4 to December 9, and December 18 to December 23, 2006 the waterway will be closed to navigation except for hourly openings as necessary between 8 a.m. to 6 p.m.

(c) Effective date: This temporary rule is effective from 8 a.m. on June 19, 2006 through 6 p.m. on February 5, 2007.

Dated: March 15, 2006.

**D.B. Peterman,**

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

[FR Doc. E6–4786 Filed 3–31–06; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD05–06–014]**

**RIN 1625-AA87**

## Security Zone; Georgetown Channel, Potomac River, Washington, DC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary security zone on the waters of the upper Potomac River. This action is necessary to provide for the security of a large number of visitors to the annual July 4th celebration on the National Mall in Washington, DC. The security zone will allow for control of a designated area of the river and safeguard spectators and high-ranking officials.

**DATES:** Comments and related material must reach the Coast Guard on or before June 2, 2006.

**ADDRESSES:** You may mail comments and related material to Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland 21226–1791. Coast Guard Sector Baltimore, Waterways Management Division, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Sector Baltimore, Waterways Management Division, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576–2674 or (410) 576–2693.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–06–014), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Sector Baltimore, Waterways Management Division, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

**Background and Purpose**

Due to increased awareness that future terrorist attacks are possible, including continued threats against U.S. interests by Al-Queda and other terrorist organizations, the Coast Guard as lead federal agency for maritime homeland security, has determined that the Captain of the Port Baltimore must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce.

This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against a large number of spectators and high-ranking officials during the annual July 4th celebration would have on the public interest, the Coast Guard is proposing to establish a security zone upon all waters of the Georgetown Channel of the Potomac River, from the surface to the bottom, 75 yards from the eastern shore measured perpendicularly to the shore, between the Long Railroad Bridge (the most eastern bridge of the 5-span, Fourteenth Street Bridge Complex) to the Theodore Roosevelt Memorial Bridge and all waters in between, totally including the waters of the Georgetown Channel Tidal Basin. This security zone will help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against a large number of spectators and high-ranking officials during the annual July 4th celebration. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on the National Mall in Washington, DC during the annual July 4th celebration would have on the large number of spectators and high-ranking officials, and the surrounding area and communities, a security zone is prudent for this type of event.

## Discussion of Proposed Rule

It is very likely that hundreds of thousands of visitors will attend the July 4th celebration on the National Mall in Washington, DC. The Captain of the Port, Baltimore, Maryland proposes to establish a security zone for the highly-publicized public event in Washington, DC to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against a large gathering of spectators and high-ranking officials at or near the July 4th celebration on the National Mall in Washington, DC, would have. This security zone applies to all waters of the Georgetown Channel of the Potomac River, from the surface to the bottom, 75 yards from the eastern shore measured perpendicularly to the shore, between the Long Railroad Bridge (the most eastern bridge of the 5-span, Fourteenth Street Bridge Complex) to the Theodore Roosevelt Memorial Bridge and all waters in between, totally including the waters of the Georgetown Channel Tidal Basin from 12:01 a.m. through 11:59 p.m. local time on July 4, 2006. Vessels underway at the time this security zone is implemented will immediately proceed out of the zone. We will issue Broadcast Notices to Mariners to further publicize the security zone. This security zone is necessary to prevent vessels or persons on designated waters of the Potomac River (including the waters of the Georgetown Channel Tidal Basin) from going ashore and thereby bypassing the security perimeter established by the U. S. Park Police of the National Park Service for the event.

## Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

## Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Potomac River (including the waters of the Georgetown Channel Tidal Basin) from 12:01 a.m. to 11:59 p.m. on July 4, 2006.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for less than twenty-four hours. Although the security zone will apply to the entire width of the river, traffic may be allowed to pass through the zone at the direction of the Coast Guard Captain of the Port, Baltimore, Maryland. Additionally, before the effective period, the Coast Guard will issue maritime advisories widely available to users of the river to allow mariners to make alternative plans for transiting the affected areas. Because the zone is of limited size, it is expected that there will be minimal disruption to the maritime community. Smaller vessels not constrained by their draft, which are more likely to be small entities, may request permission from the Captain of the Port Baltimore, Maryland on a case-by-case basis to enter the zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.** The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

## Collection of Information

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

## Federalism

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

## Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions

that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rulemaking is a security zone less than one week in duration. A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' (CED) are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

**List of Subjects in 33 CFR Part 165**

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T05–014 to read as follows:

**§ 165.T05–014 Security Zone; Georgetown Channel, Potomac River, Washington, DC**

(a) *Definitions.* (1) The Captain of the Port, Baltimore, Maryland means the Commander, Coast Guard Sector Baltimore, Maryland or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his or her behalf.

(b) *Location.* The following area is a security zone: All waters of the Georgetown Channel of the Potomac River, from the surface to the bottom, 75 yards from the eastern shore measured perpendicularly to the shore, between the Long Railroad Bridge (the most eastern bridge of the 5-span, Fourteenth Street Bridge Complex) to the Theodore Roosevelt Memorial Bridge and all waters in between, totally including the waters of the Georgetown Channel Tidal Basin.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones found in § 165.33 of this part.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland.

(3) Persons or vessels requiring entry into or passage through the security zone must first request authorization from the Captain of the Port, Baltimore to seek permission to transit the area. The Captain of the Port, Baltimore, Maryland can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, VHF channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, Baltimore, Maryland and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) *Effective period.* This section will be effective from 12:01 a.m. to 11:59 p.m. local time on July 4, 2006.

Dated: March 24, 2006.

**Curtis A. Springer,**

*Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.*

[FR Doc. E6–4789 Filed 3–31–06; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### 36 CFR Chapter 1

### Negotiated Rulemaking Advisory Committee for Dog Management at Golden Gate National Recreation Area

**ACTION:** Notice of meeting.

Notice is hereby given, in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), of the second meeting of the Negotiated Rulemaking Advisory Committee for Dog Management at Golden Gate National Recreation Area.

**DATES:** The Committee will meet on April 18, 2006 at the Fort Mason Officer's Club in upper Fort Mason, in San Francisco. The meeting will begin at 3 p.m. This, and any subsequent meetings, will be held to assist the National Park Service in potentially developing a special regulation for dogwalking at Golden Gate National Recreation Area.

The proposed agenda for this meeting of the Committee may contain the following items; however, the Committee may modify its agenda during the course of its work. The Committee will provide for a public comment period during the meeting.

1. Agenda review and adoption.
2. Approve previous meeting summary.
3. Committee Protocols.
4. GGNRA Sideboards.
5. Interest statements from Committee representatives.
6. Negotiated rulemaking process and coordination with NEPA.
7. Goals and criteria.
8. Information needs.
9. Committee schedule and logistics.
10. Public comment.
11. Adjourn.

To request a sign language interpreter for a meeting, please call the park TDD line (415) 556–2766, a week in advance of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Golden Gate National Recreation Area, Fort Mason, Building 201, San Francisco, CA 94123 or call the Dog Management Information Line at 415–561–4728.

**SUPPLEMENTARY INFORMATION:** The meetings are open to the public. The Committee was established pursuant to the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570). The purpose of the Committee is to consider developing a special regulation for dogwalking at Golden Gate National Recreation Area. Interested persons may provide brief oral/written comments to the Committee during the Public Comment period of the meeting or file written comments with the GGNRA Superintendent.

Dated: March 28, 2006.

**Bernard C. Fagan,**

*Deputy Chief, Office of Policy.*

[FR Doc. 06–3182 Filed 3–31–06; 8:45 am]

**BILLING CODE 4312–FN–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 50 and 51

**[EPA–HQ–OAR–2005–0159; FRL–8052–8]**

**RIN 2060–AN40**

### Notice of Public Hearing for the Proposed Rule—The Treatment of Data Influenced by Exceptional Events

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Announcement of public hearing.

**SUMMARY:** The EPA is announcing two public hearings for the proposed rule on ''The Treatment of Data Influenced by Exceptional Events'' which was published in the **Federal Register** on March 10, 2006.

**DATES:** The public hearings will be held on April 18, 2006, and April 25, 2006. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the hearings.

**ADDRESSES:** *Public Hearing:* The public hearings will be held at the following locations:

1. Research Triangle Park, N.C.: Date of hearing: April 18, 2006. The Sheraton Imperial Hotel, 4700 Emperor Blvd., Durham, N.C. 27703, Phone: 919–941–5050.
2. Denver, CO: Date of hearing: April 25, 2006. The Adams Mark Hotel, 1550 Court Place, Denver, CO 80202, Phone: 303–893–3333.

**FOR FURTHER INFORMATION CONTACT:** If you would like to speak at the public hearing or have questions concerning the public hearing, please contact Ms. Pamela Long at the address provided below under **SUPPLEMENTARY INFORMATION.**

Questions concerning the proposed rule entitled ''The Treatment of Data Influenced by Exceptional Events'' should be addressed to Mr. Larry Wallace, Ph.D., U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, (C539–01), Research Triangle Park, N.C. 27711, telephone number (919) 541–0906, e-mail at *Wallace.larry@epa.gov*, or Mr. Neil Frank, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, (C304–01), Research Triangle Park, N.C. 27711, telephone number (919) 541–5560, and e-mail address *frank.neil@epa.gov*.

**SUPPLEMENTARY INFORMATION:** The EPA has proposed a rule to govern the review and handling of air quality monitoring data influenced by exceptional events. Exceptional events are events for which the normal planning and regulatory process established by the Clean Air Act is not appropriate. In this rulemaking action, EPA is proposing to: Implement section 319(b)(3)(B) and section 107(d)(3) authority to exclude air quality monitoring data from regulatory determinations related to exceedances or violations of the National Ambient Air Quality Standards (NAAQS) and avoid designating an area as nonattainment, redesignating an area as nonattainment, or reclassifying an existing nonattainment area to a higher classification if a State adequately demonstrates that an exceptional event has caused an exceedance or violation of a NAAQS.

*Public hearings:* The proposal for which EPA is holding the public hearings was published in the **Federal Register** on March 10, 2006 (71 FR 21592) and is available on the following Web site: *http://www.epa.gov/ttn/oarpg/t1pfpr.html*. The public hearings will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rule. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearings. Written comments must be postmarked by May 10, 2006, which is the closing date for the comment period, as specified in the proposal for the rule.

The two public hearings will be held in Research Triangle Park, N.C. on April 18, 2006 and Denver, CO on April 25, 2006. Both public hearings will begin at 9 a.m. (local time) and continue until 5 p.m. on each day, if necessary, depending on the number of speakers. The EPA may end the hearing early (no

earlier than 2 p.m.) if all registered speakers have had an opportunity to speak.

Commenters desiring to speak at the hearing should notify Ms. Pamela Long, (C539–01), U.S. EPA, Research Triangle Park, N.C. 27711, *long.pam@epa.gov*, (919) 541–0641 by 12 p.m. Eastern time on April 13, 2006. We request that commenters contact Ms. Long at U.S. EPA, Research Triangle Park, N.C. 27711, by e-mail at *long.pam@epa.gov*, or by telephone at (919) 541–0641, and provide the requests to speak at the hearing. Ms. Long will arrange a time slot for participants to speak at the hearing.

Commenters should notify Ms. Long if they will need specific equipment, or if there are other special needs related to providing comments at the hearing. Persons desiring to present oral testimony that have not made arrangements in advance can register by 2 p.m. on the day of the hearing. The EPA will provide equipment for commenters to show overhead slides or make computerized slide presentations if we receive special requests in advance. Oral testimony will be limited to 5 minutes for each commenter. The EPA encourages commenters to provide EPA with a copy of their oral testimony electronically (via e-mail, computer disk, or CD) or in hard copy form.

The hearing schedule, including lists of speakers, will be posted on EPA's Web site *http://www.epa.gov/ttn/oarpg/t1pfpr.html*. Verbatim transcripts of the hearings and written statements will be included in the docket for the rulemaking.

## How Can I Get Copies of This Document and Other Related Information?

The EPA has established the official public docket for the proposed rule entitled ''The Treatment of Data Influenced by Exceptional Events'' under Docket ID No. EPA–HQ–OAR–2005–0159. As stated previously, the proposed rule was published in the **Federal Register** on March 10, 2006 (71 FR 12592) and is available at *http://www.epa.gov/ttn/oarpg/t1pfpr.html*.

Dated: March 27, 2006.

**Gregory Green,**

*Acting Director, Office of Air Quality Planning and Standards.*

[FR Doc. 06–3154 Filed 3–31–06; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 80

[EPA–OAR–2005–0048; FRL–8051–9]

RIN 2060–AM42

# Regulation of Fuel and Fuel Additives: Gasoline and Diesel Fuel Test Methods

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Proposed Rulemaking

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to allow refiners and laboratories to use more current and improved fuel testing procedures for five American Society for Testing and Materials (ASTM) analytical test methods. Once these test method changes are adopted, they will supersede the corresponding earlier versions of these test methods in EPA's motor vehicle fuel regulations. EPA is also proposing to take action to change the designated test method for sulfur in butane. EPA is proposing to replace an approved ASTM Committee D.16 sulfur test method with the ASTM Committee D.02 version of the test method for gasoline and diesel fuel, and proposing to allow an additional ASTM test method for sulfur in gasoline. EPA is also proposing to remove a September 1, 2004 sunset provision for two alternative ASTM test methods for gasoline. Finally, EPA is proposing to add a new section to the motor vehicle fuels regulations. This new section would reference the rounding method in an ASTM standard practice as the procedure to follow for rounding a test result when determining compliance with EPA's motor vehicle fuels standards listed in the regulations. In the Rules and Regulations section of this **Federal Register**, we are taking direct final rule action on the proposed amendments because we view these amendments as noncontroversial and anticipate no adverse comments. We have explained our reasons for the amendments in the preamble to the direct final rule.

**DATES:** Comments or a request for a public hearing must be received on or before May 3, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0048, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov*
- *Fax:* (202) 566–1741
- *Mail:* ''EPA–HQ–OAR–2005–0048, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.''
- *Hand Delivery:* EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0048. EPA's policy is that all comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''Aanonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Unit 1.B of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West,

Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Joe Sopata, Chemist, Transportation and Regional Programs Division, Office of Transportation and Air Quality (6406J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9034; fax number: (202) 343–2801; e-mail address: *sopata.joe@epa.gov*.

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are listed in the following outline.

I. General Information
A. Does This Action Apply to Me?
B. What Should I Consider as I Prepare My Comments for EPA?
II. Proposed Rule Changes
A. Updating ASTM Test Methods to Their Most Recent Version
B. Replacing ASTM D 6428–99 With ASTM D 6920–03
C. Test Method for Sulfur in Butane
D. Additional Alternative Test Method for Sulfur in Gasoline
E. Removal of Sunset Provision for Alternative Test Methods
F. Using Rounding When Determining Conformance With a Fuels Standard
III. Administrative Requirements
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA)
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
VI. Statutory Provisions and Legal Authority

## I. General Information

### *A. Does This Action Apply to Me?*

Regulated categories and entities potentially affected by this proposed action include those involved with the production, importation, distribution, sale and storage of gasoline motor fuel and diesel motor fuel.

The table below is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed action. This table lists the types of entities that EPA is now aware could be potentially regulated by this proposed action. Other types of entities not listed in the table could also be regulated. To determine whether an entity is regulated by this proposed action, one should carefully examine the existing regulations in 40 CFR part 80. If you have questions regarding the applicability of this proposed action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

| Category | NAICS codes [a] | SIC codes [b] | Examples of potentially regulated parties |
|---|---|---|---|
| Industry | 324110 | 2911 | Petroleum refiners. |
| Industry | 54138 | 8734 | Testing Laboratories. |
| Industry | 422710, 422720 | 5171, 5172 | Gasoline Marketers and Distributors. |

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part of all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions—The agency may ask you to respond to specific questions or organize comments referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Proposed Rule Changes

### *A. Updating ASTM Test Methods to Their Most Recent Version*

Refiners, importers and oxygenate blenders producing gasoline and diesel motor vehicle fuel are required to test reformulated gasoline (RFG), conventional gasoline (CG) and diesel fuel for various fuel parameters including sulfur, olefins, aromatics, and oxygenate content. American Society for Testing and Materials (ASTM) test method D2622 is currently a designated test method for measuring sulfur [1] in gasoline. ASTM test method D 3120 and ASTM D 5453 are currently alternative test methods for measuring sulfur [2] [3] in gasoline. ASTM test method D 1319 is currently a designated test method for measuring olefins [4] in gasoline and aromatics [5] in diesel fuel and is also allowed as an alternative test method for measuring aromatics [6] in gasoline.

[1] 40 CFR 80.46(a)(1).
[2] 40 CFR 80.46(a)(3)(iii).
[3] 40 CFR 80.46(a)(3)(i).
[4] 40 CFR 80.46(b).
[5] 40 CFR 80.2(z).
[6] 40 CFR 80.46(f)(3).

ASTM test method D 4815 is currently an alternative test method for measuring oxygenate content [7] in gasoline.

The American Petroleum Institute (API) recommended in a letter to EPA that EPA update the ASTM test methods mentioned above to their most recent ASTM version.[8] API asked EPA to refer to the 2003 year version of ASTM test method D 2622 in all references involving gasoline and diesel fuels because this version of ASTM D 2622 includes an updated precision statement as determined in a recent ASTM sulfur round robin. API also recommended EPA adopt in the motor vehicle fuels regulations the 2003a version of ASTM 3120, the 2003a version of ASTM D 5453, the 2003 version of ASTM D1319, and the 2003 year version of ASTM D 4815.

Table 1 lists the designated analytical test methods and alternative analytical test methods which are being proposed to be updated for parameters measured under RFG, CG, and diesel fuels program in today's action. The Agency has reviewed these updated ASTM test methods and we are in agreement with the revisions contained in them which will result in improvements in the utilization of these test methods for the regulated industry. We believe that the revisions in the test method changes in today's proposed action are not significant changes that would cause a user of an older version of the same method to incur significant costs. All of the revisions were deemed necessary by ASTM so that improvements in the test method's procedures would ensure better operation for the user of the test method. Thus, EPA is proposing today to update the regulations for the following ASTM test methods: (1) ASTM D 2622–03, the designated test method for measuring sulfur in RFG, and CG, (2) ASTM D 3120–03a and ASTM D 5453–03a alternative test methods for sulfur in gasoline, (3) ASTM D 1319–03, designated test method for measuring olefins in gasoline and aromatics in diesel fuel, as well as the alternative test method for measuring aromatics in gasoline, and (4) ASTM 4815–03, alternative test method for measuring oxygenate content in gasoline.

TABLE 1.—DESIGNATED AND ALTERNATIVE ASTM ANALYTICAL TEST METHODS UNDER RFG, CG AND DIESEL MOTOR VEHICLE FUEL PROGRAMS

| Fuel parameter | ASTM analytical test method |
|---|---|
| Sulfur (gasoline) | ASTM D 2622–03, entitled "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry". |
| Sulfur (gasoline) | ASTM D 5453–03a, entitled, "Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence". |
| Sulfur (gasoline) | ASTM D 3120–03a, entitled, "Standard Test Method for Trace Quantities of Sulfur in Light Petroleum Hydrocarbons by Oxidative Microcoulometry". |
| Oxygen content (gasoline) | ASTM D 4815–03, entitled "Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C1 to C4 Alcohols in Gasoline by Gas Chromatography". |
| Olefins (gasoline) | ASTM D 1319–03, entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption". |
| Aromatics (gasoline and diesel) | ASTM D 1319–03, entitled, "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption", for diesel fuel, this method is the designated test method, for gasoline, this method is an alternative test method and if used as an alternative method, its results, must be correlated to ASTM D 5769–98. |

*B. Replacing ASTM D 6428–99 With ASTM D 6920–03*

Refiners, importers and oxygenate blenders producing gasoline and diesel motor vehicle fuels are required to test RFG, CG and diesel fuel for various fuel parameters including sulfur content. ASTM test method D 6428–99 is currently the designated test method for measuring the sulfur content of on-highway diesel fuel at the 15 ppm level[9], an alternative test method for measuring the sulfur content on-highway diesel fuel at the 500 ppm level[10], and an alternative test method for measuring the sulfur content of gasoline.[11]

ASTM D 6428–99 was developed by the ASTM D.16 Committee for Aromatic Hydrocarbons and Related Chemicals. ASTM D 6428–99 does not contain a precision statement in the test method for its use with gasoline and diesel fuel. ASTM D.02, the Committee for Petroleum Products and Lubricants, recently determined the precision for this method with respect to gasoline and diesel fuels, and named the new method containing the precision statement ASTM D 6920–03. Since ASTM D 6920–03 contains precision statements for the method as it applies to gasoline and diesel, API requested that EPA refer to ASTM D 6920–03 in all references with respect to gasoline and diesel fuel involving test method ASTM D 6428–99.[12] The Agency has evaluated API's request and agrees that since ASTM D 6920–03 contains precision estimates for use of the method with gasoline and diesel fuels, ASTM D 6920–03 is more practical for use with our gasoline and diesel fuels programs compared to ASTM D 6428–99. Thus, EPA is proposing to change the regulations by replacing ASTM D 6428–99 with ASTM D 6920–03 for the alternative test method for measuring the sulfur content of diesel fuel at the 500 ppm level, and the alternative test method for measuring the sulfur content of gasoline.

[7] 40 CFR 80.46(g)(2).

[8] See Air Docket # EPA–HQ–OAR–2005–0048–0002.

[9] 40 CFR 80.580(a)(2).

[10] 40 CFR 80.580(a)(3)(ii).

[11] 40 CFR 80.46(a)(3)(ii).

[12] See Air Docket #EPA–HQ–OAR–2005–0048–0002.

The regulations state that until December 27, 2004, for 15 ppm diesel fuel, regulated parties may use ASTM D 6428–99, the designated test method, or ASTM D 5453–03a or ASTM D 3120–03a, two alternative test methods, provided the alternative test method results are correlated to the designated test method. After December 27, 2004, regulated parties measuring motor vehicle diesel fuel and fuel additives subject to the 15 ppm diesel sulfur standard must qualify their test method on a site specific basis under the precision and accuracy criteria specified in the regulations at 40 CFR 80.584. Once they have completed this testing, they must submit their precision and accuracy results to the Agency for approval to use their test method as specified in the regulations at 40 CFR 80.585. Thus, after December 27, 2004, regulated parties may only use test methods that have been qualified on a site specific basis that meet the accuracy and precision criteria specified in the regulations at 40 CFR 80.584 and that have been approved under the process specified in the regulations at 40 CFR 80.585. The December 27, 2004, date, provided regulated parties 180 days of lead time to qualify their test methods for use at each site for measuring 15 ppm sulfur diesel fuel. Since today's proposed rule will be effective after December 27, 2004, the Agency is proposing to revise the regulations by removing the now irrelevant designated and alternative test method paragraphs that allow the use of ASTM D 6428–99, ASTM D 5453–03a, and ASTM D 3120–03a for 15 ppm sulfur diesel fuel (*i.e.*, 40 CFR 80.580(b)(1) and 40 CFR 80.580(c)(1)). The regulations will then only reflect the present situation that all test methods must qualify under the precision and accuracy criteria in the regulations.

*C. Test Method for Sulfur in Butane*

Certain parties blend butane into gasoline which has already been manufactured and certified under EPA regulations. Effective January 1, 2004, the parties that blend butane into already made gasoline were required to test the butane for sulfur content.[13] Currently, ASTM D 3246–96 is the designated test method for measuring the sulfur content of butane.

Recently, API said in a letter to EPA that ASTM D 6667 is more readily available, more reliable, and a better test method than ASTM D 3246.[14] Thus, API requested EPA to change the designated test method for measuring sulfur in butane to ASTM D 6667–01, and to continue to allow ASTM D 3246–96 as an alternative test method. EPA has evaluated API's request on this test method issue and agrees. Thus, EPA is proposing to change the regulations making ASTM D 6667–01 the designated test method for measuring the sulfur content of butane. Additionally, EPA proposes to continue to allow ASTM test method D 3246–96 as an alternative test method, provided its test results are correlated to ASTM D 6667–01, the new designated test method for sulfur in butane.

In the future, EPA intends to establish a performance-based test method approach (PBTM) rule which would provide criteria for the qualification of alternative test methods. Once a PBTM rule has been established by the Agency, ASTM D 3246–96 may qualify under the PBTM rule's criteria as an alternative test method.

*D. Additional Alternative Test Method for Sulfur in Gasoline*

Refiners, importers and oxygenate blenders producing gasoline and diesel motor vehicle fuel are required to test RFG, CG and diesel fuel for various fuel parameters including sulfur. Test methods for determining sulfur content are specified in the regulation.

Recently, X–Ray Optical Systems, Incorporated (XOS®) requested in a letter to EPA that ASTM D 7039–04 be designated by EPA as an alternative test method in the regulations for sulfur in gasoline.[15] EPA has evaluated XOS®'s request on this test method issue and agrees. Thus, EPA is proposing to allow ASTM D 7039–04 as an alternative test method in the regulations for sulfur in gasoline, provided that its results are correlated to ASTM D 2622. The allowance of this additional alternative test method for sulfur in gasoline will provide the regulated community additional flexibility in meeting their testing requirements.

As stated above, EPA plans to establish a PBTM rule for the qualification of alternative test methods. Once this PBTM rule is effective, ASTM D 7039 may qualify as an alternative test method under the PBTM's criteria.

*E. Removal of Sunset Provision for Alternative Test Methods*

As explained previously, ASTM D 1319 is an alternative test method for measuring total aromatics in gasoline, and ASTM D 4815 is an alternative test method for measuring oxygenates in gasoline. Both of these alternative methods have sunset provisions under which their use as an alternative test method expired on September 1, 2004. On June 16, 2004, EPA issued an enforcement discretion letter allowing the use of these two alternative test methods until December 31, 2005, or until such time that a rulemaking was promulgated by the Agency to continue to allow the use of these two alternative test methods, whichever is earlier.[16]

Recently, API requested in a letter that the sunset provisions for these two alternative test methods be removed until a PBTM approach for qualifying analytical test methods is promulgated by EPA.[17] Since EPA believes the use of these two alternative test methods has been effective, we are proposing to continue to allow their use until the PBTM rule mentioned previously is promulgated by the Agency. Once a PBTM rule has been established, these two alternative test methods may qualify under the PBTM rule's criteria. The proposed rule change that is the subject of this notice would remove the current sunset provision of September 1, 2004, for both ASTM D 1319 and ASTM D 4815 and allow their use as alternative test methods until a PBTM rule is established by the Agency.

*F. Using Rounding When Determining Conformance With a Fuels Standard*

Refiners, importers and oxygenate blenders producing gasoline and diesel motor vehicle fuel are required to test RFG, CG and diesel fuel for various fuel parameters to determine compliance with EPA's motor vehicle fuels standards. These fuels standards are listed in the regulations at 40 CFR part 80.

Each of EPA's motor vehicle fuel standards indicates the number of significant digits which should be present in an observed measurement number to be compared to the standard for the purpose of demonstrating compliance. The appropriate number of significant digits to determine compliance with a fuel standard regulation or to report on a reporting form should be determined from the method outlined in section 3.1 of the ASTM standard practice E 29–02$^{\epsilon 1}$, entitled, ''Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications''. Regulated parties measuring a fuel parameter to determine compliance with a fuel standard must

[13] 40 CFR 80.46(a)(2).

[14] See Air Docket #EPA–HQ–QAR–2005–0048–0002.

[15] See Air Docket #EPA–HQ–OAR–2005–0048–0003.

[16] See Air Docket #EPA–HQ–QAR–2005–0048–0004.

[17] See Air Docket #EPA–HQ–OAR–2005–0048–0005.

report their test result out to the number of significant digits specified in the applicable fuel standard. However, a test method used to measure a certain fuel parameter may provide more significant digits in its output than specified in the standard. When this situation occurs, the regulated party should round their test result to determine if they are in compliance with the standard. The American Society for Testing and Materials (ASTM) has developed the standard practice, ASTM E 29–02$^{\epsilon 1}$, for this situation. The rounding method $^{\epsilon 1}$ [18] in this standard practice provides a procedure for rounding a test result to the number of significant digits specified in some standard. After using the rounding method specified in ASTM E 29–02$^{\epsilon 1}$, the regulated party may compare the resulting number to the standard to determine whether they are in compliance.

The Agency has reviewed the rounding method referenced in the standard practice ASTM E 29–02$^{\epsilon 1}$, and we are in agreement with its use for this purpose. The Agency believes referencing the Arounding'' method (as contrasted with the Aabsolute'' method) in this ASTM standard practice in EPA's regulations will help to avoid confusion in the fuels distribution system. Therefore, EPA is proposing to add a new section to the motor vehicle fuels regulations at 40 CFR 80.9. This new section would reference the rounding method in ASTM E 29–02$^{\epsilon 1}$. The rounding method is the procedure to follow for rounding a test result when determining compliance with EPA's motor vehicle fuels standards listed at 40 CFR Part 80.

In the ''Final Rules'' section of today's **Federal Register**, we are publishing a direct final rule that matches the substance of this proposed rule. If the Agency receives adverse comment or a request for public hearing by May 3, 2006, we will withdraw the direct final rule by publishing a timely withdrawal notice in the **Federal Register**. If the Agency receives no adverse comment or a request for public hearing by May 3, 2006, these test method changes will be effective sixty (60) days after publication of the final rule in the **Federal Register**. We are confident that sixty(60) days is sufficient lead time for industry to become familiar and implement these ASTM test methods for the applications mentioned above.

[18] The Rounding Method in ASTM E 29–02$^{\epsilon 1}$ applies where it is the intent that a limited number of digits in an observed value or calculated value are to be considered significant for purposes of determining conformance to the number of figures listed in a fuels standard. The rounded value should be compared to the specified limit in the fuels standard, and conformance or non-conformance with the specification in the fuels standard should be based on this comparison.

## III. Administrative Requirements

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

### *B. Paperwork Reduction Act*

This proposed rule does not impose any new information collection burden. However, the Office of Management and Budget (OMB), under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, has approved the information collection requirements contained in the final RFG and anti-dumping rulemaking and gasoline sulfur control rulemaking, and has assigned OMB control number 2060–0277, EPA ICR number 1591.14. OMB, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, has also approved the information collection requirements contained in the final Tax Exempt (Dyed) Highway Diesel Fuel rulemaking, and has assigned OMB control number 2060–0308, EPA ICR number 1718.03. Copies of the OMB approved Information Collection Requests (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

### *C. Regulatory Flexibility Act (RFA)*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' 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 proposed rule on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory

alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

All of the test method updates in today's proposed action will improve the performance and/or utilization by industry of the test methods. For the two alternative test methods, ASTM D 1319 and ASTM D 4815, today's action will continue to provide flexibility to the regulated community. The allowance of ASTM D 7039–04 will provide additional flexibility to the regulated community in meeting sulfur in gasoline testing requirements. Referencing the rounding method in ASTM E 29–02$^{\epsilon 1}$ provides consistent guidance for the regulated community when determining whether a test result is in conformance with our motor vehicle fuels standards. Finally, for the measurement of sulfur in butane, today's action will provide industry with a more reliable, more readily available and better test method. We have therefore concluded that today's proposed rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of this rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local or tribal governments or the private sector. The proposed rule would impose no enforceable duty on any state, local or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It would 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. All of the test method updates in today's action will improve the performance and/or utilization by industry of the test methods. For the two alternative test methods, ASTM D 1319 and ASTM D 4815, today's action will continue to provide flexibility to the regulated community. The allowance of ASTM D 7039–04 will provide additional flexibility to the regulated community in meeting sulfur in gasoline testing requirements. Referencing the rounding method in ASTM E 29–$^{\epsilon 1}$ provides consistent guidance for the regulated community when determining whether a test result is in conformance with our motor vehicle fuels standards. Finally, for the measurement of sulfur in butane, today's action will provide industry with a more reliable, more readily available and better test method. Thus, Executive Order 13132 does not apply to this proposed rule.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 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.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule applies to gasoline refiners, blenders and importers that supply gasoline or diesel fuel. All of the test method updates in today's action will improve the performance and/or utilization by industry of the test methods. The allowance of ASTM D 7039–04 will provide additional flexibility to the regulated community in meeting sulfur in gasoline testing requirements. For the two alternative test methods, ASTM D 1319 and ASTM D 4815, today's action will continue to provide flexibility to the regulated community. Referencing the rounding method in ASTM E 29–02$^{\epsilon 1}$ provides consistent guidance for the regulated community when determining whether a test result is in conformance with our motor vehicle fuels standards. Finally, for the measurement of sulfur in butane, today's action will provide industry with a more reliable, more readily available and better test method. Thus, Executive Order 13175 does not apply to this proposed rule.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045: Protection of Children from Environmental health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets 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 Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks that may disproportionately affect children.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking involves technical standards. EPA proposes to use ASTM standards as described in Units II.A, II.B, II.C, II.D and II.F of the **SUPPLEMENTARY INFORMATION** section of this document. All technical standards included in today's proposed rule are standards developed by ASTM, a voluntary consensus standards body, and thus raises no issues under the NTTAA. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

## IV. Statutory Provisions and Legal Authority

Statutory authority for today's proposed rule comes from sections 211(c), 211(i) and 211(k) of the CAA (42 U.S.C. 7545(c) and (k)). Section 211(c) and 211(i) allows EPA to regulate fuels that contribute to air pollution which endangers public health or welfare, or which impairs emission control equipment. Section 211(k) prescribes requirements for RFG and CG and requires EPA to promulgate regulations establishing these requirements. Additional support for the fuels controls in today's rule comes from sections 114(a) and 301(a) of the CAA.

## List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Diesel, Imports, Incorporation by reference, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: March 24, 2006.

**Stephen L. Johnson,**

*Administrator.*

[FR Doc. 06–3132 Filed 3–31–06; 8:45 am]

BILLING CODE 6560–50–P

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 544

**[Docket No.: NHTSA–2006–24175]**

**RIN 2127–AJ88**

## Insurer Reporting Requirements; List of Insurers Required To File Reports

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend Appendices A, B, and C of 49 CFR part 544, insurer reporting requirements. The appendices list those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these appendices would be required to file three copies of its report for the 2003 calendar year before October 25, 2006. If the passenger motor vehicle insurers remain listed, they must submit reports by each subsequent October 25. We are proposing to add and remove several insurers from relevant appendices.

**DATES:** Comments must be submitted not later than June 2, 2006. Insurers listed in the appendices are required to submit reports on or before October 25, 2006.

**ADDRESSES:** You may submit comments, identified by docket number: NHTSA–2006–24175 and/or RIN number: 2127–AJ88, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the Docket Management System.
- *Fax:* (202) 493–2251
- *Mail:* Dockets, 400 7th Street, SW., Washington, DC 20590
- Hand Delivery/Courier: Plaza Level Room 401, (PL #401), of the Nassif Building, 400 7th Street, SW., Washington, DC 20590. Telephone: 1–800–647–5527

You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Deborah Mazyck, Office of International Vehicle, Fuel Economy and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590, by electronic mail to *deborah.mazyck@nhtsa.dot.gov.* Ms. Mazyck's telephone number is (202) 366–4139. Her fax number is (202) 493–2290.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's regulation, 49 CFR Part 544, the following insurers are subject to the reporting requirements:

(1) Issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States;

(2) Issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state; and

(3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

*A. Small Insurers of Passenger Motor Vehicles*

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term ''small insurer'' is defined, in Section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a ''small insurer,'' but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (52 FR 59; January 2, 1987), 49 CFR part 544, NHTSA exercised its exemption authority by listing in Appendix A each insurer that must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting, instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally, is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best, which A.M. Best,[1] publishes in its State/Line Report each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

*B. Self-Insured Rental and Leasing Companies*

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). Under 49 U.S.C. 33112(e)(1) and (2), NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and 33112(e)(1) and (2),

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on them. As a result of the June 1990 final rule, the agency added Appendix C, consisting of an annually updated list of the self-insurers subject to Part 544. Following the same approach as in Appendix A, NHTSA included, in Appendix C, each of the self-insurers subject to reporting instead of the self-insurers which are exempted.

NHTSA updates Appendix C based primarily on information from Automotive Fleet Magazine and Auto Rental News.[2]

*C. When a Listed Insurer Must File a Report*

Under Part 544, as long as an insurer is listed, it must file reports on or before October 25 of each year.

Thus, any insurer listed in the appendices must file a report before October 25, and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

**II. Proposal**

*1. Insurers of Passenger Motor Vehicles*

Appendix A lists insurers that must report because each had 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a final rule published on July 25, 2005 (70 FR 42505). Based on the 2003 calendar year data market shares from A.M. Best, we propose to remove California State Auto Association from Appendix A.

Each of the 18 insurers listed in Appendix A are required to file a report before October 25, 2006, setting forth the information required by Part 544 for each State in which it did business in the 2003 calendar year. As long as these 18 insurers remain listed, they will be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists insurers required to report for particular States for calendar year 2003, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 2003 calendar year data for market shares from A.M. Best, we propose to remove Nodak Mutual Group (North Dakota) and add Safety Group (Massachusetts) to Appendix B.

The nine insurers listed in Appendix B are required to report on their calendar year 2003 activities in every State where they had a 10 percent or greater market share. These reports must be filed by October 25, 2006, and set forth the information required by Part 544. As long as these nine insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

*2. Rental and Leasing Companies*

Appendix C lists rental and leasing companies required to file reports. Based on information in Automotive Fleet Magazine and Auto Rental News for 2003, NHTSA proposes to remove Avis Rent-A-Car, Budget Rent-A-Car Corporation, Dollar Rent-A-Car Systems, Inc. and ANC Rental Corporation and

[1] A.M. Best Company is a well-recognized source of insurance company ratings and information. 49 U.S.C. 33112(i) authorizes NHTSA to consult with public and private organizations as necessary.

[2] Automotive Fleet Magazine and Auto Rental News are publications that provide information on the size of fleets and market share of rental and leasing companies.

add the Cendant Car Rental Group[3], Dollar Thrifty Automotive Group[4] and Vanguard Car Rental USA[5]. Each of the 13 companies (including franchisees and licensees) listed in Appendix C would be required to file reports for calendar year 2003 no later than October 25, 2006, and set forth the information required by Part 544. As long as those 13 companies remain listed, they would be required to submit reports before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

## III. Regulatory Impacts

### *1. Costs and Other Impacts*

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and determined that the action is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. This proposed rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this proposed rule, reflecting current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing Part 544 (52 FR 59; January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the Bureau of Labor Statistics Consumer Price Index for 2005 (see *http://www.bls.gov/cpi*), the cost estimates in the 1987 final regulatory evaluation were adjusted for inflation. The agency estimates that there is $97,650 decrease in the cost of compliance for any insurer added to Appendix A, no cost of compliance for any insurer added to Appendix B, and a $11,269 decrease in the cost of compliance for any insurer added to Appendix C. If this proposed rule is made final, for Appendix A, the agency would propose to remove one company; for Appendix B, the agency would propose to remove one company and add one company; and for Appendix C, the agency would propose to remove four companies and add three companies. The agency estimates that the net effect of this proposal, if made final, would be a cost decrease to insurers, as a group of approximately $108,919.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling (202) 366–4949.

### *2. Paperwork Reduction Act*

The information collection requirements in this proposed rule were submitted and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information is assigned OMB Control Number 2127–0547 (''Insurer Reporting Requirements'') and approved for use through July 31, 2006, and the agency will seek to extend the approval afterwards.

### *3. Regulatory Flexibility Act*

The agency also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed for Appendices A, B, or C are construed to be a small entity within the definition of the RFA. ''Small insurer'' is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all ''self insured rental and leasing companies'' that have fleets of fewer than 50,000 vehicles. Any self-insured rental and leasing company too large to meet that criterion is not a small entity.

### *4. Federalism*

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### *5. Environmental Impacts*

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and determined that it would not have a significant impact on the quality of the human environment.

### *6. Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading, at the beginning, of this document to find this action in the Unified Agenda.

### *7. Plain Language*

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the proposal clearly stated?
- Does the proposal contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the proposal easier to understand?

If you have any responses to these questions, you can forward them to me several ways:

a. *Mail:* Deborah Mazyck, Office of International Vehicle, Fuel Economy and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590;

b. *E-mail: deborah.mazyck@nhtsa.dot.gov;* or

c. *Fax:* (202) 493–2290.

[3] Cendant Car Rental acquired ownership of Avis and Budget Rent-A-Car in 2002.

[4] Dollar Thrifty Automotive Group acquired ownership of Dollar Rent-A-Car Systems, Inc. and Thrifty, Inc. in 2001.

[5] Vanguard Car Rental USA acquired ownership of ANC Rental Corporation in 2003.

## IV. Comments

*Submission of Comments*

1. How Can I Influence NHTSA's Thinking on This Proposed Rule?

In developing our rules, NHTSA tries to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide views on our proposal, new data, a discussion of the effects of this proposal on you, or other relevant information. We welcome your views on all aspects of this proposed rule. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning clearly.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you derived the estimate.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Include the name, date, and docket number with your comments.

2. How Do I Prepare and Submit Comments?

Your comments must be written in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not exceed 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments concisely. You may attach necessary documents to your comments. We have no limit on the attachments' length.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

3. How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you, upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will mail the postcard.

4. How Do I Submit Confidential Business Information?

If you wish to submit any information under a confidentiality claim, you should submit three copies of your complete submission, including the information you claim as confidential business information, to the Chief Counsel, Office of Chief Counsel, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter addressing the information specified in our confidential business information regulation (49 CFR Part 512).

5. Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider, in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

6. How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above, in the same location. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).
2. On that page, click on ''search.''
3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number was ''NHTSA 1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. The ''pdf'' versions of the documents are word searchable.

## V. Conclusion

Based on the foregoing, we are proposing to amend Appendices A, B, and C of 49 CFR 544, insurer reporting requirements.

**List of Subjects in 49 CFR Part 544**

Crime insurance, insurance, insurance companies, motor vehicles, reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is proposed to be amended as follows:

## PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

**Authority:** 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 is revised to read as follows:

**§ 544.5 General requirements for reports.**

(a) Each insurer to which this part applies shall submit a report annually before October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year 3 years previous to the year in which the report is filed (e.g., the report due by October 25, 2006 will contain the required information for the 2003 calendar year).

* * * * *

3. Appendix A to part 544 is revised to read as follows:

**Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business**

Allstate Insurance Group
American Family Insurance Group
American International Group
Auto-Owners Insurance Group
CNA Insurance Companies
Erie Insurance Group
Berkshire Hathaway/GEICO Corporation Group
Hartford Insurance Group
Liberty Mutual Insurance Companies
Metropolitan Life Auto & Home Group
Mercury General Group
Nationwide Group
Progressive Group
Safeco Insurance Companies
State Farm Group
Travelers PC Group
USAA Group
Farmers Insurance Group

4. Appendix B to Part 544 is revised to read as follows:

**Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States**

Alfa Insurance Group (Alabama)
Arbella Mutual Insurance (Massachusetts)
Auto Club (Michigan)
Commerce Group, Inc. (Massachusetts)
Kentucky Farm Bureau Group (Kentucky)

New Jersey Manufacturers Group (New Jersey)

Safety Group (Massachusetts) [1]

Southern Farm Bureau Group (Arkansas, Mississippi)

Tennessee Farmers Companies (Tennessee)

5. Appendix C to Part 544 is revised to read as follows:

[1] Indicates a newly listed company, which must file a report beginning with the report due October 25, 2006.

**Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544**

ARI (Automotive Resources International)
Cendant Car Rental [1]
Dollar Thrifty Automotive Group [2]
Donlen Corporation
Enterprise Rent-A-Car
Enterprise Fleet Services
GE Capital Fleet Services
Hertz Rent-A-Car Division (subsidiary of The Hertz Corporation)
Lease Plan USA, Inc.
PHH Vehicle Management Services/ PHH Arval
U-Haul International, Inc. (subsidiary of AMERCO)
Vanguard Car Rental USA [3]
Wheels Inc.

[1] Cendant Car Rental acquired ownership of Avis and Budget Rent-A-Car in 2002.

[2] Dollar Thrifty Automotive Group acquired ownership of Dollar Rent-A-Car Systems, Inc. and Thrifty, Inc. in 2001.

[3] Vanguard Car Rental USA acquired ownership of ANC Rental Corporation in 2003.

Issued on: March 23, 2006.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 06–3015 Filed 3–31–06; 8:45 am]

BILLING CODE 4910–59–P

# Notices

Federal Register

Vol. 71, No. 63

Monday, April 3, 2006

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

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

March 28, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Farm Service Agency**

*Title:* 7 CFR 1951–T Disaster Set-aside Program.

*OMB Control Number:* 0560–0164.

*Summary of Collection:* The Disaster Set-Aside Program (DSA) is made available through the authority granted the Secretary of Agriculture under Section 331A of the Consolidated Farm and Rural Development Act (CONACT). The set-aside program is designed to assist borrowers in financial distress that operated a farm or ranch in a political subdivision, typically a county that was declared or designated a disaster area. DSA allows eligible borrowers who are unable to make the payments to quickly eliminate their immediate financial stress. Under this program, Farm Service Agency (FSA) farm loan program borrowers can receive immediate financial relief by moving one annual installment for each loan to the end of the loan term. FSA will collect information on the borrowers asset values, expenses and income.

*Need and Use of the Information:* The information is required of FSA farm borrowers and collected by FSA loan servicing officials to determine that disaster victims need payment relief and to support the approval of a set-aside request. Failure to obtain the documentation at the time of the request for DSA will result in rejection of the borrower's request.

*Description of Respondents:* Farms; Individuals or households; Business or other for-profit.

*Number of Respondents:* 800.

*Frequency of Responses:* Reporting: On occasion; Annually.

*Total Burden Hours:* 2,000.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E6–4750 Filed 3–31–06; 8:45 am]

BILLING CODE 3410–05–P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

March 28, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Forest Service**

*Title:* Grazing Permit Administration Forms.

*OMB Control Number:* 0596–0003.

*Summary of Collection:* Domestic livestock grazing currently exist on approximately 90 million acres of National Forest Service (NFS) lands. This grazing is subject to authorization and administrative oversight by the Forest Service (FS). The information is required for the issuance and administration of grazing permits, including fee collections, on NFS lands as authorized by the Federal Land

Policy and Management Act, as amended, and subsequent Secretary of Agriculture Regulation 5 U.S.C. 301, 36 CFR 222, subparts A and C. The bills for collection of grazing fees are based on the number of domestic livestock grazed on national forest lands and are a direct result of issuance of the grazing permit. Information must be collected on an individual basis and is collected through the permit issuance and administration process. FS will collect information using several forms.

*Need and Use of the Information:* FS will collect information on the ownership or control of livestock and base ranch property; the need for additional grazing to round out yearlong ranching operations; and citizenship. FS uses the information collected in administering the grazing use program on NFS lands. If information were not collected it would be impossible for the agency to administer a grazing use program in accordance with the statutes and regulations.

Description of Respondents: Farms; Business or other for-profit; Individuals or households.

*Number of Respondents:* 5,720.

*Frequency of Responses:* Reporting: Annually; Other (as needed basis).

*Total Burden Hours:* 2,180.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E6–4754 Filed 3–31–06; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

March 29, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Food and Nutrition Service**

*Title:* MyPyramid Tracker Information Collection for Registration, Login, and Food Intake and Physical Activity Assessment.

*OMB Control Number:* 0584–NEW

*Summary of Collection:* The Center for Nutrition Policy and Promotion (CNPP) of the U.S. Department of Agriculture (USDA) has the mission to improve the nutritional status of Americans by developing and promoting science-based dietary guidance and economic information for the public. CNPP is involved with the development and promotion of the *Dietary Guidelines for Americans and MyPyramid.* CNPP has among its major functions the development and coordination of nutrition policy within USDA and the investigation of techniques for effective nutrition communication. The authority to collect the information can be found under Subtitle D of the National Agriculture Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3171–3175) and 7 CFR 2.19(a)(3).

*Need and Use of the Information:* CNPP wants to provide MyPyramid Tracker users with personalized nutrition and physical activity assessment based on most-up-to-date guidance, which can only be accessed by the individual user. The user creates a unique ID and password, to access their information. If the information is not collected, users will not be able to access their personal information and cannot evaluate their food intake and physical activity status.

*Description of Respondents:* Individual or households; Federal Government; State, Local, or Tribal Government.

*Number of Respondents:* 900,300.

*Frequency of Responses:* Reporting: Other (as desired)

*Total Burden Hours:* 2,082,905.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E6–4761 Filed 3–31–06; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2006–0035]**

### Supplemental Environmental Impact Statement for Gull Hazard Reduction Program at John F. Kennedy International Airport

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of intent.

**SUMMARY:** We are advising the public that a supplemental environmental impact statement will be prepared by the Animal and Plant Health Inspection Service to analyze alternatives and methods for the reduction of additional wildlife hazards to aircraft and human health and safety at John F. Kennedy International Airport. This action is a supplement to the Gull Hazard Reduction Program at John F. Kennedy International Airport Final Environmental Impact Statement, May 1994.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Chipman, Wildlife Services, APHIS, 1930 Route 9, Castleton, NY 12033–9653; (518) 477–4837.

**SUPPLEMENTARY INFORMATION:** The Animal and Plant Health Inspection Service (APHIS), in cooperation with the Department of the Interior's Fish and Wildlife Service and National Park Service, the Federal Aviation Administration, the New York State Department of Environmental Conservation, the Port Authority of New York and New Jersey, and the New York City Department of Environmental Protection, intends to prepare a supplemental environmental impact statement (SEIS) to address wildlife hazards to aircraft resulting from changes in wildlife populations and land uses in and around the John F. Kennedy International Airport (JFK). This action is a supplement to the Gull Hazard Reduction Program at John F.

Kennedy International Airport Final Environmental Impact Statement (EIS), May 1994.

The scope of the EIS will be changed to include management of risks associated with bird species already addressed in the 1994 EIS and hazards associated with additional wildlife species including, but not limited to, double-crested cormorants and Canada geese. The SEIS will review the efficacy and impacts of current wildlife hazard management efforts and analyze impacts of new and/or expanded alternatives and methods for wildlife hazard management at JFK. We anticipate that the draft SEIS will be available for review by the general public in September 2006.

The SEIS will be prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 29th day of March 2006.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E6–4759 Filed 3–31–06; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request Food Stamp Program Quality Control Review Schedule

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed information collection of Form FNS–380–1, Food Stamp Program Quality Control Review Schedule. The proposed collection is a revision of a collection currently approved under OMB No. 0584–0299.

**DATES:** Written comments must be submitted on or before June 2, 2006.

**ADDRESSES:** Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Send comments and requests for copies of this information collection to Daniel Wilusz, Branch Chief, Quality Control Branch, Program and Accountability Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 822, Alexandria, Virginia 22302. You may fax comments to us at (703) 305–0928. You may also download an electronic version of this notice at *http://www.fns.usda.gov/fsp/rules/Regulations/default.htm* and comment via e-mail at *Daniel.Wilusz@fns.usda.gov*.

All responses to this notice will be included in the request for OMB's approval. All comments will also become a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection form and instruction should be directed to Daniel Wilusz at (703) 305–2460.

**SUPPLEMENTARY INFORMATION:** *Title:* Quality Control Review Schedule.

*OMB Number:* 0584–0299.

*Form Number:* FNS 380–1.

*Expiration Date:* August 31, 2006.

*Type of Request:* Revision of a currently approved collection.

*Abstract:* The Form FNS–380–1, Food Stamp Program Quality Control Review Schedule, collects quality control (QC) and household characteristics data. The information needed to complete this form is obtained from the Food Stamp case record and State quality control findings. The information is used to monitor and reduce errors, develop policy strategies, and analyze household characteristic data. We estimate that it takes 1.05 hours per response and .0236 hours per record for recordkeeping to complete the form.

The reporting and recordkeeping burden associated with the completion of the FNS 380–1 is being increased from 58,729 hours to 61,352 hours. This is a 2,623 hour increase in the current burden that is a result of a change in the number of cases selected from 54,703 to 57,146. Case selection is impacted by the State agencies' monthly participation rate.

*Affected Public:* Individuals or households and State or local governments.

*Estimated Number of Respondents:* 53 State agencies.

*Estimated Total Number of Responses Per Year:* 57,146.

*Estimated Hours Per Response:* 1.05 Hours.

*Total Annual Reporting Burden:* 60,003 Hours.

*Estimated Number of Recordkeepers:* 57,146.

*Estimated Hours Per Recordkeeper:* 0.0236 Hours.

*Total Annual Record Keeping Burden:* 1,349 Hours.

*Total Annual Reporting and Recordkeeping Burden:* 61,352 Hours.

Dated: March 27, 2006.

**Roberto Salazar,**

*Administrator, Food and Nutrition Service.*

[FR Doc. E6–4728 Filed 3–31–06; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF COMMERCE

### Bureau of the Census

### Census Advisory Committees

**AGENCY:** Bureau of the Census, Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Bureau of the Census (Census Bureau) is giving notice of a joint meeting, followed by separate and concurrently held meetings of the Census Advisory Committees (CACs) on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations. The Committees will address issues related to the 2010 re-engineered decennial census, including the American Community Survey (ACS) and other related decennial programs. Last-minute changes to the schedule are possible, which could prevent advance notification.

**DATES:** April 26–28, 2006. On April 26, the meeting will begin at approximately 2 p.m. and end at approximately 5:15 p.m. On April 27, the meeting will begin at approximately 8:45 a.m. and end at approximately 4 p.m. On April 28, the meeting will begin at approximately 8:30 a.m. and end at approximately 3 p.m.

**ADDRESSES:** The meeting will be held at the Sheraton Crystal City Hotel, 1800

Jefferson Davis Highway, Arlington, Virginia 22202.

**FOR FURTHER INFORMATION CONTACT:** Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Office Building 3, Washington, DC 20233, telephone (301) 763–2070, TTY (301) 457–2540.

**SUPPLEMENTARY INFORMATION:** The CACs on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations are comprised of nine members each. The Committees provide an organized and continuing channel of communication between the representative race and ethnic populations and the Census Bureau. The Committees provide an outside-user perspective about how research and design plans for the 2010 re-engineered decennial census, the ACS, and other related programs realize goals and satisfy needs associated with these communities. The Committees also assist the Census Bureau on ways that census data can best be disseminated to diverse race and ethnic populations and other users. The Committees are established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10(a)(b)).

All meetings are open to the public. A brief period will be set aside at the meeting for public comment. However, individuals with extensive questions or statements must submit them in writing to Ms. Jeri Green at least three days before the meeting. Seating is available to the public on a first-come, first-served basis.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer as soon as possible, preferably two weeks prior to the meeting.

Dated: March 28, 2006.

**Charles Louis Kincannon,**

*Director, Bureau of the Census.*

[FR Doc. E6–4758 Filed 3–31–06; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

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

**ACTION:** Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation

**FOR FURTHER INFORMATION CONTACT:** Sheila E. Forbes, Office of AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

**SUPPLEMENTARY INFORMATION:**

### Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with section 351.213(2004) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

### Opportunity to Request a Review

Not later than the last day of April 2006[1], interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April for the following periods:

| Antidumping Duty Proceedings | Period |
|---|---|
| FRANCE: Sorbitol. | |
| A–427–001 | 4/1/05 - 3/31/06 |
| NORWAY: Fresh and Chilled Atlantic Salmon. | |
| A–403–801 | 4/1/05 - 3/31/06 |
| THE PEOPLE'S REPUBLIC OF CHINA: Automotive Replacement Glass Windshields. | |
| A–570–867 | 4/1/05 - 3/31/06 |
| THE PEOPLE'S REPUBLIC OF CHINA: Brake Rotors. | |
| A–570–846 | 4/1/05 - 3/31/06 |
| THE PEOPLE'S REPUBLIC OF CHINA: Magnesium Metal. | |
| A–570–896 | 10/4/04 - 3/31/06 |
| THE PEOPLE'S REPUBLIC OF CHINA: Non–Malleable Cast Iron Pipe Fittings. | |
| A–570–875 | 4/1/05 - 3/31/06 |
| RUSSIA: Magnesium Metal. | |
| A–821–819 | 10/4/04 - 3/31/06 |
| TURKEY: Certain Steel Concrete Reinforcing Bars. | |
| A–489–807 | 4/1/05 - 3/31/06 |

| Countervailing Duty Proceedings | Period |
|---|---|
| NORWAY: Fresh and Chilled Atlantic Salmon. | |
| C–403–802 | 1/1/05 - 12/31/05 |

| Suspension Agreements | |
|---|---|
| None | |

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

In accordance with section 351.213 (b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order–by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://ia.ita.doc.gov*.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of April 2006. If the Department does not receive, by the last day of April 2006, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the U.S. Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 27, 2006.

**Thomas F. Futtner,**

*Acting Office Director AD/CVD Operations, Office 4 Import Administration.*

[FR Doc. E6–4735 Filed 3–31–06; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

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

**ACTION:** Notice of Upcoming Sunset Reviews.

### Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

### Upcoming Sunset Reviews for May 2006

The following Sunset Reviews are scheduled for initiation in May 2006 and will appear in that month's Notice of Initiation of Five-year Sunset Reviews.

| Antidumping Duty Proceedings | Department Contact |
|---|---|
| Ferrovanadium & Nitrided Vanadium from Russia (A–821–807) (2nd Review) ..... | Brandon Farlander (202) 482–0182 |
| **Countervailing Duty Proceedings**. | |
| No countervailing duty proceedings are scheduled for initiation in May 2006.. | |
| **Suspended Investigations**. | |
| No suspended investigations are scheduled for initiation in May 2006.. | |

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3--Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR

18871 (April 16, 1998) (''Sunset Policy Bulletin''). The Notice of Initiation of Five-year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 16, 2006.

**Thomas F. Futtner,**

*Acting Office Director, AD/CVD Operations, Office 4, for Import Administration.*

[FR Doc. E6–4734 Filed 3–31–06; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Five-year (''Sunset'') Reviews

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

**SUMMARY:** In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''Sunset Reviews'') of the antidumping duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-year Review* which covers these same orders.

**EFFECTIVE DATE:** April 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** The Department official identified in the *Initiation of Review(s)* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW, Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

**SUPPLEMENTARY INFORMATION:**

### Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3 – *Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

### Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping duty orders:

| DOC Case No. | ITC Case No. | Country | Product | Department Contact |
|---|---|---|---|---|
| A–549–813 | 731–TA–706 | Thailand | Canned Pineapple Fruit (2nd Review) | Zev Primor (202) 482–4114 |
| A–570–835 | 731–TA–703 | PRC | Furfuryl Alcohol (2nd Review) | Jim Nunno (202) 482–0783 |
| A–549–812 | 731–TA–705 | Thailand | Furfuryl Alcohol (2nd Review) | Brandon Farlander (202) 482–0182 |
| A–588–856 | 731–TA–888 | Japan | Stainless Steel Angle | Brandon Farlander (202) 482–0182 |
| A–580–846 | 731–TA–889 | South Korea | Stainless Steel Angle | Brandon Farlander (202) 482–0182 |
| A–469–810 | 731–TA–890 | Spain | Stainless Steel Angle | Brandon Farlander (202) 482–0182 |

### Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the Department's regulations regarding Sunset Reviews (19 CFR 351.218) and *Sunset Policy Bulletin*, the Department's schedule of Sunset Reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists available to the public on the Department's sunset Internet website at the following address: ''*http://ia.ita.doc.gov/sunset/*.'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

### Information Required from Interested Parties

Domestic interested parties (defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in these Sunset Reviews must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will

automatically revoke the orders without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order–specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order–specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: March 23, 2006.

**Thomas F. Futtner,**

*Acting Office Director AD/CVD Operations, Office 4 for Import Administration.*

[FR Doc. E6–4736 Filed 3–31–06; 8:45 am]

**BILLING CODE 3510–DS–S**

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–427–602, A–428–602, A–475–601, A–588–704]**

### Brass Sheet and Strip from France, Italy, Germany, and Japan: Continuation of Antidumping Duty Orders

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

**SUMMARY:** As a result of the determinations by the Department of Commerce (''the Department'') and the International Trade Commission (''ITC'') that revocation of the antidumping duty orders on brass sheet and strip from France, Italy, Germany, and Japan would likely lead to continuation or recurrence of dumping, and material injury to an industry in the United States, the Department is publishing notice of continuation of these antidumping duty orders.

**EFFECTIVE DATE:** April 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** Audrey Twyman or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3534 and (202) 482–0182, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On April 1, 2005, the Department initiated and on March 31, 2005, the ITC instituted sunset reviews of the antidumping duty orders on brass sheet and strip from France, Italy, Germany, and Japan pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[1]

As a result of its review, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping, and notified the ITC of the magnitude of the margins likely to prevail were the orders to be revoked.[2] On March 6, 2006, the ITC determined pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on brass sheet and strip from France, Italy, Germany, and Japan would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

#### Scope of the Orders

The product covered by these orders is brass sheet and strip (''BSS''), other than leaded and tinned BSS. The chemical composition of the covered product is currently defined in the Copper Development Association (''C.D.A.'') 200 Series or the Unified Numbering System (''U.N.S.'') C2000. These orders do not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the product covered by these orders has a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound–on-reels (traverse wound), and cut–to-length products are included.

The merchandise is currently classified under Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 7409.21.00 and 7409.29.00. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of these orders remains dispositive.

#### Determination

As a result of the determinations by the Department and the ITC that revocation of these antidumping duty orders would likely lead to continuation or recurrence of dumping, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on brass sheet and strip from France, Italy, Germany, and Japan.

U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year reviews of these orders not later than February 2011.

These five-year (sunset) reviews and this notice are in accordance with section 751(c) of the Act.

Dated: March 27, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6–4783 Filed 3–31–06; 8:45 am]

**BILLING CODE 3510–DS–S**

[1] *See Initiation of Five-Year (''Sunset'') Reviews*, 70 FR 16800 (April 1, 2005); and *Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, and Japan*, Investigations Nos. 701-TA-269 and 270, and 731-TA-311-314, 317, and 379 (Second Review), 70 FR 16519 (March 31, 2005).

[2] *See Brass Sheet and Strip from Brazil, Canada, France, Italy and Japan; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 70 FR 45650 (August 8, 2005); and *Brass Sheet and Strip from Germany: Final Results of the Full Sunset Review of the Antidumping Duty Order*, 71 FR 4348 (January 26, 2006).

[3] *See Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, and Japan*, Investigation Nos. 701-TA-269 and 731, and TA-311-314, 317, and 379 (Second Review), 71 FR 14719 (March 23, 2006).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–827]**

### Notice of Decision of the Court of International Trade: Certain Cased Pencils from the People's Republic of China

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

**SUMMARY:** On March 7, 2006, the Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) voluntary redetermination regarding the 2001–2002 antidumping duty administrative review of certain cased pencils (pencils) from the People's Republic of China (PRC). In its redetermination, the Department selected a new surrogate value for pencil cores which it used to recalculate the respondents' dumping margins. Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *The Timken Company v. United States and China National Machinery and Equipment Import and Export Corporation*, 893 F. 2d 337 (Fed. Cir. 1990) *(Timken)*, the Department is publishing this notice of the CIT's decision which is not in harmony with the Department's determination in the 2001–2002 antidumping duty administrative review of pencils from the PRC.

**EFFECTIVE DATE:** April 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** Magd Zalok or Howard Smith at (202) 482–4162 or (202) 482–5193, respectively; AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 21, 2004, the Department published in the **Federal Register**, the final results of its 2001–2002 antidumping duty administrative review of pencils from the PRC. *See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*; 69 FR 29266 (May 21, 2004). In that review, the Department used 2002 Monthly Statistics of the Foreign Trade of India (MSFTI) to value pencil cores.

During July 2004, several respondents in the 2001–2002 administrative review filed complaints with the CIT contesting, among other things, the Department's valuation of black and color pencil cores. On September 1, 2004, the Department filed a motion for a voluntary remand with the CIT with respect to the pencil core issue. On September 20, 2004, the CIT remanded this case to the Department to conduct further proceedings concerning the valuation of pencil cores. On December 20, 2004, the Department issued its redetermination in which it recalculated the respondents' dumping margins using a new surrogate value for pencil cores (*i.e.*, 2001 MSFTI data, adjusted for inflation, rather than 2002 MSFTI data). The recalculated dumping margins are as follows: 4.21 percent for Shandong Rongxin Import & Export Company, Ltd., 5.63 percent for Orient International Holding Shanghai Foreign Trade Co., Ltd., and 16.50 for China First Pencil Company, Ltd./Three Star Stationery Industry Corp.. The PRC–wide rate was not changed. See Final Results of Voluntary Redetermination Pursuant to Court Order, December 20, 2004. On March 7, 2006, the CIT sustained the Department's decision, including the redetermination. *See China First Pencil Co., Ltd., et al v. United States and Sanford Corporation, et al.* Slip Op. 06–34.

#### Notification

In its decision in *Timken*, the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish notice of a CIT decision which is ''not in harmony'' with the Department's determination. With respect to the valuation of pencil cores, the above–referenced CIT decision is not in harmony with the Department's determination in the final results of the 2001–2002 antidumping duty administrative review of pencils from the PRC. Therefore, publication of this notice fulfills the Department's obligation under 19 U.S.C. 1516a(e).

The Department will continue to suspend liquidation pending the expiration of the period to appeal the CIT's March 7, 2006, decision, or, if that decision is appealed, pending a ''conclusive'' decision by the Federal Circuit. Upon expiration of the period to appeal, or if the CIT's decision is appealed and the Federal Circuit's decision is not in harmony with the Department's determination in the 2001–2002 antidumping duty administrative review of pencils from the PRC, the Department will publish in the **Federal Register** a notice of amended final results for the 2001–2002 administrative review of pencils.

March 24, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6–4747 Filed 3–31–06; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**(A–427–808)**

### Certain Corrosion–Resistant Carbon Steel Flat Products from France: Notice of Rescission of Antidumping Duty Administrative Review

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

**SUMMARY:** On December 12, 2005, the Department of Commerce (the Department) published a notice of intent to rescind an administrative review of the antidumping duty (AD) order on certain corrosion–resistant carbon steel flat products (CORE) from France for the period August 1, 2004, through July 31, 2005. The Department received comments only from domestic interested parties. There were no requests for a public hearing in response to the intent to rescind notice. The Department is rescinding this administrative review pursuant to section 351.213(d) of the Department's regulations.

**EFFECTIVE DATE:** April 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** Stephen Bailey or Dena Crossland at (202) 482–0193 or (202) 482–3362, respectively; AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

#### Background

On August 19, 1993, the Department published an AD order on CORE from France. *See Antidumping Duty Order and Amendments to Final Determinations of Sales at Less Than Fair Value: Certain Hot–Rolled Carbon Steel Flat Products, Certain Cold–Rolled Carbon Steel Flat Products, Certain Corrosion–Resistant Carbon Steel Flat Products and Certain Cut–to-Length Carbon Steel Plate from France*, 58 FR 44169 (August 19, 1993). On August 1, 2005, the Department published a notice of opportunity to request an administrative review of the AD order on CORE from France for the period August 1, 2004, through July 31, 2005.

*See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 44085 (August 1, 2005). On August 31, 2005, United States Steel Corporation, petitioner, and Duferco Coating SA and Sorral SA, French producers and exporters of the subject merchandise, and Duferco Steel, Inc. (the U.S. importer of subject merchandise exported to the United States by Duferco Coating SA and Sorral SA) (collectively ''Duferco''), made timely requests that the Department conduct an administrative review of Duferco.[1] In its August 31, 2005, submission, Duferco requested that the Department conduct a review of its sale of subject merchandise to an unaffiliated customer during the period of review (POR), pursuant to section 351.213(e)(1), which states that an administrative review ''normally will cover, as appropriate, entries, exports, or sales of subject merchandise during the 12 months immediately preceding the most recent anniversary month.'' Duferco also requested that the Department rely on the entry summary date (August 11, 2004) for administrative review purposes, or align the AD administrative review period with the countervailing duty review period (*i.e.*, initiate an AD review for the period January 1, 2004, through December 31, 2004).

On September 23, 2005, petitioner formally objected to Duferco's request that the Department align the AD and CVD reviews, stating that this practice is not based on the statute, the Department's regulations, or precedent. On September 28, 2005, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), the Department published in the **Federal Register** a notice of initiation of this AD administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005). On October 7, 2005, the Department issued its AD questionnaire to Duferco.

On December 12, 2005, the Department published its intent to rescind the administrative review of the antidumping duty order on CORE from France for the period August 1, 2004, through July 31, 2005. *See Certain Corrosion–Resistant Carbon Steel Flat Products From France: Notice of Intent To Rescind Administrative Review*, 70 FR 73433 (December 12, 2005) (''*CORE Intent to Rescind Notice*''). On December 30, 2005, and January 3, 2006, respectively, Mittal Steel USA ISG, Inc. (Mittal Steel USA) and Nucor Corporation (Nucor), domestic interested parties, filed case briefs fully supporting the Department's decision. Duferco did not file either a case or rebuttal brief.

**Scope of the AD Order**

For purposes of this order, the products covered are corrosion–resistant carbon steel flat products, which covers flat–rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion–resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron–based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in the order are flat–rolled products of non–rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') – for example, products which have been beveled or rounded at the edges. Excluded from the order are flat–rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin–free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from the order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from the order are certain clad stainless flat–rolled products, which are three–layered corrosion–resistant carbon steel flat–rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat–rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

These HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

**Analysis of Comments Received**

In their case briefs, Mittal Steel USA and Nucor state that the Department should continue to: (1) Not deviate from its long–standing practice of reviewing ''entries'' rather than ''sales;'' (2) rely on the entry release date rather than the entry summary date; and, accordingly, (3) continue to conclude that there is no basis for continuing the instant administrative review.

Citing *Stainless Steel Sheet and Strip in Coils from Taiwan: Final Results of Antidumping Duty Administrative Review*, 67 FR 6682 (February 13, 2002) (*SSSS in Coils from Taiwan*), Nucor states that the Department determined that because Ta Chen, the Taiwanese respondent, had no entries of subject merchandise during the POR, rescission as to Ta Chen was warranted. See SSSS in Coils from Taiwan and accompanying Issues and Decision Memorandum at Comment 31. Nucor notes that the Department has also rescinded reviews due to the absence of entries during the POR in other cases.[2] Nucor asserts that this Departmental practice is consistent with the antidumping statute, which requires that the duties assessed on the subject merchandise correspond to the entries of such merchandise. *See* section 751(a)(2)(c) of the Act.

According to Mittal Steel USA, Duferco does not allege any other entries during the instant POR; therefore, there is no entry for which to

[1] On October 6, 2005, October 26, 2005, and November 15, 2005, respectively, Ispat Inland Inc., Mittal Steel USA ISG Inc., and Nucor Corporation submitted their entries of appearance as interested parties.

[2] *See, e.g., Stainless Steel Plate in Coils from Taiwan; Final Rescission of Antidumping Duty Administrative Review*, 69 FR 20859, 20861 (April 19, 2004); *Stainless Steel Bar from Italy; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 17656 (April 7, 2005); *Petroleum Wax Candles from the People's Republic of China; Preliminary Intent To Rescind the Antidumping New Shipper Review of Shanghai R&R Import/Export Co. Ltd.*, 69 FR 46509 (August 3, 2004); and *Stainless Steel Butt-Weld Pipe Fittings from Taiwan; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 40859 (July 7, 2004).

assess cash deposit rates, and thus, no review for the Department to conduct. Both Mittal Steel and Nucor note that both the Court of Appeals for the Federal Circuit (''CAFC'') and the United States Court of International Trade (''CIT'') have upheld the Department's practice of only conducting a review where there were entries during the POR.[3]

Furthermore, Mittal Steel USA argues that the circumstances by which the Department may use its discretion to review ''sales'' rather than ''entries'' are not present in the instant case, *e.g.*, middleman dumping is alleged or examined, where the Department imposes an antidumping duty order on sales.[4]

Regarding the question of whether the Department should use the ''entry summary date'' for Duferco's subject merchandise as the ''entry date,'' Nucor states that Duferco does not contest the fact that the subject merchandise entered the United States before the POR; rather, Duferco argues in the alternative that the ''entry summary date'' reported in box 3 of CBP Form 7501 falls within the POR. Nucor argues that for the Department to continue the instant review based on an entry prior to the POR is not only contrary to the statute and the Department's precedents, but also allows Duferco to have ''two bites at the apple,'' given that Duferco also had an opportunity to request a review of this entry in the 2003–2004 administrative review. Mittal Steel USA adds that the Department's determination was based on the fact that the date of release is the date that the subject merchandise entered the U.S. for consumption. Thus, according to Mittal Steel USA and Nucor, the Department properly denied Duferco's request to use the entry summary date and should instead rely on the entry release date, which reflects that there were no entries for consumption during the POR.

**Department's Position**

We agree with Mittal Steel USA and Nucor. Pursuant to section 351.213(d)(3) of the Department's regulations, the Department will rescind an administrative review in whole or only with respect to a particular exporter or producer if we conclude that during the POR there were ''no entries, exports, or sales of the subject merchandise.'' As stated in the *CORE Intent to Rescind Notice*, it is the Department's consistent, long–standing practice, supported by substantial precedent, to require that there be entries during the POR upon which to assess antidumping duties, irrespective of the export–price or constructed export–price designation of the U.S. sales. *See, e.g., Granular Polytetrafluoroethylene Resin from Japan: Notice of Rescission of Antidumping Duty Administrative Review*, 70 FR 44088 (August 1, 2005), and *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 69 FR 20859 (April 19, 2004). Moreover, as stated above in Mittal Steel USA's and Nucor's comments, in *Allegheny Ludlum*, the CAFC upheld the Department's discretion to determine not to conduct annual reviews, where there were no entries during the POR. *See Allegheny Ludlum*, 346 F.3d 1368 (Fed. Cir. 2003). As also stated in the *CORE Intent to Rescind Notice*, Duferco was given the opportunity to request a review of its entries in the review period in which such entries occurred. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 56745 (Sept. 22, 2004).

There is sufficient information on the record to establish the absence of entries or shipments with respect to Duferco during the POR. In particular, the Department conducted an internal customs data query, which determined that Duferco had no entries of subject merchandise into the United States during the POR. Additionally, the Department carefully examined U.S. Customs and Border Protection (CBP) entry documentation provided by Duferco and noted that the entry release date was prior to the current POR. *See* Duferco Coating SA and Sorral SA, and Duferco Steel Inc. submission regarding documentation relating to all entrie(s) or sale(s) made by Duferco during the review period, dated November 2, 2005. As discussed in the *CORE Intent to Rescind Notice*, and contrary to Duferco's previous arguments in its August 31, 2005, submission, (as noted above Duferco did not submit any comments for purposes of these final results), the Department relied on entry release date (the entry date in box 4 on CBP Form 7501) rather than entry summary date, because under the circumstances here, this is the date CBP uses to establish the date when merchandise has been entered, or withdrawn from warehouse, for consumption in the United States. *See also Certain Cut–to-Length Carbon Steel Plate from Romania: Final Results of Antidumping Duty Administrative Review*, 66 FR 2879 (January 12, 2001) and corresponding Issues and Decision Memorandum at Comment 1.

Given that Duferco had no entries of subject merchandise during the POR and that Duferco has no entry under suspension of liquidation that corresponds to the sale which occurred during the POR, we would be unable to assess any antidumping duties resulting from this administrative review. Furthermore, the record in this proceeding does not support a conclusion that the Department should deviate from our normal practice of conducting administrative reviews of entries rather than sales. Accordingly, we are rescinding the 2004–2005 administrative review of CORE from France pursuant to section 351.213(d)(3) of the Department's regulations.

**Rescission of Administrative Review**

Pursuant to section 351.213(d)(3), the Department will rescind an administrative review in whole or only with respect to a particular exporter or producer if we conclude that during the period of review there were ''no entries, exports or sales of the subject merchandise, as the case may be.'' The Department's practice, supported by substantial precedent, is to review entries during the period of review, because the Department requires entries upon which to assess antidumping duties, irrespective of the export–price or constructed export–price designation of U.S. sales. *See, e.g., Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 68 FR 63067 (November 7, 2003); *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 69 FR 20859 (April 19, 2004). Accordingly, we are rescinding this administrative review.

**Assessment**

The Department will instruct CBP to assess antidumping duties on all appropriate entries. In accordance with the Department's clarification of its assessment policy (*see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003)), in the event any entries of merchandise produced by Duferco were made during the POR through intermediaries under the CBP case number for Duferco, the Department will instruct CBP to liquidate such entries at the all–others rate in effect on the date of entry. The

[3] *See, e.g., Allegheny Ludlum v. United States*, 346 F.3d 1368 (Fed. Cir. 2003); *Chia Far Industrial Factory Co., Ltd. v. United States*, 343 F.2d 1344, 1373-74 (CIT 2004).

[4] *See Antidumping Duty Order and Amendments to Final Determinations of Sales at Less Than Fair Value: Certain Corrosion-Resistant Carbon Steel Flat Products from France, et al.*, 58 FR 44169, 44170 (August 19, 1993) (assessing antidumping duties on ''entries'' of CORE from France).

Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice.

### Cash Deposit Rates

For Duferco, the cash deposit rate will continue to be 29.41 percent. *See Certain Hot–Rolled Carbon Steel Flat Products, Certain Cold–Rolled Carbon Steel Flat Products, Certain Corrosion–Resistant Carbon Steel Flat Products, and Certain Cut–to-Length Carbon Steel Plate From France; Notice of Final Court Decision and Amended Final Determinations*, 61 FR 51274, October 1, 1996. This cash deposit rate shall remain in effect until publication of the final results of the next administrative review involving Duferco.

### Notification to Importers

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

### Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is published in accordance with section 777(i) of the Act and section 351.213(d)(4) of the Department's regulations.

Dated: March 24, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6–4742 Filed 3–31–06; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–331–802]**

### Notice of Extension of Time Limit for the Preliminary Results of New Shipper Review: Certain Frozen Warmwater Shrimp from Ecuador

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

**EFFECTIVE DATE:** April 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** David J. Goldberger or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–3773, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On October 3, 2005, the Department of Commerce (''the Department'') published the notice of initiation of this new shipper review of the antidumping duty order on frozen warmwater shrimp from Ecuador, covering the period August 4, 2004, through July 31, 2005. *See Notice of Initiation of New Shipper Antidumping Duty Review: Certain Frozen Warmwater Shrimp from Ecuador*, 70 FR 57562 (October 3, 2005). The preliminary results for this new shipper review are currently due no later than March 27, 2006.

### Extension of Time Limits for Preliminary Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(i)(2), require the Department to issue preliminary results within 180 days after the date on which the new shipper review was initiated. However, if the Department concludes that the case is extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2) allow the Department to extend the 180-day period to a maximum of 300 days.

Pursuant to section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the

Department determines that this review is extraordinarily complicated. In particular, we recently issued the verification report and have determined that additional time is needed to fully evaluate items raised in the report, including the basis for normal value. Accordingly, we are extending the time period for issuing the preliminary results of review by an additional 120 days, or until July 26, 2006, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2). The final results will be due 90 days after the date of issuance of the preliminary results, unless extended.

We are issuing and publishing this notice in accordance with sections 751(a)(2) and 777(i)(1) of the Act.

Dated: March 24, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretaryfor Import Administration.*

[FR Doc. E6–4743 Filed 3–31–06; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–827]**

### Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico: Notice of Intent to Rescind Administrative Review

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

**SUMMARY:** On September 28, 2005, we published the notice of initiation of this antidumping duty administrative review with respect to Tubos de Acero de Mexico, S.A. (''TAMSA''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005). We have preliminarily determined that the review of TAMSA should be rescinded.

**EFFECTIVE DATE:** April 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** Victoria Cho or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 480–5075 or (202) 482–1167, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 1, 2005, the Department of Commerce (''the Department'') published in the **Federal Register** the notice of the ''Opportunity to Request Administrative Review'' of the antidumping duty order on certain large diameter carbon and alloy seamless standard, line, and pressure pipe (''SLP'') from Mexico, for the period August 1, 2004, through July 31, 2005 (70 FR 44085). On October 19, 2005, we received a request from the petitioner[1]

[1] The petitioner is United States Steel Corporation.

to review TAMSA. On September 28, 2005, we published the notice of initiation of this antidumping duty administrative review with respect to TAMSA. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005). On October 27, 2005, TAMSA submitted a letter certifying that neither TAMSA nor its U.S. affiliate, Tenaris Global Services USA (''Tenaris''), directly or indirectly, exported or sold for consumption in the United States any subject merchandise during the period of review (''POR'').

**Scope of the Order**

The products covered are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials (''ASTM'') A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and the American Petroleum Institute (''API'') 5L specifications and meeting the physical parameters described below, regardless of application, with the exception of the exclusions discussed below. The scope of this order also includes all other products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification, with the exception of the exclusions discussed below. Specifically included within the scope of this order are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall–thickness, manufacturing process (hot finished or cold–drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this order are currently classifiable under subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.31.60.50, 7304.39.00.36 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.60, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

Specifications, Characteristics, and Uses: Large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (''ASME'') code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes in large diameters is for use as oil and gas distribution lines for commercial applications. A more minor application for large diameter seamless pipes is for use in pressure piping systems by refineries, petrochemical plants, and chemical plants, as well as in power generation plants and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

The scope of this order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the exclusions discussed below, whether or not also certified to a non–covered specification. Standard, line, and pressure applications and the above–listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of this review.

Specifically excluded from the scope of this order are:

A. Boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications.

B. Finished and unfinished oil country tubular goods (''OCTG''), if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

C. Products produced to the A–335 specification unless they are used in an application that would

normally utilize ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications.

D. Line and riser pipe for deepwater application, *i.e.*, line and riser pipe that is (1) used in a deepwater application, which means for use in water depths of 1,500 feet or more; (2) intended for use in and is actually used for a specific deepwater project; (3) rated for a specified minimum yield strength of not less than 60,000 psi; and (4) not identified or certified through the use of a monogram, stencil, or otherwise marked with an API specification (*e.g.*, ''API 5L'').

With regard to the excluded products listed above, the Department will not instruct U.S. Customs and Border Protection to require end–use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being utilized in a covered application. If such information is provided, the Department will require end–use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in a covered application as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A–335 specification is being used in an A–106 application, it will require end–use certifications for imports of that specification. Normally, the Department will require only the importer of record to certify to the end–use of the imported merchandise. If it later proves necessary for adequate implementation, the Department may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

### Intent to Rescind Fifth Administrative Review

TAMSA submitted a letter on October 27, 2005, certifying that neither TAMSA nor its U.S. affiliate, Tenaris, directly or indirectly, exported or sold for consumption in the United States any subject merchandise during the POR. The petitioner did not comment on TAMSA's no–shipment claim.

We conducted an internal customs data query on November 8, 2005. *See* November 9, 2005, Memorandum to The File through James Terpstra, Program Manager, entitled ''Internal Customs Data Query,'' A–201–827. The data query indicated TAMSA and its U.S. affiliate, Tenaris, had customs entries/shipments during the POR, some of which entered under the HTSUS number for subject merchandise. However, we confirmed that AD/CVD duties were not assessed on the shipments because the entries/shipments were excluded from the order (*e.g.*, SLP used for deepwater application), and we were able to confirm that TAMSA had no entries, exports, or sales to the United States of subject merchandise during the POR.

Based on our analysis of the shipment data, TAMSA is a non–shipper for this review. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, and consistent with our practice, we preliminarily determine to rescind this review. *See e.g.*, *Stainless Steel Bar from India; Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review, and Partial Rescission of Administrative Review*, 65 FR 12209 (March 8, 2000); *Persulfates From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review*, 65 FR 18963 (April 10, 2000).

### Public Comment

An interested party may request a hearing within 30 days of publication of this preliminary notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs no later than 30 days after the date of publication of this preliminary notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in such briefs, may be filed no later than five days after the time limit for filing the case brief 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final notice, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of this preliminary notice.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d).

Dated: March 24, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretaryfor Import Administration.*

[FR Doc. E6–4741 Filed 3–31–06; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**(A–580–839, A–583–833)**

### Certain Polyester Staple Fiber from the Republic of Korea and Taiwan: Continuation of Antidumping Duty Orders

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

**SUMMARY:** As a result of the determinations by the Department of Commerce and the International Trade Commission that revocation of the antidumping duty orders certain polyester staple fiber from the Republic of Korea and Taiwan would likely lead to continuation or recurrence of dumping, and material injury to an industry in the United States, the Department is publishing notice of continuation of these antidumping duty orders.

**EFFECTIVE DATE:** April 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** Yasmin Bordas or Andrew McAllister, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–3813 or (202) 482–1174, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 1, 2005, the Department of Commerce (''the Department'') initiated and on March 31, 2005, the International Trade Commission (''the ITC'') instituted sunset reviews of the antidumping duty orders on certain polyester staple fiber (''PSF'') from the Republic of Korea (''Korea'') and Taiwan pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[1]

As a result of its review, the Department found that revocation of the

[1] *See Initiation of Five-Year (''Sunset'') Reviews*, 70 FR 16800 (Apr. 1, 2005); and *Polyester Staple Fiber From Korea and Taiwan*, Investigations Nos. 731-TA-825 and 826 (Review), 70 FR 16522 (Mar. 31, 2005).

antidumping duty orders would likely lead to continuation or recurrence of dumping, and notified the ITC of the magnitude of the margins likely to prevail were the orders to be revoked.[2] On March 7, 2006, the ITC determined pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on PSF from Korea and Taiwan would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

**Scope of the Orders**

For the purposes of these orders, the product covered is PSF. PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to these orders may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheading 5503.20.00.20 is specifically excluded from these orders. Also specifically excluded from these orders are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low–melt PSF is excluded from these orders. Low–melt PSF is defined as a bi–component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to these orders is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the orders is dispositive.

**Determination**

As a result of the determinations by the Department and the ITC that revocation of these antidumping duty orders would likely lead to continuation or recurrence of dumping, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on PSF from Korea and Taiwan.

U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five–year reviews of these orders not later than February 2011.

These five–year (sunset) reviews and this notice are in accordance with section 751(c) of the Act, and published pursuant to section 777(i) of the Act.

Dated: March 27, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6–4782 Filed 3–31–06; 8:45 am]

BILLING CODE 3510–DS–S

[2] *See Certain Polyester Staple Fiber from the Republic of Korea and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 70 FR 45368 (Aug. 5, 2005).

[3] *See Certain Polyester Staple Fiber from Korea and Taiwan*, Investigation Nos. 731-TA-825 and 826 (Review), 71 FR 14721 (Mar. 23, 2006).

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–351–826]**

### Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review

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

**EFFECTIVE DATE:** April 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** Helen Kramer or David Kurt Kraus, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0405 or (202) 482–7871, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 1, 2005, the Department published a notice of opportunity to request an administrative review of the antidumping order on seamless line and pressure pipe from Brazil for the period of review (''POR'') August 1, 2004, through July 31, 2005. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 44085 (August 1, 2005). On August 31, 2005, United States Steel Corporation (''US Steel''), the petitioner, requested that we conduct an administrative review of V&M do Brazil S.A. (''VMB'') sales to the United States during the POR. On September 28, 2005, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the POR August 1, 2004, through July 31, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005). The preliminary results for this review are currently due no later than May 3, 2006.

**Extension of Time Limits for Preliminary Results**

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213(h)(2), the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within 245 days after the last day of the anniversary month of the date of publication of the order for which the administrative review was requested.

The Department has determined it is not practicable to complete this review within the originally anticipated time limit, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), because the Department requires additional time to issue a second supplemental questionnaire and resolve cost issues, and because of its workload. Therefore, the Department is extending the time limit for the preliminary results by 30 days, to not later than June 2, 2006. The deadline for the final results of this review will continue to be 120 days after the publication of the preliminary results.

This extension is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: March 23, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E6–4745 Filed 3–31–06; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–821–802]**

### Preliminary Results of Sunset Review of Suspended Antidumping Duty Investigation on Uranium From the Russian Federation

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

**SUMMARY:** On July 1, 2005, the Department of Commerce (''the Department'') initiated the second sunset review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (''*Suspension Agreement*'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Notice of Initiation of Five-year (''Sunset'') Reviews*, 70 FR 38101 (July 1, 2005) (''*Sunset Initiation*''). On January 17, 2006, the Department determined that it would conduct a full sunset review of the *Suspension Agreement*. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty suspension agreement would likely lead to continuation or recurrence of dumping at the levels indicated in the Preliminary Results of Review section of this notice.

**EFFECTIVE DATE:** April 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** Sally Gannon or Aishe Allen, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–0162, or 482–0172, respectively.

**SUPPLEMENTARY INFORMATION:**

### History of the Suspension Agreement

On December 5, 1991, the Department published in the **Federal Register** a notice of initiation of the antidumping duty investigation on uranium from the Union of Soviet Socialist Republics (''USSR'') (56 FR 63711). On December 10, 1992, the Department received a letter of appearance on behalf of Techsnabexport Ltd. (''TENEX''), NUEXCO Trading Corporation (''NUEXCO'') and Global Nuclear Services and Supply Ltd. (''GNSS''). On December 23, 1991, the U.S. International Trade Commission (''ITC'') issued an affirmative preliminary injury determination.

On December 25, 1991, the USSR dissolved and the United States subsequently recognized the twelve newly independent states (''NIS'') which emerged: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation (Russia), Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. The Department continued the investigations against each of these twelve countries. On June 3, 1992, the Department issued an affirmative preliminary determination that uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan was being sold at less–than-fair–value by a weighted–average dumping margin of 115.82 percent, and a negative determination regarding the sale of uranium from Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan (57 FR 23380).

On October 30, 1992, the Department suspended the antidumping duty investigations involving uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan on the bases of agreements by the countries' respective governments to restrict the volume of direct or indirect exports to the United States in order to prevent the suppression or undercutting of price levels of United States domestic uranium. *See Antidumping; Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations*, 57 FR 49220 (October 30, 1992). The Department also amended its preliminary determination to include highly–enriched uranium (''HEU'') in the scope of the investigations (57 FR 49220, 49235).

The first amendment to the *Suspension Agreement*, effective on March 11, 1994, authorized matched sales in the United States of Russian–origin and U.S.-origin natural uranium and separative work units (''SWU''). *See Amendment to Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 59 FR 15373 (April 1, 1994). The amendment also extended the duration of the *Suspension Agreement* to March 31, 2004. *See Id.*

The *Suspension Agreement* was amended a second time, effective on October 3, 1996. The Department and the Government of Russia agreed to: (1) permit the sale in the United States of Russian low–enriched uranium (''LEU'') derived from HEU, making the suspension agreement consistent with the USEC Privatization Act; (2) restore previously unused quotas for SWU, and (3) include within the scope of the *Suspension Agreement*, Russian uranium which has been enriched in a third country. *See Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 61 FR 56665 (November 4, 1996). According to the amendment, these modifications would remain in effect until the date two years after the effective date of this amendment. *See Id.* 61 FR at 56667.

A third amendment to the *Suspension Agreement*, effective on May 7, 1997, doubled the amount of Russian–origin uranium that may be imported into the United States for further processing prior to re–exportation, and lengthened the period of time uranium may remain in the United States for such processing to up to three years. *See Amendment to Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 62 FR 37879 (July 15, 1997).

On July 31, 1998, the Department notified interested parties of a change in the administration of matched sales in that the Department would, effective immediately, use a calendar year quota accounting rather than the previously–used delivery year quota accounting. *See Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 63 FR 40879 (July 31, 1998).

On August 2, 1999, the Department published a notice of initiation of the first five-year sunset review of the *Suspension Agreement. See Notice of Initiation of Five-year (''Sunset'') Reviews*, 64 FR 41915 (August 2, 1999). On July 5, 2000, the Department published its notice of the final results of the full sunset review, finding that revocation of the antidumping duty suspension agreement would likely lead to continuation or recurrence of dumping at a percentage weighted–average margin of 115.82 percent for all Russian manufacturers/exporters. *See Notice of Final Results of Full Sunset Review: Uranium from Russia*, 65 FR 41439 (July 5, 2000). On August 22, 2000, the Department published a notice of continuation of the suspended antidumping duty investigation on uranium from Russia pursuant to the Department's affirmative determination and the ITC's affirmative determination that termination of the *Suspension Agreement* would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Notice of Continuation of Suspended Antidumping Duty Investigation: Uranium from Russia*, 65 FR 50958 (August 22, 2000).

There have been no completed administrative reviews of the *Suspension Agreement*. The *Suspension Agreement* remains in effect for all

manufacturers, producers, and exporters of uranium from Russia.

**Scope of the Review**

According to the June 3, 1992, preliminary determination, the suspended investigation of uranium from Russia encompassed one class or kind of merchandise.[1] The merchandise included natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing natural uranium or natural uranium compound; uranium enriched in U235 and its compounds; alloys dispersions (including cermets), ceramic products and mixtures containing uranium enriched in U235 or compounds or uranium enriched in U235; and any other forms of uranium within the same class or kind. The uranium subject to this investigation was provided for under subheadings 2612.10.00.00, 2844.10.10.00, 2844.10.20.10, 2844.10.20.25, 2844.10.20.50, 2844.10.20.55, 2844.10.50, 2844.20.00.10, 2844.20.00.20, 2844.20.00.30, and 2844.20.00.50 of the Harmonized Tariff Schedule of the United States (''HTSUS'').[2] In addition, the Department preliminarily determined that HEU (uranium enriched to 20 percent or greater in the isotope uranium–235) is not within the scope of the investigation. On October 30, 1992, the Department issued a suspension of the antidumping duty investigation of uranium from Russia and an amendment of the preliminary determination.[3] The notice amended the scope of the investigation to include HEU.[4] Imports of uranium ores and concentrates, natural uranium compounds, and all other forms of enriched uranium were classifiable under HTSUS subheadings 2612.10.00, 2844.10.20, 2844.20.00, respectively. Imports of natural uranium metal and forms of natural uranium other than compounds were classifiable under HTSUS subheadings 2844.10.10 and 2844.10.50.[5]

In addition, Section III of the *Suspension Agreement* provides that uranium ore from Russia that is milled into U3O8 and/or converted into UF6 in another country prior to direct and/or indirect importation into the United States is considered uranium from Russia and is subject to the terms of the Suspension Agreement, regardless of any subsequent modification or blending. In addition, Section M.1 of the *Suspension Agreement* in no way prevents Russia from selling directly or indirectly any or all of the HEU in existence at the time of the signing of the agreement and/or LEU produced in Russia from HEU to the Department of Energy (''DOE''), its governmental successor, its contractors, or U.S. private parties acting in association with DOE or the USEC and in a manner not inconsistent with the Suspension Agreement between the United States and Russia concerning the disposition of HEU resulting from the dismantlement of nuclear weapons in Russia.

There were three amendments to the *Suspension Agreement* on Russian uranium. In particular, the second amendment to the *Suspension Agreement*, on November 4, 1996, permitted, among other things, the sale in the United States of Russian LEU derived from HEU and included within the scope of the *Suspension Agreement* Russian uranium which has been enriched in a third country prior to importation into the United States.[7] According to the amendment, these modifications remained in effect until October 3, 1998.[8]

On August 6, 1999, USEC, Inc. and its subsidiary, United States Enrichment Corporation (collectively, ''USEC'') requested that the Department issue a scope ruling to clarify that enriched uranium located in Kazakhstan at the time of the dissolution of the Soviet Union is within the scope of the Russian suspension agreement. Respondent interested parties filed an opposition to the scope request on August 27, 1999. That scope request is pending before the Department at this time.

**Statute and Regulations**

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''Sunset Regulations'') and in CFR Part 351 (1999) in general.

**Background**

On July 1, 2005, the Department initiated the second sunset review of the *Suspension Agreement* pursuant to section 751(c) of the Tariff Act of 1930. *See Sunset Initiation*. We invited parties to comment. On July 18, 2005, we received Notices of Intent to Participate on behalf of Power Resources, Inc. (''PRI'') and Crow Butte Resources, Inc. (''Crow Butte''), U.S. producers of natural uranium; USEC, a U.S. producer of uranium products covered by the scope of the suspended investigation and the only U.S. enricher; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied–Industrial and Service Workers International Union, AFL–CIO, CLC (''USW''), a domestic interested party.[9]

On July 26, 2005, the Department extended the deadline for all interested parties to submit substantive responses from July 31, 2005 to August 30, 2005 and the deadline for rebuttal comments to September 6, 2005. *See Memorandum from Sally C. Gannon to Interested Parties dated July 26, 2005*.

On August 30, 2005, the Department received complete substantive responses to the *Sunset Initiation* from USEC, a U.S. producer primarily of enriched uranium hexafluoride (*i.e.*, LEU), and PRI and Crow Butte, U.S. producers of natural uranium. On August 30, 2005, the Department also received a complete substantive response to the *Sunset Initiation* from the Ad Hoc Utilities Group (''AHUG''), which is comprised of owners and operators of nuclear power plants that procure Russian

[1] The Department based its analysis of the comments on class or kind submitted during the proceeding and determined that the product under investigation constitutes a single class or kind of merchandise. The Department based its analysis on the ''Diversified'' criteria (see Diversified Products Corp. v. United States, 6 CIT 1555 (1983); see also Preliminary Determination of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determination of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan, 57 FR 23380, 23382 (June 3, 1992).

[2] *See Preliminary Determination of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determination of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan*, 57 FR 23380, 23381 (June 3, 1992).

[3] *See Antidumping; Uranium from Kazakhstan, Kyrgyszstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations*, 57 FR 49220 (October 30, 1992).

[4] *See* Id. at 49235.

[5] *See* Id.

[6] *See* Id. at 49235.

[7] *See Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 61 FR 56665 (November 4, 1996).

[8] *See* Id at 56667.

[9] USW notes that it is the successor-in-interest to the Paper, Allied-Industrial, Chemical & Energy Workers International Union, AFL-CIO, CLC (PACE), following a merger of the two unions on April 12, 2005. Furthermore, USW notes that PACE was the successor-in-interest to the Oil, Chemical and Atomic Workers International Union (OCAW), the original co-petitioner in the antidumping duty investigation, following a merger with the Paperworkers International Union in January 1999.

uranium feed and contract for uranium enrichment services (*i.e.*, SWU).[10]

The Department did not receive a substantive response to the Sunset Initiation from the Ministry of the Russian Federation for Atomic Energy (''MINATOM''), the original Russian government signatory to the *Suspension Agreement*, its successor agency, the Russian Federal Atomic Energy Agency (''Rosatom''), or any Russian exporter of subject merchandise. On September 9, 2005, USEC and AHUG submitted rebuttal comments regarding the August 30, 2005 substantive responses.

On November 10, 2005, the Department determined that the sunset review of the *Suspension Agreement* was extraordinarily complicated and required additional time for the Department to complete its analysis. Therefore, the Department extended the deadlines in this proceeding, stating that it intended to issue either the preliminary results of the full sunset review on January 17, 2006, and the final results on May 30, 2006, or the final results of the expedited review on January 27, 2006. *See Extension of Time Limit for Sunset Review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 70 FR 68397 (November 10, 2005) (*Review Extension*).

On January 13, 2006, AHUG submitted a letter to the Department with respect to recent court actions which occurred in the case of *Eurodif v. United States* (U.S. Court of Appeals for the Federal Circuit (''CAFC'') Case Nos. 01–1209, -1210). In its letter, AHUG states that the Department should remove SWU transactions from the scope of this Russian sunset review and the underlying restrictions imposed on uranium from Russia to be consistent with the CAFC's legal holdings in *Eurodif v. United States* and the direction of the U.S. Court of International Trade (CIT) on remand to the Department.

On January 17, 2006, the Department determined that it would conduct a full sunset review in this case. *See* Memorandum from Sally C. Gannon to Ronald K. Lorentzen entitled ''Sunset Review of Uranium from the Russian Federation: Adequacy of Domestic and Respondent Interested Party Responses to the Notice of Initiation and Decision to Conduct Full Sunset Review'' (January 17, 2006). The Department also determined on January 17, 2006, that it needed an additional 30 days to complete the preliminary results of this full sunset review. *See Extension of Time Limit for Sunset Review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 71 FR 3824 (January 24, 2006). On January 26, 2006, the Department notified the ITC of its decision to conduct a full review. *See* Letter from Sally C. Gannon to Robert Carpenter (January 26, 2006). On February 24, 2006, the Department extended the deadline for the preliminary results of this sunset review by an additional 35 days, until no later than March 24, 2006. *See Extension of Time Limit for Sunset Review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 71 FR 9522 (February 24, 2006).

**Analysis of Comments Received**

All issues raised by parties to this sunset review are addressed in the *Issues and Decision Memorandum for the Sunset Review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation; Preliminary Results (''Decision Memorandum'')* from Joseph A. Spetrini, Deputy Assistant Secretary for Policy and Negotiations, Import Administration, to David Spooner, Assistant Secretary, Import Administration, dated March 24, 2006, which is adopted by this notice. The issues discussed in the *Decision Memorandum* include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the suspended antidumping duty investigation to be terminated. Parties may find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Department of Commerce building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov/frn, under the heading ''April 2006.'' The paper copy and electronic version of the *Decision Memorandum* are identical in content.

**Preliminary Results of Review**

We preliminarily determine that termination of the suspended antidumping duty investigation on uranium from Russia would likely lead to a continuation or recurrence of dumping at the following percentage weighted–average margin:

| Exporter/manufacturer | Weighted–average margin (percent) |
|---|---|
| Russia–Wide ..... | 115.82 |

Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Interested parties may submit case briefs no later than April 17, 2006, in accordance with section 351.309(c)(1)(i) of the Department's regulations. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than April 24, 2006. Any hearing, if requested, will be held on April 26, 2006, in accordance with section 351.310(d) of the Department's regulations. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than May 30, 2006.

This sunset review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 24, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6–4738 Filed 3–31–06; 8:45 am]

BILLING CODE 3510–DS–S

[10] The following companies are members of AHUG: Ameren UE, Arizona Public Service, Constellation Energy Group, Inc., Dominion Energy Kewaunee, Inc., Dominion Nuclear Connecticut, Inc., Duke Energy Corp., Entergy Services, Inc., Exelon Corp., Florida Power & Light Co., FPL Energy Seabrook, LLC, Nebraska Public Power District, Nuclear Management Company, Pacific Gas & Electric Company, PPL Susquehanna, LLC, Progress Energy Carolinas, Inc., Progress Energy Florida, Inc., Southern California Edison Co., Southern Nuclear Operating Co., and TXU Generation Company LP, Virginia Electric & Power Co.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No.: 030602141–6087–37; I.D. 061505A]**

**RIN 0648–ZB55**

### Availability of Grant Funds for Fiscal Year 2006; Correction

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice; availability of grant funds; correction.

**SUMMARY:** This notice corrects two errors contained in the notice of availability of funds published in the **Federal Register** on March 27, 2006. That notice announced two project competitions: the National Sea Grant

College Program/Aquatic Invasive Species Program competition and the National Sea Grant College Program/Climate Program Office. This notice corrects an incorrect application deadline for the National Sea Grant College Program/Aquatic Invasive Species Program competition, and an incorrect Federal Opportunity Number listed for the National Sea Grant College Program/Climate Program Office competition.

**DATES:** Proposals for the National Sea Grant College Program/Aquatic Invasive Species Program competition must be received no later than 5 p.m. Eastern Time, April 24, 2006.

**SUPPLEMEMTARY INFORMATION:**

### Correction

The announcement for the National Sea Grant College Program/Aquatic Invasive Species Program competition (71 FR 15171, March 27, 2006) listed the application deadline as April 13, 2006. The correct application deadline is 5 p.m. Eastern Time, April 24, 2006.

The announcement for the National Sea Grant College Program/Climate Program Office competition (71 FR 15171, March 27, 2006) listed the Federal Opportunity Number as ''OA–SG–2006–2000586''. The correct Federal Opportunity Number is ''OAR–SG–2006–2000657''.

### Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

### Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

### Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

### Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

### Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: March 29, 2006.

**Mark E. Brown,**

*Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.*

[FR Doc. E6–4795 Filed 3–31–06; 8:45 am]

**BILLING CODE 3510–12–P**

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0150]**

## Federal Acquisition Regulation; Information Collection; Small Disadvantaged Business Procurement Credit Programs

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0150).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Small Business Procurement Credit Programs. This OMB clearance expires on June 30, 2006.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, 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; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before June 2, 2006.

**ADDRESSES:** Submit comments including suggestions for reducing this burden, to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT** Ms. Rhonda Cundiff, Contract Policy Division, GSA, (202) 501–0044.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

This FAR requirement concerning small disadvantaged procurement credit programs implements the Department of Justice proposal to reform affirmative action in Federal procurement, which was designed to ensure compliance with the constitutional standards established by the Supreme Court. The credits include price evaluation factor targets and certifications.

### B. Annual Reporting Burden

*Number of Respondents:* 7,900.

*Responses Per Respondent:* 9.11.

*Total Responses:* 72,000.

*Average Burden Hours Per Response:* 2.32.

*Total Burden Hours:* 167,370.

*OBTAINING COPIES OF PROPOSALS:* Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0150, Small Disadvantaged Business Procurement Credit Programs, in all correspondence.

Dated: March 29, 2006.

**Gerald Zaffos,**

*Director, Contract Policy Division.*

[FR Doc. 06–3167 Filed 3–31–06; 8:45 am]

**BILLING CODE 6820–EP–S**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Veterans' Advisory Board on Dose Reconstruction

**AGENCY:** Department of Defense, Defense Threat Reduction Agency.

**ACTION:** Notice of advisory board meeting.

**SUMMARY:** The Defense Threat Reduction Agency (DTRA) and the Department of Veterans Affairs (VA) will hold the third public meeting of the Veterans' Advisory Board on Dose Reconstruction (VBDR). The VBDR was established at the recommendation of the National Research Council report, entitled ''Review of the Dose Reconstruction Program of the Defense Threat Reduction Agency.'' The report recommended the need to establish an advisory board that will provide suggestions for improvements in dose reconstruction and claim adjudication procedures. The goal of VBDR is to provide guidance and oversight of the dose reconstruction and claims compensation programs for veterans of U.S.-sponsored atmospheric nuclear weapons tests from 1945–1962; veterans of the 1945–1946 occupation of Hiroshima and Nagasaki, Japan; and veterans who were prisoners of war in those regions at the conclusion of World War II. In addition, the advisory board will assist VA and DTRA in communicating with the veterans.

Radiation dose reconstruction has been carried out by the Department of Defense under the Nuclear Test Personnel Review (NTPR) program since the 1970s. DTRA is the executive agent for the NTPR program which provides participation data and actual or estimated radiation dose information to veterans and the VA.

Board members were selected to fulfill the statutory requirements mandated by Congress in section 601 of Public Law 108–183. The Board was appointed on June 3, 2005, and is comprised of 16 members. Board members were selected to provide expertise in historical dose reconstruction, radiation health matters, risk communications, radiation epidemiology, medicine, quality management, decision analysis and ethics in order to appropriately enable the VBDR to represent and address veterans' concerns.

The Board is governed by the provisions of the Federal Advisory Committee Act (FACA), PL 92–463, which sets forth standards for the formation and conduct of government advisory committees.

**DATES:** Thursday, June 8, 2006, 8:30 a.m.–11:45 a.m. and 3–5 p.m., including a public comment session from 1 to 2:30 p.m.; and Friday, June 9, 2006, from 8:30 a.m.–12:30 p.m. and 2:30–3:45 p.m., including a public comment session from 1:30–2:30 p.m.

**ADDRESSES:** Omni Austin Hotel Downtown, 700 San Jacinto Street, Austin, TX 78701.

*Agenda:* On Thursday, the meeting will open with an introduction of the Board. The following briefings will be presented: ''BEIR VII: Epidemiology and Models for Estimating Cancer Risks'' by Dr. Ethel Gilbert: ''Summary of Findings on Beta Dosimetry and Uncertainty From the Academy's Report on Dose Reconstructions for Atomic Veterans'' by Dr. Thomas Gesell; ''NTPR Dose Reconstruction and Veterans Communication Activities'' by Dr. Paul Blake; and ''VA Radiation Claims Compensation Program for Veterans'' by Mr. Thomas Pamperin.

On Friday, the four subcommittees established during the inaugural VBDR session, will report on their activities since January 2006. The subcommittees are the ''Subcommittee on DTRA Dose Reconstruction Procedures,'' the ''Subcommittee on VA Claims Adjudication Procedures,'' the ''Subcommittee on Quality Management and VA Process Integration with DTRA Nuclear Test Personnel Review Program,'' and the ''Subcommittee on Communication and Outreach.'' The Board will close with a discussion of the Subcommittee reports, future business and meeting dates.

**FOR FURTHER INFORMATION CONTACT:** The Veterans' Advisory Board on Dose Reconstruction hotline at 1–866–657–VBDR (8237).

**SUPPLEMENTARY INFORMATION:** May be found at *http://vbdr.org.*

Dated: March 28, 2006.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 06–3158 Filed 3–31–06; 8:45 am]

BILLING CODE 5001–06–M

## DEPARTMENT OF DEFENSE

### Defense Threat Reduction Agency

**[DOD–2006–05–0055]**

### Privacy Act of 1974; System of Records

**AGENCY:** Defense Threat Reduction Agency, DoD.

**ACTION:** Notice to Delete Systems of Records.

**SUMMARY:** The Defense Threat Reduction Agency is deleting a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974. (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on May 3, 2006 unless comments are received which result in a contrary determination.

**ADDRESSES:** Freedom of Information Act/Privacy Act Officer, Defense Threat Reduction, 8725 John J. Kingman Road, Stop 6201, Fort Belvoir, VA 22060–6201.

**FOR FURTHER INFORMATION CONTACT:** Ms. Brenda Carter at (703) 325–1205.

**SUPPLEMENTARY INFORMATION:** The Defense Threat Reduction Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 28, 2006.

**L. M. Bynum,**

*OSD Federal Register Liaison Officer, Department of Defense.*

**HDTRA 005**

**SYSTEM NAME:**

Manpower/Personnel Management System (December 14, 1998, 63 FR 68736).

*Reason:* The records are contained in systems of records that are maintained by the Office of Personnel Management (OPM), the Defense Finance and Accounting Service (DFAS), and the DoD military departments as follows:

OPM/GOVT–1, General Personnel Records (April 27, 2000, 65 FR 24732)

T7335, Defense Civilian Pay System (DCPS) (May 19, 2000, 65 FR 31888)

T7340, Defense Joint Military Pay System-Active Component (April 12, 1999, 64 FR 17629)

T7346, Defense Joint MIlitary Pay System-Reserve Component (April 12, 1999, 64 FR 17629)

A0600–8–104b, Official Military Personnel Record (August 8, 2004, 69 FR 51271)

N01070–3, Navy Military Personnel Records System (November 16, 2004, 69 FR 67128)

F036 AF PC C, Military Personnel Records System (October 13, 2000, 65 FR 60916)

MMN00006, Marine Corps Military Personnel Records (OQR/SRB) (April 8, 2002, 67 FR 16738)

[FR Doc. 06–3155 Filed 3–31–06; 8:45am]

BILLING CODE 5001–06–M

## DEPARTMENT OF DEFENSE

**[DOD–2006–OS–0056]**

## National Reconnaissance Office; Privacy Act of 1974; System of Records

**AGENCY:** National Reconnaissance Office.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The National Reconnaissance Office is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on May 3, 2006 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the FOIA/Privacy Official, National Reconnaissance Office, Information Access and Release, 14675 Lee Road, Chantilly, VA 20151–1715.

**FOR FURTHER INFORMATION CONTACT:** Contact the FOIA/NRO Privacy Official at (703) 227–9128.

**SUPPLEMENTARY INFORMATION:** The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 23, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 28, 2006.

**L. M. Bynum,**

*OSD Federal Register Liaison Officer, Department of Defense.*

### QNRO–10

**SYSTEM NAME:**

Inspector General Investigative Records (August 17, 2001, 66 FR 43237).

**CHANGES:**

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with: ''Individual's name, Social Security Number, employee number, company, parent organization, work telephone number, date of birth, home address, reports of investigations, reports of interviews, signed statements, correspondence, government forms, and internal NRO memoranda.''

* * * * *

**RETRIEVABILITY:**

Delete entry and replace with: ''Name, Social Security Number, and/or case category.''

* * * * *

### QNRO–10

**SYSTEM NAME:**

Inspector General Investigative Records.

**SYSTEM LOCATION:**

Office of the Inspector General, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Persons who are interviewed by or provide information to the National Reconnaissance Office (NRO) Office of Inspector General, and persons involved with or who have knowledge about a matter being investigated or reviewed by the Office of the Inspector General. These persons include NRO civilian and military personnel assigned or detailed to the NRO, persons with a contractual relationship with the NRO or who perform work under NRO contracts.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's name, Social Security Number, employee number, company, parent organization, work telephone number, date of birth, home address, reports of investigations, reports of interviews, signed statements, correspondence, government forms, and internal NRO memoranda.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

National Security Act of 1947, as amended, 50 U.S.C. 401 et seq.; 5 U.S.C. 301, Departmental Regulations; NRO Directive 22–3A; E.O. 12333; E.O. 12958; E.O. 12968; and E.O. 9397 (SSN).

**PURPOSE(S):**

Records are used to investigate allegations of misconduct or wrongdoing by NRO personnel related to violations of laws, rules, or regulations or to mismanagement, gross waste of funds, fraud or mismanagement on the part of persons assigned or detailed to the NRO, and to provide information to NRO management regarding personnel matters and for evaluating current and proposed programs, policies and activities, assignments, and requests for awards or promotions. Records are used by the NRO Inspector General and his/her staff, the NRO Director, the Director of the Central Intelligence Agency, and the Secretary of Defense to effect corrective personnel or other administrative action; to provide facts and evidence upon which to base prosecution; to provide information to other investigative elements of the Department of Defense, other Federal, State, or local agencies having jurisdiction over the substance of the allegations or a related investigative interest; to provide information upon which determinations may be made for individuals' suitability for various personnel actions including but not limited to retention, promotion, assignment, retirement in grade or selection for sensitive or critical positions in the Armed Forces or Federal service.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To appropriate officials within the Intelligence Community (Central Intelligence Agency, other Federal departments, agencies, inspectors generals and elements thereof) to the extent that the records concern NRO funds, personnel, property programs, operations, or contracts or when relevant to the official responsibilities of those organizations and entities; regarding personnel matters; and to evaluate current and proposed programs policies and activities, selected assignments and requests for awards or promotions.

To Federal, state, local, foreign or international agencies, or to an

individual or organization, when necessary to elicit information relevant to an NRO Inspector General investigation, inquiry, decision or recommendation.

To the Department of Justice or any other agency responsible for representing NRO interests in connection with a judicial, administrative, or other proceeding. To the Department of Justice or other Intelligence Community Inspector General or agency to the extent necessary to obtain information or advice on any matter relevant to an Office of Inspector General investigation;

To the President's Foreign Intelligence Advisory Board, and the Intelligence Oversight Board, and any successor organizations, when requested by those entities, or when the Inspector General determines that disclosure will assist in the performance of their oversight functions; and

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

**POLICES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper files and automated information system, maintained in computers and computer output products.

**RETRIEVABILITY:**

Name, Social Security Number, and/or case category.

**SAFEGUARDS:**

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these records are limited to the Inspector General staff whose official duties require such access.

**RETENTION AND DISPOSAL:**

Records are permanently maintained by NRO.

**SYSTEM MANGER(S) AND ADDRESS:**

Inspector General, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name and any aliases or nicknames, address, Social Security Number, current citizenship status, date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, and any aliases or nicknames, address, Social Security Number, current citizenship status, date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

**CONTESTING RECORD PROCEDURES:**

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3A and NRO Instruction 110–5A; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

**RECORD SOURCE CATEGORIES:**

Information is supplied by the individual, parties, other than the individual, as well as by personal records and documentation; subjects and suspects of NRO investigations; interview of witnesses, victims, and confidential sources. All types of records and information maintained by all levels of government, private industry, and non-profit organizations reviewed during the course of the investigation or furnished the NRO; and any other type of record deemed necessary to complete the NRO investigation.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would revealed the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 326. For additional information contact the system manager.

[FR Doc. 06–3157 Filed 3–31–06; 8:45am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Revised Non-Foreign Overseas Per Diem Rates

**AGENCY:** Per Diem, Travel and Transportation Allowance Committee, DOD.

**ACTION:** Notice of revised non-foreign overseas per diem rates.

**SUMMARY:** The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 243. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 243 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

**DATES:** *Effective Date:* April 1, 2006.

**SUPPLEMENTARY INFORMATION:** This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 242. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

Dated: March 28, 2006.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, DOD.*

**BILLING CODE 5001–06–P**

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| THE ONLY CHANGES IN CIVILIAN BULLETIN 243 ARE THE UPDATES TO THE RATES FOR ALASKA. | | | | |
| ALASKA | | | | |
| ADAK | 120 | 79 | 199 | 07/01/2003 |
| ANCHORAGE [INCL NAV RES] | | | | |
| 05/01 - 09/15 | 170 | 89 | 259 | 06/01/2004 |
| 09/16 - 04/30 | 95 | 81 | 176 | 06/01/2004 |
| BARROW | 159 | 95 | 254 | 05/01/2002 |
| BETHEL | 119 | 77 | 196 | 06/01/2004 |
| BETTLES | 135 | 62 | 197 | 10/01/2004 |
| CLEAR AB | 80 | 55 | 135 | 09/01/2001 |
| COLD BAY | 90 | 73 | 163 | 05/01/2002 |
| COLDFOOT | 135 | 71 | 206 | 10/01/1999 |
| COPPER CENTER | | | | |
| 05/01 - 09/30 | 129 | 75 | 204 | 04/01/2006 |
| 10/01 - 04/30 | 89 | 71 | 160 | 04/01/2006 |
| CORDOVA | | | | |
| 05/01 - 09/30 | 110 | 74 | 184 | 04/01/2005 |
| 10/01 - 04/30 | 85 | 72 | 157 | 04/01/2005 |
| CRAIG | | | | |
| 04/15 - 09/14 | 125 | 67 | 192 | 04/01/2006 |
| 09/15 - 04/14 | 95 | 64 | 159 | 04/01/2006 |
| DEADHORSE | 95 | 67 | 162 | 05/01/2002 |
| DELTA JUNCTION | 90 | 82 | 172 | 04/01/2006 |
| DENALI NATIONAL PARK | | | | |
| 06/01 - 08/31 | 122 | 66 | 188 | 04/01/2006 |
| 09/01 - 05/31 | 70 | 61 | 131 | 04/01/2006 |
| DILLINGHAM | 114 | 69 | 183 | 06/01/2004 |
| DUTCH HARBOR-UNALASKA | 121 | 84 | 205 | 04/01/2006 |
| EARECKSON AIR STATION | 80 | 55 | 135 | 09/01/2001 |
| EIELSON AFB | | | | |
| 05/01 - 09/15 | 169 | 88 | 257 | 04/01/2006 |
| 09/16 - 04/30 | 75 | 79 | 154 | 04/01/2006 |
| ELMENDORF AFB | | | | |
| 05/01 - 09/15 | 170 | 89 | 259 | 06/01/2004 |
| 09/16 - 04/30 | 95 | 81 | 176 | 06/01/2004 |
| FAIRBANKS | | | | |
| 05/01 - 09/15 | 169 | 88 | 257 | 04/01/2006 |
| 09/16 - 04/30 | 75 | 79 | 154 | 04/01/2006 |
| FOOTLOOSE | 175 | 18 | 193 | 06/01/2002 |
| FT. GREELY | 90 | 82 | 172 | 04/01/2006 |
| FT. RICHARDSON | | | | |
| 05/01 - 09/15 | 170 | 89 | 259 | 06/01/2004 |
| 09/16 - 04/30 | 95 | 81 | 176 | 06/01/2004 |
| FT. WAINWRIGHT | | | | |
| 05/01 - 09/15 | 169 | 88 | 257 | 04/01/2006 |
| 09/16 - 04/30 | 75 | 79 | 154 | 04/01/2006 |
| GLENNALLEN | | | | |
| 05/01 - 09/30 | 129 | 75 | 204 | 04/01/2006 |

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| 10/01 - 04/30 | 89 | 71 | 160 | 04/01/2006 |
| HAINES | 90 | 69 | 159 | 04/01/2006 |
| HEALY | | | | |
| 06/01 - 08/31 | 122 | 66 | 188 | 04/01/2006 |
| 09/01 - 05/31 | 70 | 61 | 131 | 04/01/2006 |
| HOMER | | | | |
| 05/15 - 09/15 | 125 | 73 | 198 | 04/01/2005 |
| 09/16 - 05/14 | 76 | 68 | 144 | 04/01/2005 |
| JUNEAU | | | | |
| 05/01 - 09/30 | 129 | 89 | 218 | 04/01/2006 |
| 10/01 - 04/30 | 79 | 84 | 163 | 04/01/2006 |
| KAKTOVIK | 165 | 86 | 251 | 05/01/2002 |
| KAVIK CAMP | 150 | 69 | 219 | 05/01/2002 |
| KENAI-SOLDOTNA | | | | |
| 05/01 - 08/31 | 129 | 92 | 221 | 04/01/2006 |
| 09/01 - 04/30 | 79 | 87 | 166 | 04/01/2006 |
| KENNICOTT | 189 | 85 | 274 | 04/01/2005 |
| KETCHIKAN | | | | |
| 05/01 - 09/30 | 135 | 82 | 217 | 04/01/2005 |
| 10/01 - 04/30 | 98 | 78 | 176 | 04/01/2005 |
| KING SALMON | | | | |
| 05/01 - 10/01 | 225 | 91 | 316 | 05/01/2002 |
| 10/02 - 04/30 | 125 | 81 | 206 | 05/01/2002 |
| KLAWOCK | | | | |
| 04/15 - 09/14 | 125 | 67 | 192 | 04/01/2006 |
| 09/15 - 04/14 | 95 | 64 | 159 | 04/01/2006 |
| KODIAK | | | | |
| 05/01 - 09/30 | 123 | 91 | 214 | 04/01/2006 |
| 10/01 - 04/30 | 99 | 88 | 187 | 04/01/2006 |
| KOTZEBUE | | | | |
| 05/15 - 09/30 | 141 | 86 | 227 | 02/01/2005 |
| 10/01 - 05/14 | 135 | 85 | 220 | 02/01/2005 |
| KULIS AGS | | | | |
| 05/01 - 09/15 | 170 | 89 | 259 | 06/01/2004 |
| 09/16 - 04/30 | 95 | 81 | 176 | 06/01/2004 |
| MCCARTHY | 189 | 85 | 274 | 04/01/2005 |
| METLAKATLA | | | | |
| 05/30 - 10/01 | 98 | 48 | 146 | 05/01/2002 |
| 10/02 - 05/29 | 78 | 47 | 125 | 05/01/2002 |
| MURPHY DOME | | | | |
| 05/01 - 09/15 | 169 | 88 | 257 | 04/01/2006 |
| 09/16 - 04/30 | 75 | 79 | 154 | 04/01/2006 |
| NOME | 120 | 84 | 204 | 04/01/2005 |
| NUIQSUT | 180 | 53 | 233 | 05/01/2002 |
| PETERSBURG | 80 | 62 | 142 | 06/01/2005 |
| POINT HOPE | 130 | 70 | 200 | 03/01/1999 |
| POINT LAY | 105 | 67 | 172 | 03/01/1999 |
| PORT ALSWORTH | 135 | 88 | 223 | 05/01/2002 |
| PRUDHOE BAY | 95 | 67 | 162 | 05/01/2002 |
| SEWARD | | | | |

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| 05/01 - 09/30 | 171 | 79 | 250 | 04/01/2006 |
| 10/01 - 04/30 | 69 | 69 | 138 | 04/01/2006 |
| SITKA-MT. EDGECUMBE | | | | |
| 05/01 - 09/30 | 119 | 75 | 194 | 04/01/2006 |
| 10/01 - 04/30 | 99 | 73 | 172 | 04/01/2006 |
| SKAGWAY | | | | |
| 05/01 - 09/30 | 135 | 82 | 217 | 04/01/2005 |
| 10/01 - 04/30 | 98 | 78 | 176 | 04/01/2005 |
| SLANA | | | | |
| 05/01 - 09/30 | 139 | 55 | 194 | 02/01/2005 |
| 10/01 - 04/30 | 99 | 55 | 154 | 02/01/2005 |
| SPRUCE CAPE | | | | |
| 05/01 - 09/30 | 123 | 91 | 214 | 04/01/2006 |
| 10/01 - 04/30 | 99 | 88 | 187 | 04/01/2006 |
| ST. GEORGE | 129 | 55 | 184 | 06/01/2004 |
| TALKEETNA | 100 | 89 | 189 | 07/01/2002 |
| TANANA | 120 | 84 | 204 | 04/01/2005 |
| TOGIAK | 100 | 39 | 139 | 07/01/2002 |
| UMIAT | 180 | 107 | 287 | 04/01/2005 |
| UNALAKLEET | 79 | 80 | 159 | 04/01/2003 |
| VALDEZ | | | | |
| 05/01 - 10/01 | 129 | 80 | 209 | 04/01/2006 |
| 10/02 - 04/30 | 79 | 75 | 154 | 04/01/2006 |
| WASILLA | | | | |
| 05/01 - 09/30 | 134 | 84 | 218 | 04/01/2006 |
| 10/01 - 04/30 | 80 | 79 | 159 | 04/01/2006 |
| WRANGELL | | | | |
| 05/01 - 09/30 | 135 | 82 | 217 | 04/01/2005 |
| 10/01 - 04/30 | 98 | 78 | 176 | 04/01/2005 |
| YAKUTAT | 110 | 68 | 178 | 03/01/1999 |
| [OTHER] | 80 | 55 | 135 | 09/01/2001 |
| AMERICAN SAMOA | | | | |
| AMERICAN SAMOA | 122 | 73 | 195 | 12/01/2005 |
| GUAM | | | | |
| GUAM (INCL ALL MIL INSTAL) | 135 | 90 | 225 | 06/01/2005 |
| HAWAII | | | | |
| CAMP H M SMITH | 129 | 96 | 225 | 05/01/2005 |
| EASTPAC NAVAL COMP TELE AREA | 129 | 96 | 225 | 05/01/2005 |
| FT. DERUSSEY | 129 | 96 | 225 | 05/01/2005 |
| FT. SHAFTER | 129 | 96 | 225 | 05/01/2005 |
| HICKAM AFB | 129 | 96 | 225 | 05/01/2005 |
| HONOLULU (INCL NAV & MC RES CTR) | 129 | 96 | 225 | 05/01/2005 |
| ISLE OF HAWAII: HILO | 105 | 80 | 185 | 05/01/2005 |
| ISLE OF HAWAII: OTHER | 150 | 92 | 242 | 05/01/2005 |
| ISLE OF KAUAI | 158 | 98 | 256 | 05/01/2005 |
| ISLE OF MAUI | 159 | 95 | 254 | 06/01/2004 |
| ISLE OF OAHU | 129 | 96 | 225 | 05/01/2005 |
| KEKAHA PACIFIC MISSILE RANGE FAC | 158 | 98 | 256 | 05/01/2005 |
| KILAUEA MILITARY CAMP | 105 | 80 | 185 | 05/01/2005 |
| LANAI | 400 | 153 | 553 | 05/01/2005 |

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| LUALUALEI NAVAL MAGAZINE | 129 | 96 | 225 | 05/01/2005 |
| MCB HAWAII | 129 | 96 | 225 | 05/01/2005 |
| MOLOKAI | 119 | 95 | 214 | 05/01/2005 |
| NAS BARBERS POINT | 129 | 96 | 225 | 05/01/2005 |
| PEARL HARBOR [INCL ALL MILITARY] | 129 | 96 | 225 | 05/01/2005 |
| SCHOFIELD BARRACKS | 129 | 96 | 225 | 05/01/2005 |
| WHEELER ARMY AIRFIELD | 129 | 96 | 225 | 05/01/2005 |
| [OTHER] | 72 | 61 | 133 | 01/01/2000 |
| MIDWAY ISLANDS | | | | |
| MIDWAY ISLANDS INCL ALL MILITARY | 100 | 65 | 165 | 07/01/2005 |
| NORTHERN MARIANA ISLANDS | | | | |
| ROTA | 129 | 88 | 217 | 06/01/2005 |
| SAIPAN | 121 | 91 | 212 | 06/01/2005 |
| TINIAN | 85 | 80 | 165 | 06/01/2005 |
| [OTHER] | 55 | 72 | 127 | 04/01/2000 |
| PUERTO RICO | | | | |
| BAYAMON | | | | |
| 04/11 - 12/23 | 155 | 71 | 226 | 01/01/2000 |
| 12/24 - 04/10 | 195 | 75 | 270 | 01/01/2000 |
| CAROLINA | | | | |
| 04/11 - 12/23 | 155 | 71 | 226 | 01/01/2000 |
| 12/24 - 04/10 | 195 | 75 | 270 | 01/01/2000 |
| FAJARDO [INCL CEIBA & LUQUILLO] | 82 | 54 | 136 | 01/01/2000 |
| FT. BUCHANAN [INCL GSA SVC CTR, | | | | |
| 04/11 - 12/23 | 155 | 71 | 226 | 01/01/2000 |
| 12/24 - 04/10 | 195 | 75 | 270 | 01/01/2000 |
| HUMACAO | 82 | 54 | 136 | 01/01/2000 |
| LUIS MUNOZ MARIN IAP AGS | | | | |
| 04/11 - 12/23 | 155 | 71 | 226 | 01/01/2000 |
| 12/24 - 04/10 | 195 | 75 | 270 | 01/01/2000 |
| MAYAGUEZ | 85 | 59 | 144 | 01/01/2000 |
| PONCE | 96 | 69 | 165 | 01/01/2000 |
| ROOSEVELT RDS & NAV STA | 82 | 54 | 136 | 01/01/2000 |
| SABANA SECA [INCL ALL MILITARY] | | | | |
| 04/11 - 12/23 | 155 | 71 | 226 | 01/01/2000 |
| 12/24 - 04/10 | 195 | 75 | 270 | 01/01/2000 |
| SAN JUAN & NAV RES STA | | | | |
| 04/11 - 12/23 | 155 | 71 | 226 | 01/01/2000 |
| 12/24 - 04/10 | 195 | 75 | 270 | 01/01/2000 |
| [OTHER] | 62 | 57 | 119 | 01/01/2000 |
| VIRGIN ISLANDS (U.S.) | | | | |
| ST. CROIX | | | | |
| 04/15 - 12/14 | 98 | 83 | 181 | 08/01/2003 |
| 12/15 - 04/14 | 135 | 87 | 222 | 08/01/2003 |
| ST. JOHN | | | | |
| 04/15 - 12/14 | 110 | 91 | 201 | 08/01/2003 |
| 12/15 - 04/14 | 185 | 98 | 283 | 08/01/2003 |
| ST. THOMAS | | | | |

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| 04/15 - 12/14 | 163 | 95 | 258 | 08/01/2003 |
| 12/15 - 04/14 | 220 | 99 | 319 | 08/01/2003 |
| WAKE ISLAND | | | | |
| WAKE ISLAND | 100 | 65 | 165 | 07/01/2005 |

[FR Doc. 06–3156 Filed 3–31–06; 8:45 am]

BILLING CODE 5001–06–C

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board Chairs Meeting

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site Specific Advisory Board (EM SSAB) Chairs. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

**DATES:** Thursday, April 27, 2006. 8:15 a.m.–5:15 p.m. Friday, April 28, 2006. 8:15 a.m.–12 p.m.

**ADDRESSES:** Cumberland House Hotel, 1109 White Avenue, Knoxville, Tennessee 37916. (865) 971–4663.

**FOR FURTHER INFORMATION CONTACT:** Douglas E. Frost, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5619.

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* The purpose of the EM SSAB is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

*Thursday, April 27, 2006*

8:15 a.m. Welcome and Overview, and review of meeting objectives, agenda, and ground rules.
8:45 a.m. Update on Waste Disposition Strategy.
10 a.m. Break.
10:15 a.m. Lessons Learned from Closures Sites.
11:15 a.m. Discussion of the FY 2007 Budget.
12 p.m. Public Comment Period.
12:15 p.m. Lunch.
1:15 p.m. Invited James Rispoli, Assistant Secretary for Environmental Management.
2 p.m. Invited Charlie Anderson, Principal Deputy Assistant Secretary for Environmental Management.
2:30 p.m. Break.
2:45 p.m. Round Robin: Top Three Site Issues.
2:45–3:30: Each Board has five minutes to present top three site issues.
3:30–4: Questions and discussion of issues presented.
4 p.m. Public Comment Period.
4: 15 p.m. Discussion of Any Proposed Project from the Chairs.
5 p.m. Review of Day's Discussion and Friday's Agenda.

*Friday, April 28, 2006*

8:15 a.m. Opening. Welcome and summary of Thursday's work.
8:30 a.m. Briefings by DOE/EM Staff.
9:15 a.m. Discuss possible product(s) to send to DOE or any issues that may warrant follow up.
10:45 a.m. Break.
11 a.m. EM SSAB Organizational Issues.
11:30 a.m. Public Comment Period.
11:45 a.m. Meeting Wrap-Up.
12 p.m. Adjourn.

*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 Doug Frost at the address above or by telephone at (202) 586–5619. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The 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:* Minutes of this meeting will be available for public review and copying at the U.S. Department of Energy Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4.p.m., Monday—Friday except Federal holidays. Minutes will also be available by calling Doug Frost at (202) 586–5619 and will be posted at *http://web.em.doe.gov/public/ssab/chairs.html.*

Issued at Washington, DC, on March 28, 2006.

**James N. Solit,**

*Advisory Committee Management Officer.*

[FR Doc. E6–4770 Filed 3–31–06; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Desert Southwest Customer Service Region-Rate Order No. WAPA–129

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Order Extending Network Integration Transmission and Ancillary Services Rates.

**SUMMARY:** This action is to extend the existing Rate Schedules PD–NTS1, INT–NTS1, DSW–SD1, DSW–RS1, DSW–FR1, DSW–EI1, DSW–SPR1, and DSW–SUR1 for the Desert Southwest Customer Service Region (DSW) network integration transmission services (NTS) for Parker-Davis Project (P–DP) and Pacific Northwest-Pacific Southwest Intertie Project (Intertie) and ancillary services for the Western Area Lower Colorado (WALC) control area through September 30, 2006. The

additional time is needed to accommodate changes in methodology due to recent events in the industry.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jack Murray, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2442, e-mail *jmurray@wapa.gov*.

**SUPPLEMENTARY INFORMATION:** By Delegation Order No. 00–037.00 approved December 6, 2001, the Secretary delegated: (1) The authority to develop power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (Commission).

Pursuant to applicable Delegation Orders and existing Department of Energy (DOE) procedures for public participation in power and transmission rate adjustments in 10 CFR part 903, Western's rate methodology for network integration transmission and ancillary services was submitted to the Commission for confirmation and approval on May 3, 1999, as supplemented on May 21, 1999. On January 20, 2000, in Docket No. EF99–5041–000, at 90 FERC 62,032, the Commission issued an order confirming, approving, and placing into effect on a final basis rate schedules for transmission and ancillary services from Western's DSW. Rate Order No. WAPA–84 was approved for a 5-year period, beginning April 1, 1999, and ending March 31, 2004. These rate schedules were extended by a series of Rate Orders through March 31, 2006, with the most recent Rate Order being Rate Order No. WAPA–121 (70 FR 15622, March 28, 2005).

Western entered into a rate adjustment process with a **Federal Register** notice published on October 12, 2005, beginning a public consultation and comment period that ended on January 10, 2006. The enactment of the Energy Policy Act of 2005, issues arising out of the Commission's implementation of that Act, and a recently proposed revision to the transmission revenue requirement for a separate Western project caused a reassessment of the proposed rates as presented in the public process. Western believes that the additional time afforded by extending the date for expiration of the network integration transmission and ancillary services will allow Western to validate these rate designs. Western's existing formulary network integration transmission and ancillary service schedules, which are recalculated annually, will sufficiently recover project expenses (including interest) and capital requirements through September 30, 2006.

Following review of Western's proposal within the DOE, I approve Rate Order No. WAPA–129, which extends the existing Network Integration Transmission and Ancillary Services Rates through September 30, 2006, or until superseded.

Dated: March 22, 2006.

**Clay Sell,**

*Deputy Secretary.*

## Deputy Secretary

*In the Matter of: Western Area Power Administration; Extension of the Network Integration; Transmission and Ancillary Service Rates; Order Confirming and Approving an Extension of The Desert Southwest Customer Service Region Network Integration Transmission and Ancillary Services Rates*

These service rate methodologies were established following section 302 of the Department of Energy (DOE) Organization Act, (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy (Secretary) the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902, (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts that specifically apply to the project system involved.

By Delegation Order No. 00–037.00 approved December 6, 2001, the Secretary delegated: (1) The authority to develop power and transmission rates on a non-exclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (Commission).

## Background

The existing rate, Rate Order No. WAPA–84, was approved for 5 years, beginning April 1, 1999, and ending March 31, 2004. These rate schedules were extended by a series of Rate Orders through March 31, 2006, with the most recent Rate being Rate Order No. WAPA–121 (70 FR 15622, March 28, 2005).

## Discussion

Western entered into a rate adjustment process with a **Federal Register** notice published on October 12, 2005, beginning a public consultation and comment period that ended on January 10, 2006. The enactment of the Energy Policy Act of 2005, issues arising out of the Commission's implementation of that Act, and a recently proposed revision to the transmission revenue requirement for a separate Western project caused a reassessment of the proposed rates as presented in the public process. Western believes that the additional time afforded by extending the date for the expiration of the network integration transmission and ancillary services will allow Western to validate these rate designs.

Therefore, time requirements make it necessary to extend the current rates pursuant to 10 CFR part 903.23(b). Upon its approval, Rate Order No. WAPA–121 will be extended under Rate Order No. WAPA–129.

## Order

In view of the above and under the authority delegated to me by the Secretary, I hereby extend for a period effective from April 1, 2006 and ending September 30, 2006, the existing Ancillary Rate Schedules DSW–SD1, DSW–RS1, DSW–FR1, DSW–EI1, DSW–SPR1, DSW–SUR1, and the existing network integration transmission rate schedules PD–NTS1, and INT–NTS1. These rates shall remain in effect through September 30, 2006, or until superseded.

Dated: March 22, 2006.

**Clay Sell,**

*Deputy Secretary.*

[FR Doc. E6–4777 Filed 3–31–06; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OA–2006–0278; FRL–8052–6]**

## Agency Information Collection Activities; Proposed Collection; Comment Request; MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Interagency Agreements; EPA ICR No. 2212.02, OMB Control No. 2090–0025

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on June 30, 2006. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before June 2, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OA–2006–0278, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: oei.docket@epamail.epa.gov.*

*Mail:* MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Interagency Agreements, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* EPA Docket Center, EPA West, Room B 102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OA–2006–0278. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

**FOR FURTHER INFORMATION CONTACT:** Kimberly Patrick, Office of Small and Disadvantaged Business Utilization, Mail Code 1230N, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–5386; fax number: 202–501–0139; e-mail address: *patrick.kimberly@epa.gov* .

**SUPPLEMENTARY INFORMATION:**

### How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OA–2006–0278, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Environmental Information Docket is 202–566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

### What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

### What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES.**
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**What Information Collection Activity or ICR Does This Apply to?**

[Docket ID No. EPA–HQ–OA–2006–0278]

*Affected entities:* Entities potentially affected by this action are all recipients of EPA financial assistance agreements, and any entities receiving identified loans under a financial assistance agreement capitalizing a revolving loan fund.

*Title:* MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Interagency Agreements.

*ICR numbers:* EPA ICR No. 2212.02, OMB Control No. 2090–0025.

*ICR status:* This ICR is currently scheduled to expire on June 30, 2006. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* All EPA financial assistance agreement recipients are required to make good faith efforts to assure that small, minority and women owned businesses are used, when possible, as sources of construction, services, equipment, and supplies. The completion and submission of EPA Form 5700–52A is mandatory. The information collected by EPA Form 5700–52A is used to compile data concerning the utilization of minority and women owned businesses as contractors under procurements funded by EPA financial assistance agreements pursuant to Executive Orders 11625, 12138, and 12432, and Public Laws 101–507 and 102–389. The effectiveness of EPA's MBE/WBE Program is measured through this reporting requirement. The modifications to the form were made to simplify and shorten the form itself. The instructions in the modified form also provide more information about questions frequently asked by respondents.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average one (1) hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 3600.

*Frequency of response:* Depending on the type of financial assistance received, respondents either report on an annual or quarterly basis.

*Estimated total average number of responses for each respondent:* 3600.

*Estimated total annual burden hours:* 3600 (one burden hour per respondent).

*Estimated total annual costs:* $146,916. This includes an estimated burden cost of $146,916, and an estimated cost of $0 for capital investment or maintenance and operational costs.

**Are There Changes in the Estimates From the Last Approval?**

There is no change in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

**What Is the Next Step in the Process for This ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: March 27, 2006.

**Jeanette L. Brown,**

*Director, Office of Small and Disadvantaged Business Utilization.*

[FR Doc. E6–4764 Filed 3–31–06; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OA–2006–0172; FRL–8052–7]**

## Agency Information Collection Activities; Proposed Collection; Comment Request; Smart Growth and Active Aging National Recognition Program; EPA ICR No. 2221.01, OMB Control No. 2090–XXXX

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before June 2, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OA–2006–0172, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: oei.docket@epa.gov.*
- *Fax:* 202–566–0224.
- *Mail:* Office of Environmental Information (OEI) Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Office of Environmental Information (OEI) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OA–2006–0172. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov

or e-mail. The *http://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

**FOR FURTHER INFORMATION CONTACT:**

Kathy Sykes, Aging Initiative, Office of Children's Health Protection, Room 2512 Ariel Rios North, Mail Code:1107A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: 202–564–3651; fax number: 202–564–2733; e-mail address: *sykes.kathy@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OA–2006–0172, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Environmental Information Docket is 202–566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

## What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

## What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES.**
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## What Information Collection Activity or ICR Does This Apply to?

*Affected entities:* Entities potentially affected by this action are communities, municipalities, and counties that choose to participate in the Recognition Program.

*Title:* Smart Growth and Active Aging National Recognition Program.

*ICR numbers:* EPA ICR No. 2221.01, OMB Control No. 2090–XXXX.

*ICR status:* This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* EPA's Initiative on Aging is planning to launch a Smart Growth and Active Aging National Recognition Program for communities, municipalities, tribes, and counties (collectively referred to as ''communities''). Communities would submit a letter to EPA indicating that their State or local Area Agency on Aging is engaged in their smart growth planning activities and active aging programs, and complete an on-line questionnaire describing their processes and programs in these two areas. The purpose of the Program is to recognize communities that excel in promoting the health and well-being of older adults through smart growth and active aging and to raise public awareness of the interconnectedness and importance of these two areas to the aging population. In addition, the on-line questionnaire would include links to helpful information on the Internet. This would assist in educating communities on available resources to help them do better in the areas where they have not met the criteria for recognition. Finally, the Program would enable EPA to compile ''lessons learned'' from communities that have successfully implemented smart growth and active aging principles. EPA would use this information to create a learning network on its Web site where all communities could benefit from this experience.

The Recognition Program would be voluntary. EPA expects communities to participate only if they see a benefit by doing so. A primary benefit to communities would be recognition at the national level as leaders in smart growth and active aging. National recognition would promote their image

as a desirable place to live. This could help them attract residents of all ages, which could benefit the communities (*e.g.*, economically), as well as the new residents (*e.g.*, because they could partake of their community's amenities, such as walkable neighborhoods, fitness trails, and more transportation choices). In addition, communities that participate but are not recognized under the Program (*i.e.*, because they do not meet the criteria for recognition) would benefit by learning about their areas for improvement, finding ways to address these areas based on links to helpful resources on the Internet, and modifying their behavior as appropriate.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average one hour and 45 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

*Estimated total annual number of respondents on average:* 110 communities.

*Average frequency of response:* Once.

*Estimated total annual burden hours:* 186 hours.

*Estimated total annual cost:* $8,284. This includes an estimated labor cost of $8,183, an estimated operation and maintenance cost of $101, and no capital cost.

### What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: March 22, 2006.

**William H. Sanders,**

*Acting Director, Office of Children's Health Protection and Environmental Education.*

[FR Doc. E6–4765 Filed 3–31–06; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ-OPPT–2005–0554; FRL–7765–9]**

## Pollution Prevention Grants; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is announcing the availability of grant funds to States, Tribes, and Intertribal Consortia. Under the authority of the Pollution Prevention Act of 1990, EPA will award Pollution Prevention (P2) Grants in fiscal year (FY) 2006 for prevention activities during FY 2006–2007. These grants are targeted for State and Tribal technical assistance programs that address the reduction or elimination of pollution by businesses across all environmental media: Air, land, and water. The total amount of funding available for award in FY 2006 is approximately $4.1 million. The maximum funding level per project is $150,000. You may access the full text of the grant announcement at*http://www.epa.gov/oppt/p2home/grants/ppis/ppis.htm*.

**DATES:** Proposals must be received on or before May 18, 2006.

**FOR FURTHER INFORMATION CONTACT:** Michele Amhaz, Pollution Prevention Division (7409M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8857; fax number: (202) 564–8899; e-mail address: *amhaz.michele@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to States, State entities (colleges and universities), Tribes, and Intertribal Consortia. This notice may, however, be of interest to local governments, private universities, private nonprofit entities, private businesses, and individuals who are not eligible for this grant program. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2005–0554. Publicly available docket materials are available electronically at*http://www.regulations.gov* or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

2. *Electronic access*. You may obtain electronic copies of this document through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

You may access copies of the grant announcement at*http://www.epa.gov/oppt/p2home/grants/ppis/ppis.htm*.

### II. Overview

The following listing provides certain key information concerning the proposal opportunity.

- *Federal agency name*: Environmental Protection Agency.
- *Funding opportunity title*: Pollution Prevention Grants Program.
- *Funding opportunity number*: EPA–OPPT–06–002.
- *Announcement type*: The initial announcement of a funding opportunity.
- *Catalog of Federal Domestic Assistance (CFDA) number*: 66.708.
- *Dates*: Proposals must be received on or before May 18, 2006.

For detailed information concerning the grant announcement refer to the Agency website at*http://www.epa.gov/oppt/p2home/grants/ppis/ppis.htm*. The full text of the grant announcement includes specific information regarding the: Purpose and scope; activities to be funded; award information; eligibility requirements; application and submission information; award review information; and regional agency contacts if applicable.

### III. Submission to Congress and the Comptroller General

Grant solicitations containing binding legal requirements are considered rules for the purpose of the Congressional Review Act (CRA) (5 U.S.C. 801*et seq.*). The CRA generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this grant solicitation 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 in the **Federal Register**. This grant solicitation does not qualify as a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects

Environmental protection, Grants, Pollution prevention.

Dated: March 26, 2006.

**Susan B. Hazen,**

*Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. E6–4762 Filed 3–31–06; 8:45 am]

BILLING CODE 6560–50–S

## FARM CREDIT ADMINISTRATION

### Farm Credit Administration Board; Regular Meeting

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

*Date and Time:* The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 9, 2006, from 9 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

**Open Session**

*A. Approval of Minutes*

- March 9, 2006 (Open).

*B. Reports*

- Economic Overview Information.
- Farm Credit System Building Association Audit Report.

**Closed Session***

- Farm Credit System Building Association Audit Report.
- Office of Secondary Market Oversight Quarterly Report.

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: March 30, 2006.

**Roland E. Smith,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 06–3216 Filed 3–30–06; 2:35 pm]

BILLING CODE 6705–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Federal Advisory Committee Act; Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks (''Independent Panel'' or ''Panel'') will hold its next meeting on April 18, 2006 at 9 a.m. at the Commission Meeting Room of the Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

**DATES:** April 18, 2006 at 9 a.m.

**ADDRESSES:** Commission Meeting Room, Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Fowlkes, Designated Federal Officer of the FCC's Independent Panel at 202–418–7452 or e-mail: *lisa.fowlkes@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** The Panel will hear presentations from its three informal working groups (IWG–1 Infrastructure Resiliency, IWG–2 Recovery Coordination and Procedures and IWG–3 Emergency Communications) regarding their work to date. The informal working groups' presentations will form the framework for discussion of the specific issues, findings and recommendations to be addressed in the Panel's report to the FCC which must be submitted by June 15, 2006. The report will address the impact of Hurricane Katrina on communications infrastructure, including public safety communications, and recommendations for improving disaster preparedness, network reliability and communications among first responders. The Panel may take action on any of the issues raised during the meeting. The Panel may also receive presentations and/or demonstrations from invited representatives of government agencies and/or other entities that address emergency response and disaster preparedness issues.

Members of the general public may attend the meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. Real Audio access to the meeting will be available at *www.fcc.gov.* Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. To request accommodations, send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY). Include a description of the accommodation you will need with as much detail as possible. Also include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

The public may submit written comments before the meeting to: Lisa M. Fowlkes, the FCC's Designated Federal Officer for the Independent Panel by e-mail: *lisa.fowlkes@fcc.gov* or U.S. Postal Service Mail (Lisa M. Fowlkes, Designated Federal Officer, Hurricane Katrina Independent Panel, Federal Communications Commission, 445 12th Street, SW., Room 7–C737, Washington, DC 20554).

Further information regarding the Independent Panel, including publicly available documents, may be found at the Panel's Web site at *www.fcc.gov/eb/hkip.* In addition, publicly available documents related to the Panel are available for inspection and copying at the FCC's Public Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E6–4767 Filed 3–31–06; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://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 April 27, 2006.

**A. Federal Reserve Bank of Chicago** (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

*1. Prairieland Bancorp Employee Stock Ownership Plan and Trust*, Bushnell, Illinois; to acquire an additional 4.87 percent, for a total of 49.67 percent, of the voting shares of Prairieland Bancorp, Inc., Busnnell, Illinois, and thereby indirectly acquire voting shares of Farmers and Merchants State Bank of Bushnell, Bushnell, Illinois.

**B. Federal Reserve Bank of Kansas City** (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

*First Liberty Holdings, LLC, and FLH Management Company, LLC*, both of Oklahoma City, Oklahoma; to become bank holding companies by acquiring 100 percent of the voting shares of Hazelton Bancshares, Inc., Hazelton, Kansas (which will be known as First Liberty Bancshares, Inc.), and Farmers State Bank (to be known as First Liberty Bank), Meno, Oklahoma.

Board of Governors of the Federal Reserve System, March 28, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E6–4715 Filed 3–31–06; 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 Web site at *http://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 April 28, 2006.

**A. Federal Reserve Bank of Cleveland** (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

*1. S & T Bancorp, Inc.*, Indiana, Pennsylvania; to acquire up to 24.99 percent of the voting shares of Allegheny Valley Bancorp, Inc, and thereby indirectly acquire Allegheny Valley Bank of Pittsburgh, both of Pittsburgh, Pennsylvania.

Board of Governors of the Federal Reserve System, March 29, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E6–4773 Filed 3–31–06; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security (SSS).

*Time and Date:* April 4, 2006 9 a.m.–5 p.m., April 5, 2006 9 a.m.–5 p.m.

*Place:* Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 505A, Washington, DC 20201.

*Status:* Open.

*Purpose:* The Subcommittee's agenda for the morning of April 4 will include a briefing on the newly issued HIPAA Enforcement Final rule and an update from the Designated Standards Maintenance Organizations (DMSOs) on the status of version 5010 of the American Standards Committee (ASC) X12837 Health Care Service: Data Reporting Guide. The morning will conclude with a panel discussion of issues associated with the implementation of the National Provider Identifier (NPI). The afternoon will include a second NPI panel discussion followed by Subcommittee discussion. The morning of April 5 will be devoted to development of recommendations for Consolidated Health Informatics Initiative (CHI) standards on multimedia; HIPAA Return on Investment (ROI) and lessons learned; and matching patients to their records. The hearings will adjourn following Subcommittee discussion.

*Contact Person For More Information:* Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Maria Friedman, Health Insurance Specialist, Security and Standards Group, Centers for Medicare and Medicaid Services, MS: C5–24–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, telephone: 410–786–6333 or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Diseases Control and Prevention, Room 1100, Presidential Building, 3311 Toledo Road, Hyattsville,

Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available. Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: March 21, 2006.

**James Scanlon,**

*Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. 06–3171 Filed 3–31–06; 8:45am]

**BILLING CODE 4151–05–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–06–0237]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5960 or send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

The 2007–2008 National Health and Nutrition Examination Survey (NHANES)–(0920–0237)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The National Health and Nutrition Examination Survey (NHANES) has been conducted periodically since 1970 and continuously since 1999 by the National Center for Health Statistics, CDC. About 5,000 participants will be examined annually. They will receive an interview, a physical examination, a telephone dietary interview, a home allergen dust collection and a telephone interview. The telephone interview, as well as selected questions in the household interview will be referred to as the Flexible Consumer Behavior Survey (FCBS) and will include questions on food expenditures, diet and health knowledge and other food and nutrition topics. Participation in the survey is completely voluntary and confidential.

NHANES programs produce descriptive statistics which measure the health and nutrition status of the general population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States. NHANES monitors the prevalence of chronic conditions and risk factors related to health such as asthma, osteoporosis, infectious diseases, diabetes, eye disease, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, physical activity, environmental exposures, and diet. NHANES data are used to establish the norms for the general population against which health care providers can compare such patient characteristics as height, weight, and nutrient levels in the blood. Data from NHANES can be compared to those from previous surveys to monitor changes in the health of the U.S. population. For this revision, NHANES will also establish a national probability sample of genetic material for future genetic research for susceptibility to disease.

Users of NHANES data include Congress; the World Health Organization; Federal agencies such as NIH, EPA, and USDA; private groups such as the American Heart Association; schools of public health; private businesses; individual practitioners; and administrators. NHANES data are used to establish, monitor, and/or evaluate recommended dietary allowances, food fortification policies, environmental exposures, immunization guidelines and health education and disease prevention programs. NCHS is seeking OMB approval through April 2009.

There is no net cost to respondents other than their time. Respondents are reimbursed for any out-of-pocket costs such as transportation to and from the examination center.

ESTIMATED ANNUALIZED BURDEN TABLE

| Burden category | Number of respondents | Number of responses/ respondent | Avg. burden per response (in hours) | Total burden hours |
|---|---|---|---|---|
| 1. Screening Interview Only | 13,333 | 1 | 10/60 | 2,222 |
| 2. Screener, Family, and Sample Participant Interviews Only | 300 | 1 | 1.10 | 330 |
| 3. Screener, Family, and Sample Participant Interviews and Examination | 5,180 | 1 | 5.9 | 30,562 |
| 4. Household Dust Collection | 2,328 | 1 | 36/60 | 1,397 |
| 5. Second Dietary Interview | 4,300 | 1 | 30/60 | 2,150 |
| 6. Telephone Interview (FCBS) | 3,000 | 1 | 30/60 | 1,500 |
| 7. Special Studies | 4,000 | 1 | 5.9 | 23,600 |
| Total | | | | 61,761 |

Dated: March 22, 2006.

**Joan F. Karr,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E6–4774 Filed 3–31–06; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panels (SEP): Fragile X Family Needs Assessment, Program Announcement Number PEP 2006–R–06

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

*Name:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Fragile X Family Needs Assessment, Program Announcement Number PEP 2006–R–06.

*Time And Date:* 12 p.m.–4 p.m., April 24, 2006 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters to be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to Fragile X Family Needs Assessment, Program Announcement Number PEP 2006–R–06.

*Contact Person for More Information:* Juliana Cyril, Ph.D., Scientific Review Administrator, Office of Extramural Research, CDC, 1600 Clifton Road, Mailstop D 72, Atlanta, GA 30333, Telephone (404) 639–4639.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 24, 2006.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E6–4776 Filed 3–31–06; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panels (SEP): Evaluation of Breastfeeding Promotion and Support Programs, Potential Extramural Project (PEP) 2006–R–01

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

*Name:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Evaluation of Breastfeeding Promotion and Support Programs, PEP 2006–R–01.

*Time and Date:* 8 a.m.–4 p.m., April 27, 2006 (Closed).

*Place:* Centers for Disease Control and Prevention, Global Communications Center, 1600 Clifton Road, NE., Room 254/255 Atlanta, GA 30333, Telephone Number 404–639–3138.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters to be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to: Evaluation of Breastfeeding Promotion and Support Programs, PEP 2006–R–01.

*For Further Information Contact:* Christine Morrison, PhD, Scientific Review Administrator, CDC, 1600 Clifton Road, NE., Mailstop D–72, Atlanta, GA 30333, Telephone Number 404–639–3098.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 28, 2006.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E6–4780 Filed 3–31–06; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Health Resources and Services Administration; CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment; Meeting

In accordance with section l0(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) and the Health Resources and Services Administration (HRSA) announce the following committee meeting.

*Name:* CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment.

*Times and Dates:* 8 a.m.–5 p.m., May 17, 2006, 8 a.m.–12 p.m., May 18, 2006.

*Place:* Sheraton Midtown Atlanta Hotel at Colony Square, 188 14th Street NE., Atlanta, Georgia 30361, Phone 404–892–6000, Fax 404–872–9192

*Status:* Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

*Purpose:* This Committee is charged with advising the Secretary, the Director, CDC and the Administrator, HRSA, regarding activities related to prevention and control of HIV/AIDS and other STDs, the support of health care services to persons living with HIV/AIDS, and education of health professionals and the public about HIV/AIDS and other STDs.

*Matters To Be Discussed:* Agenda items include issues pertaining to (1) HPV vaccine (2) CARE Act Reauthorization (3) HIV Counseling and Testing in health care settings. Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Paulette Ford-Knights, Public Health Analyst, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, Georgia 30333. Telephone (404) 639–8008, fax (404) 639–3125, e-mail *pbf7@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 27, 2006.

**Alvin Hall,**

*Director, Management Analysis and Services Office , Centers for Disease Control and Prevention.*

[FR Doc. 06–3163 Filed 3–31–06; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Advisory Committee on Immunization Practices: Meeting

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 Federal Committee meeting.

*Name:* Advisory Committee on Immunization Practices (ACIP).

*Times and Dates:* 8 a.m.–7 p.m., June 29, 2006; 8 a.m.–6 p.m., June 30, 2006.

*Place:* Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Building 19, Room 232, Atlanta, Georgia 30333.

*Additional Information:* In order to expedite the security clearance process at the CDC Clifton Road Campus, all ACIP attendees are now required to register on-line at *http://www.cdc.gov/nip/acip*, which can be found under the ''Upcoming Meetings'' tab. Please be sure to complete all the required fields before submitting your registration.

**Please Note:** All non-U.S. citizens who have not pre-registered by June 2, 2006 will not be allowed access to the campus and will not be allowed to register on site. All non U.S. Citizens are required to complete the ''Access Request Form'' and register on line at *http://www.cdc.gov/nip/acip*. The access request form can be obtained by contacting Demetria Gardner at (404) 639–8836 and should be e-mailed directly to Ms. Gardner upon completion to *dgardner@cdc.gov.*

*For Further Information Contact:* Demetria Gardner, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE., (E–61), Atlanta, Georgia 30333, telephone (404) 639–8096, fax (404) 639–8616.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 28, 2006.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E6–4775 Filed 3–31–06; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Notice for April 2006 Advisory Committee Meeting

**AGENCY:** Office of Planning, Research and Evaluation, ACF, DHHS.

**ACTION:** Notice of meeting; Advisory Committee on Head Start Accountability and Educational Performance Measures.

**SUMMARY:** The Secretary of Health and Human Services, by authority of 42 U.S.C. 9836A, section 641A(b) of the Head Start Act, as amended (5 U.S.C. Appendix 2), has formed the Advisory Committee on Head Start Accountabilit5y and Educational Performance Measures (the Committee). The committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2).

The function of the Committee is to help assess the progress of HHS in developing and implementing educational measures in the Head Start Program. This includes the Head Start National Reporting System (NRS). The Committee is to provide recommendations for integrating NRS with other ongoing assessments of the effectiveness of the program. The Committee will make recommendations as to how NRS and other assessment data can be included in the broader Head Start measurement efforts found in the Family and Child Experiences Survey (FACES), the National Head Start Impact Study, Head Start's Performance Based Outcome System, and the ongoing evaluation of the Early Head Start program.

**DATES:** April 24, 2006, 8:30 a.m.–5 p.m. (Dinner Recess). April 25, 2006, 8:30 a.m.–5 p.m.

*Place:* Residence Inn Bethesda Downtown, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Agenda:* The Committee will hear presentations related to existing Head Start evaluations and NRS implementation and will continue the discussions begun at the previous Committee meetings in 2005.

There will be a period set aside for public comments on April 24, 2006, from 10:30 a.m. to 11:30 a.m. Persons wishing to speak at the meeting must limit their comments to three minutes, but may also provide the Committee with supplementary written materials. Those wishing to speak at the meeting must sign up upon arrival at the meeting, and comments will be heard on a first come, first served basis until the comment period is filled. Approximately 15 speakers can be accommodated. If not all present can be accommodated during the presentation period, persons may submit written statements or papers to be considered by the Committee at a later time. On-site registration for those wishing to comment will open at 8 a.m. on April 24, 2006.

**SUPPLEMENTARY INFORMATION:** This meetings is open to the public. Persons wishing to bring written statements or papers focused on relevant, existing research with Head Start populations or on measures appropriate for low-income four- and five-year old children are welcome to do so. Individuals may also e-mail such documents to *Secretaryadvisory-hs@esi-de.com* of mail to: ESI, ATTN: Townley Knudson, Head Start Secretary's Advisory Committee, 7735 Old Georgetown Road, Suite 600, Bethesda, MD 20814.

Documents received shall be presented to the Committee. The Committee meeting records shall be kept at the Aerospace Center located at 901 D Street, SW., Washington, DC 20447. Information related to this meeting will be available on the Head Start Web site *http://www.acf.hhs.gov/programs/hsb/budget/AdvCmteSep05/index.htm.*

An interpreter for the deaf and hard of hearing will be available upon advance request by contacting *Secretaryadvisory-hs@esi-dc.com.*

**Naomi Goldstein,**

*Director, Office of Planning, Research and Evaluation, Administration for Children and Families.*

[FR Doc. 06–3152 Filed 3–31–06; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Joint Meeting of the Dental Products Panel of the Medical Devices Advisory Committee of the Center for Devices and Radiological Health and the Peripheral and Central Nervous System Drugs Advisory Committee of the Center for Drug Evaluation and Research; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Names of Committees*: The Dental Products Panel of the Medical Devices Advisory Committee of the Center for Devices and Radiological Health (CDRH) and the Peripheral and Central Nervous System Drugs Advisory Committee of the Center for Drug Evaluation and Research (CDER). This will be a joint meeting of the two committees.

*General Function of the Joint Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on September 6 and 7, 2006, from 8 a.m. to 5 p.m.

*Location*: Holiday Inn, Walker/Whetstone Rm., Two Montgomery Village Ave., Gaithersburg, MD.

*Contact Person*: Michael E. Adjodha, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283, ext. 123, e-mail: *Michael.adjodha@fda.hhs.gov* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572) in the Washington, DC area), code 3014512518. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: This joint committee will review and discuss peer-reviewed scientific literature on dental amalgam devices. Dental amalgam, also called ''encapsulated amalgam,'' consists of dental mercury and amalgam alloys. This joint committee will review and discuss peer-reviewed scientific literature on dental amalgam and its potential mercury toxicity, specifically as it relates to neurotoxic effects. Certain consumer groups have raised concerns about the effects of using mercury as a component of dental restorative materials; therefore, we are combining the expertise of the Dental Products Panel of the Medical Device Advisory Committee with the neurology expertise of the Peripheral and Central Nervous System Drugs Advisory Committee.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 23, 2006. On September 6 and 7, 2006, oral presentations from the public will be scheduled at the beginning of committee deliberations and near the end of the deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should submit written notification to the contact person by August 23, 2006, and include the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that we are not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Ann Marie Williams, Conference Management Staff, 240–276–0450 ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 22, 2006.

**Scott Gottlieb,**

*Deputy Commissioner for Policy.*

[FR Doc. E6–4760 Filed 3–31–06; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5037–N–16]**

## Screening and Eviction for Drug Abuse and Other Criminal Activity

**AGENCY:** Office of the Chief Information Officer, HUD

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Public Housing Agencies may request criminal records from any law enforcement agency concerning an adult applying for admission to a public housing or Section 8 program and may deny admission to, or evict those who engage in criminal activity.

**DATES:** *Comments Due Date:* May 3, 2006

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0232) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number.

Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Screening and Eviction for Drug Abuse and other Criminal Activity.

*OMB Approval Number:* 2577–0232.

*Form Numbers:* None.

*Description of the Need For the Information and Its Proposed Use:*

Public Housing Agencies may request criminal records from any law enforcement agency concerning an adult applying for admission to a public housing or Section 8 program and may deny admission to, or evict those who engage in criminal activity.

*Frequency of Submission:* On occasion.

| | Number of respondents | Annual responses | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 7,500 | 1.14 | | 1.26 | | 10,850 |

*Total Estimated Burden Hours:* 10,850.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 28, 2006.

**Lillian L. Deitzer,**

*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.*

[FR Doc. 06–3169 Filed 3–31–06; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5037–N–15]**

### Public Housing Agency (PHA) Lease Requirements, Recordkeeping Requirements

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Public Housing Agencies (PHAs) are required to keep records for implementation of Federal regulations governing dwelling leases in public housing. The information is retained by the PHAs that manage public housing and is used for operating purposes.

**DATES:** *Comments Due Date:* May 3, 2006.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0006) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number.

Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Public Housing Agency (PHA) Lease Requirements, Recordkeeping Requirements.

*OMB Approval Number:* 2577–0006.

*Form Numbers:* None.

*Description of the Need For the Information and Its Proposed Use:*

Public Housing Agencies (PHAs) are required to keep records for implementation of Federal regulations governing dwelling leases in public housing. The information is retained by the PHAs that manage public housing and is used for operating purposes.

*Frequency of Submission:* Recordkeeping.

| | Number of respondents | Annual responses | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 3,330 | 1 | | 47.09 | | 156,816 |

*Total Estimated Burden Hours:* 156,816.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 28, 2006.

**Lillian L. Deitzer,**

*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.*

[FR Doc. 06–3170 Filed 3–31–06; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Reviews of 56 Species in California and Nevada; Correction

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of review; correction.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce corrections to our notice of review that published in the **Federal Register** on March 22, 2006, concerning initiation of 5-year reviews for 56 species in California and Nevada. The document contained the incorrect zip code for the Carlsbad Fish and Wildlife Office and two ambiguous tables indicating to which offices information for particular species should be submitted. The correct zip code for the Carlsbad Fish and Wildlife Office is 92011, and we are reprinting the address and contact information from the two tables.

**DATES:** We must receive your information no later than May 22, 2006. However, we will continue to accept new information about any listed species at any time.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of March 22, 2006, FR

Doc E6–4120 (71 FR 14538), a document titled ''Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Reviews of 56 Species in California and Nevada'' appeared with an incorrect zipcode and unclear tables.

**Corrections**

In the **Federal Register** of March 22, 2006, on page 14540, on the fourth line of the third column, change ''in Table 2.'' to ''below.''

*On pages 14540 through 14542, replace Tables 2 and 3 with the following text*:

The species under review and the addresses to submit information for each are as follows:

For the Laguna Mountains skipper butterfly, Riverside fairy shrimp, San Diego fairy shrimp, Catalina Island mountain mahogany, Coachella Valley milk-vetch, Munz's onion, Orcutt's spineflower, Otay tarplant, San Jacinto Valley crownscale, slender-horned spineflower, spreading navarretia, thread-leaved brodiaea, and willowy monardella, submit comments to the following address: Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011. Information may be submitted electronically at *fw85yr06@fws.gov*. For information concerning these species, contact Jim Bartel at (760) 431–9440.

For the Inyo California towhee, tidewater goby, Ben Lomond spineflower, Chorro Creek bog thistle, Hoffmann's rock-cress, Indian knob mountain balm, Lane Mountain milk-vetch, Menzies' wallflower, Monterey gilia, Morro manzanita, Pismo clarkia, Santa Cruz Island bush-mallow, Santa Rosa Island manzanita, and soft-leaved paintbrush, submit comments to the following address: Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003. Information may be submitted electronically at *fw1vfwo5year@fws.gov*. For information concerning the Inyo California towhee and tidewater goby, contact Mike McCrary at (805) 644–1766. For information concerning the plant species, contact Connie Rutherford at (805) 644–1766.

For the blunt-nosed leopard lizard, California freshwater shrimp, conservancy fairy shrimp, delta green ground beetle, Fresno kangaroo rat, giant kangaroo rat, Kern primrose sphinx moth, longhorn fairy shrimp, San Joaquin kit fox, vernal pool fairy shrimp, vernal pool tadpole shrimp, Bakersfield cactus, Butte County meadowfoam, California jewelflower, Colusa grass, hairy Orcutt grass, Kern mallow, Sacramento Orcutt grass, showy indian clover, and slender Orcutt grass, submit comments to the following address: Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825. Information may be submitted electronically at *fw1sfo5year@fws.gov*. For information concerning these species, contact Craig Aubrey at (916) 414–6600.

For the Ash Meadows Amargosa pupfish, Desert dace, Pahrump poolfish, Paiute cutthroat trout, White River spinedace, and steamboat buckwheat, submit comments to the following address: Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Blvd., Suite 234, Reno, NV 89502. Information may also be submitted electronically at *fw1nfwo_5yr@fws.gov*. For information concerning these species, contact Jody Brown at (775) 861–6300.

For the Behren's silverspot butterfly and Howell's spineflower, submit comments to the following address: Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 11655 Heindon Road, Arcata, CA 95521. Information may be submitted electronically at *howellsspineflower@fws.gov* for Howell's spineflower and *behrenssilverspot@fws.gov* for Behren's silverspot butterfly. For information concerning Howell's spineflower, contact Dave Imper at the Arcata Fish and Wildlife Office at (707) 822–7201. For information concerning Behren's silverspot butterfly, contact Jim Watkins at the Arcata Fish and Wildlife Office at (707) 822–7201.

For the Modoc sucker, submit comments to the following address: Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Klamath Falls Fish and Wildlife Office, 6610 Washburn Way, Klamath Falls, OR 97603. Information may also be submitted electronically at *kfalls@fws.gov*. For information concerning the Modoc sucker, contact Ron Larson at the Klamath Falls Fish and Wildlife Office at (541) 885–8481.

Dated: March 29, 2006.

**Ken McDermond,**

*Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.*

[FR Doc. 06–3195 Filed 3–31–06; 8:45 am]

BILLING CODE 4310–55–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–706 (Second Review)]**

## Canned Pineapple Fruit From Thailand

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of a five-year review concerning the antidumping duty order on canned pineapple fruit from Thailand.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on canned pineapple fruit from Thailand would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is May 23, 2006. Comments on the adequacy of responses may be filed with the Commission by June 16, 2006. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**DATES:** Effective Date: April 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 06–5–149, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

On July 18, 1995, the Department of Commerce issued an antidumping duty order on imports of canned pineapple fruit from Thailand (60 FR 36775). Following five-year reviews by Commerce and the Commission, effective May 30, 2001, Commerce issued a continuation of the antidumping duty order on imports of canned pineapple fruit from Thailand (66 FR 29285). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

## Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Thailand.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its full five-year review determination, the Commission defined the *Domestic Like Product* as canned pineapple fruit, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and it full five-year review determination, the Commission defined the *Domestic Industry* as producers of canned pineapple fruit, excluding pineapple growers.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the review and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

*Written submissions.*—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 23, 2006. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is June 16, 2006. All written submissions must conform with the provisions of § 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of § 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

*Inability to provide requested information.*—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a

complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

**Information To Be Provided in Response to This Notice of Institution**

As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 1999.

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2005 (report quantity data in case equivalents and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in case equivalents and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in case equivalents and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 1999, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product and Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 27, 2006.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6–4639 Filed 3–31–06; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 731–TA–703 and 705 (Second Review)]**

## Furfuryl Alcohol From China and Thailand

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of five-year reviews concerning the antidumping duty orders on furfuryl alcohol from China and Thailand.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on furfuryl alcohol from China and Thailand would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is May 23, 2006. Comments on the adequacy of responses may be filed with the Commission by June 16, 2006. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**DATES:** *Effective Date:* April 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On June 21, 1995, the Department of Commerce issued an antidumping duty order on imports of furfuryl alcohol from China (60 FR 32302). On July 25, 1995, the Department of Commerce issued an antidumping duty order on imports of furfuryl alcohol from Thailand (60 FR 38035). Following five-year reviews by Commerce and the Commission, effective May 4, 2001, Commerce issued a continuation of the antidumping duty orders on imports of furfuryl alcohol from China and Thailand (66 FR 22519). The Commission is now conducting second reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China and Thailand.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations and its full five-year review determinations, the Commission defined the Domestic Like Product as furfuryl alcohol, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations and its full five-year review determinations, the Commission defined the Domestic Industry as all producers of furfuryl alcohol, including toll-producers, captive producers, and merchant market producers.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

*Participation in the reviews and public service list.*—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No., 06–5–150, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 23, 2006. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is June 16, 2006. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

*Information to be Provided in Response to This Notice of Institution:* If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in each Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 2000.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2005 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from each Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of Subject Merchandise imported from each Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in each Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total

exports to the United States of Subject Merchandise from each Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries after 2000, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: March 27, 2006.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 06–3148 Filed 3–31–06; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 731-TA–888–890 (Review)]**

## Stainless Steel Angle from Japan, Korea, and Spain

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of five-year reviews concerning the antidumping duty orders on stainless steel angle from Japan, Korea, and Spain.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on stainless steel angle from Japan, Korea, and Spain would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is May 23, 2006. Comments on the adequacy of responses may be filed with the Commission by June 16, 2006. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**DATES:** Effective Date: April 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

On May 18, 2001, the Department of Commerce issued antidumping duty orders on imports of stainless steel angle from Japan, Korea, and Spain (66 FR 27628). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

### Definitions

The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews Japan, Korea, and Spain.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined the *Domestic Like Product* as all grades of hot-rolled stainless steel angle of equal leg length commensurate with Commerce's definition of the scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as producers of hot-rolled stainless steel angle.

(5) The *Order Date* is the date that the antidumping duty orders under review became effective. In these reviews, the *Order Date* is May 18, 2001.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the reviews and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 06–5–151, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Certification**

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

**Written Submissions**

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 23, 2006. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is June 16, 2006. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

**Inability To Provide Requested Information**

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

**Information To Be Provided in Response to This Notice of Institution**

If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during

calendar year 2005 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Countries*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Countries*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Countries* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Countries*, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 27, 2006.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6–4641 Filed 3–31–06; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

### Sunshine Act Meeting

[USITC SE–06–022]

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** April 6, 2006 at 11 a.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–846–850 (Review) (Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from the Czech Republic, Japan, Mexico, Romania, and South Africa)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before April 26, 2006.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: March 29, 2006.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 06–3214 Filed 3–30–06; 1:39 pm]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Civil Rights Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day notice of information collection under review; procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

The Department of Justice (DOJ), Civil Rights Division (CFT) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 70, Number 226, page 71171 on November 25, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 3, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public

burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

(3) *None.* Civil Rights Division.

(4) *Affected Public:* State, Local, or Tribal Governments

*Brief Abstract:* Jurisdictions covered under the Voting Rights Act may request preclearance from the Attorney General (AG) before instituting changes affecting voting. They must convince the Attorney General that voting changes are not racially discriminatory.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take 10,103 respondents under the Procedures for the Administration of Section 5 of the Voting Rights Act of 1965 approximately 47,365 burden hours to complete the submission of voting changes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual burden hours to complete the submission of voting changes is 47,365 hours.

*If additional information is required contact:* Robert B. Briggs, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, D Street NW., Washington, DC 20530.

Dated: February 27, 2006.

**Robert B. Briggs,**

*Clearance Officer, Department of Justice.*

[FR Doc. 06–1937 Filed 3–31–06 8:45am]

**BILLING CODE 4410–18–M**

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 04–8]**

### Wedgewood Village Pharmacy; Revocation of Registration

On September 8, 2003, the Deputy Assistant Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause to Wedgewood Village Pharmacy in Sewell, New Jersey. The Order to Show Cause proposed to revoke the DEA Certificate of Registration AW1289126, issued to Wedgewood Village Pharmacy as a retail pharmacy and deny any pending applications for renewal of such registration. The Order alleged that the continued registration of the pharmacy would be inconsistent with the public interest as that term is defined in 21 U.S.C. 823(f).

The Order to Show Cause specifically alleged that Wedgewood Village Pharmacy was not acting as a traditional retail pharmacy but, was holding itself out as a compounding pharmacy that manufactured controlled substances without a DEA registration, in violation of the Controlled Substances Act (CSA) and provisions of the Federal Food Drug and Cosmetic Act (FD&C). It also alleged that the pharmacy was distributing controlled substances and listed chemicals without being registered with DEA to conduct those activities. The Order to Show Cause further alleged that a DEA investigation of the pharmacy determined that the pharmacy was not maintaining complete and accurate records and inventories of the controlled substances that it handled, and was unable to accurately account for the bulk controlled substances and listed chemicals it had received.

By letter dated October 16, 2003, the pharmacy, through counsel, requested a hearing in the matter. On October 21, 2003, the pharmacy submitted a written request to the DEA requesting a modification of its registration to a new location in Swedesboro, New Jersey. DEA responded to the pharmacy's request via letter dated October 27, 2003, informing the pharmacy that their requested address change constituted a modification of the registration and would be considered as part of the matters considered at the hearing on the Order to Show Cause.

On November 5, 2003, Wedgewood Village Pharmacy filed a motion for a temporary restraining order (TRO) in the United States District Court for the District of New Jersey seeking to enjoin DEA from denying its request to change location pending the hearing on the Order to Show Cause. The District Court denied the TRO on November 7, 2003, and further denied a Motion for Preliminary Injunction on December 15, 2003, concluding that Wedgewood did not meet its burden of proving all the elements required for a preliminary injunction including that, ''Wedgewood is unlikely to succeed on the merits of the case.'' *Wedgewood Village Pharmacy* v. *Ashcroft*, 293 F.Supp.2d 462, 474 (D.N.J. 2003).

The hearing on the Order to Show Cause was held at the DEA Headquarters in Arlington, Virginia, on January 26–28, 2004, before a DEA Administrative Law Judge (ALJ). No witnesses were called to testify at the hearing by either party. However, documentary evidence was submitted by both the Agency and Respondent and admitted into the record by the ALJ.

The ALJ issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge on March 4, 2005. The Respondent filed exceptions to the ALJ's Recommended Rulings on April 29, 2005. The record was transmitted by the ALJ to the DEA Deputy Administrator on May 18, 2005.

The Deputy Administrator has reviewed the Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge, the Respondent's Exceptions to the Recommended Rulings, and the record in this matter. The Deputy Administrator hereby adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge. The ALJ concluded that the agency had clearly met its burden of proof, demonstrating that Respondent's continued registration with DEA is inconsistent with the public interest. The Deputy Administrator concurs with

that Recommendation and finds as follows.

Respondent, Wegdewood Village Pharmacy, is registered by the DEA as a retail pharmacy. The registration was last renewed on May 18, 2000. They have submitted a form to renew the registration. The pharmacy was registered at that time, and is still registered with DEA at an address in Sewell, New Jersey. The Respondent is not, nor has it been, registered with DEA as a distributor or manufacturer of controlled substances or listed chemicals.

Respondent holds itself out as a compounding pharmacy, both through advertising in various medical publications and on its Web site, *www.wedgewoodpharmacy.com.* The pharmacy was the subject of an inspection by investigators from the DEA in March 2003. The investigators collected records of controlled substance and listed chemical activity by Respondent which were entered into evidence in this matter by both parties. The investigators also conducted an audit of selected controlled substances, and the results are in the record showing that there were overages and shortages in the accountability. There are also theft reports, DEA–106 forms, in evidence in the record documenting two thefts of controlled substances from Wedgewood Pharmacy.

Following the inspection, the Special Agent in Charge of the DEA Newark Division sent a letter to Wedgewood Village Pharmacy dated August 21, 2003, advising the pharmacy that it was operating beyond the scope of its registration as a retail pharmacy and was, in fact, acting as a manufacturer and distributor of controlled substances and listed chemicals without the appropriate DEA registration. The pharmacy was also advised that its recordkeeping with regard to controlled substances and listed chemicals was ''inadequate.'' By letter addressed to the DEA offices in Newark and Mt. Laurel, New Jersey, dated September 17, 2003, Respondent's counsel Howard M. Hoffman responded to the August 21st letter. Respondent's counsel disagreed that Respondent is a manufacturer of controlled substances and listed chemicals and stated that Respondent acts as a compounder and is operating in compliance with New Jersey law. Respondent continued its activity and did not submit any applications to DEA for registration as a distributor or a manufacturer.

A review of Respondent's ''Log of Prescriptions'' for the period January 1, 2002, through December 31, 2002, and for a period in early 2003 indicates that the overwhelming majority of its ''prescriptions'' list the prescribing doctor as the patient. Although the Respondent refers to these documents as prescriptions, they are not prescriptions as defined in DEA regulations. Prescriptions for controlled substances are required to ''bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner.'' See 21 CFR 1306.05(a). The DEA regulations also provide that a ''prescription may not be issued in order for an individual practitioner to obtain controlled substances for supplying the individual practitioner for the purpose of general dispensing to patients.'' See 21 CFR 1306.04(b). Unless the physicians are the patients, these documents are not prescriptions for purposes of the Controlled Substances Act.

Owner George Malmberg's own admissions in an inquiry before the New Jersey State Board of Pharmacy in October 2002 indicate that over 80% of the Respondent's sales were made directly to a physician or veterinarian and not to an individual patient. Examples include individual sales of 1080 stanozolol 50 mg/ml injectable to one veterinarian on January 2, 2002; 1800 boldenone undecylenate 50 mg/ml injectable to a veterinarian on September 3, 2002; and 1350 diazepam 5 mg/ml injectable to a physician on September 10, 2002. During 2002 the Respondent made 7,445 sales of controlled substances for a total of 1,083,154 doses of controlled substances. Over 95% of these sales were to physicians or veterinarians documented by what the pharmacy called prescriptions which contained the name of the physician or veterinarian as the patient.

The majority of Respondent's controlled substance sales were for the Schedule III anabolic steroids stanozolol and boldenone undecylenate and the Schedule IV tranquilizer diazepam. The Respondent also sells buprenorphine troches and testosterone injection, as well as the listed chemical phenylpropanolamine (PPA). The Respondent distributes or dispenses few other controlled substances. A large portion of Respondent's sales of controlled substances and listed chemicals were to physicians and veterinarians outside the State of New Jersey. DEA and the New Jersey State Board of Pharmacy received complaints regarding Respondent's compounding activities. The New Jersey State Board of Pharmacy conducted an inquiry in October 2002 and the DEA conducted an investigation in March 2003.

The main issue in this case is whether the controlled substance business activity of Respondent pharmacy was compounding as an adjunct to dispensing controlled substances in the course of retail pharmacy practice or manufacturing and distributing controlled substances as those terms are defined in the Controlled Substances Act (CSA), 21 U.S.C. 801 *et. seq.* If the Respondent was compounding as an adjunct to dispensing controlled substances to specific patients, it was properly registered as a retail pharmacy. If the Respondent was manufacturing and distributing controlled substances, the Respondent was and is not properly registered to conduct that activity. The Order to Show Cause also alleges that the Respondent failed, in a number of specific ways, to maintain complete and accurate records of the controlled substances and listed chemicals it handled.

The Controlled Substances Act (CSA) ''creates a comprehensive, closed regulatory regime * * *'' *Gonzales* v. *Oregon*, ___ U.S. ___, 126 S.Ct. 904, 911 (2006). This regime makes it ''unlawful to manufacture, distribute, dispense or possess any controlled substance except in a manner authorized by the CSA.'' *Gonzales* v. *Raich*, ___ U.S. ___, 125 S.Ct. 2195, 2203 (2005). An essential component of that closed regulatory system requires any person who handles controlled substances to obtain a registration with the DEA. See 21 U.S.C. 822. Those who manufacture and distribute controlled substances must obtain a registration annually. See 21 U.S.C. 822(a)(1). Those that dispense controlled substances must obtain a registration every three years as required by regulation. See 21 U.S.C. 822(a)(2) and 21 CFR 1301.13. The requirements for registration of manufacturers and distributors of controlled substances are more stringent than for those registered as practitioners to dispense controlled substances. See 21 U.S.C. 823(d)–(f). Recordkeeping, reporting and security requirements are also more rigorous for those who manufacture and distribute controlled substances. The Respondent is not registered as a manufacturer or a distributor. The Respondent is registered as a retail pharmacy, defined as a practitioner, and is authorized by that registration to dispense controlled substances and act as a retail distributor of listed chemicals.

A practitioner is defined in the CSA to include a pharmacy which is licensed in the jurisdiction in which it practices ''to distribute, dispense, conduct research with respect to, administer, or

use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.'' See 21 U.S.C. 802(21). A practitioner is the last link in the closed distribution system for controlled substances created by the CSA. The primary role of a practitioner in this system is to provide controlled substances to patients or ultimate users by dispensing, which includes administering and prescribing.

Manufacturing is defined by in the CSA at 21 U.S.C. 802(15) as:

> The production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substances or labeling or relabeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable state or local law by a practitioner as an *incident to his administration or dispensing of such drug or substance in the course of his professional practice.* [Emphasis added]

Distribution is defined as ''to deliver (other than by administering or dispensing) a controlled substance or listed chemical.'' See 21 U.S.C. 802(11). Dispense ''means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling or compounding necessary to prepare the substance for delivery.'' See 21 U.S.C. 802(10).

The CSA clearly permits pharmacies to compound controlled substances as part of the act of dispensing, and exempts such compounding from the definition of manufacture. The FD&C similarly exempts pharmacies that compound as part of retail pharmacy practice from the manufacturing requirements of that statute. However, in recent years some pharmacies have increased their compounding activities to such an extent that the Food and Drug Administration (FDA) became concerned that some pharmacies are using compounding as a guise to manufacture drugs.

In response to that concern, in 1997 Congress passed the Food and Drug Administration Modernization Act of 1997, Pub. L. 105–115. Included in the statute at Section 127 was a provision which amended the FD&C at 21 U.S.C. 353a. This provision was entitled ''Application of Federal Law to the Practice of Pharmacy Compounding,'' which exempted pharmacies from drug approval provisions of the FD&C relating to manufacturing when they compounded drugs under certain circumstances. The legislative history of this provision found in the House Conference Report states that ''[i]t is the intent of the conferees to ensure continued availability of compounded drug products as a component of individualized therapy, while limiting the scope of compounding so as to prevent manufacturing under the guise of compounding.'' 1997 U.S.C.C.A.N. 2880.

A number of compounding pharmacies, including the Respondent, challenged the constitutionality of the portion of the section that prohibited advertising of specific compounded drugs, in the United States District Court for the District of Nevada. The District Court found that the provision imposed an unconstitutional restriction on commercial speech, but held that the advertising provision was severable from the rest of the compounding provision. *Western States Medical Center* v. *Shalala*, 69 F.Supp.2d 1288 (D.Nev.1999). The United States Court of Appeals for the Ninth Circuit affirmed that decision, but held that the advertising provision was not severable from the rest of the compounding provision. *Western States Medical Center* v. *Shalala*, 238 F.3d 1090 (9th Cir. 2001). Review was granted by the Supreme Court on the advertising issue, but not on the severability issue. The Supreme Court found the advertising provision to be an unconstitutional restriction on commercial speech. *Thompson* v. *Western States Medical Center*, 535 U.S. 357 (2002). The Court did not address the other provisions of the section. The Supreme Court defined compounding as follows:

> Drug compounding is a process by which a pharmacist or doctor combines, mixes, or alters ingredients to create a medication tailored to *the needs of an individual patient.* Compounding is typically used to prepare medications that are not commercially available, such as medication for a patient who is allergic to an ingredient in a mass produced product. [Emphasis added]

*Id.* at 361.

Prior to passage of the 1997 legislation, and after the Supreme Court's decision which acted to invalidate the entire pharmacy compounding provision of the 1997 Act, the FDA has published on its Web site, *http://www.fda.gov,* and elsewhere, its policy on this issue. The Compliance Policy Guide issued by the FDA in 1992, ''warned that pharmacies could not dispense drugs to third parties for resale to individual patients without losing their status as retail entities.'' 535 U.S. at 363. Since the Supreme Court's decision, the FDA has issued Compliance Policy Guides related to pharmacy compounding for both human and veterinary drugs. The Guides continue to express FDA's concern that certain pharmacies are using their retail licenses to conduct manufacturing and distribution activities under the guise of compounding.

Against this backdrop, the Deputy Administrator finds that to be exempt from the definition of manufacturer under the CSA a DEA practitioner registrant must be engaged in compounding controlled substances on an individual patient basis. That is, a pharmacy must receive a prescription for a specific patient from a physician or other individual practitioner and must deliver or dispense that medication to the patient. Since the evidence in this case clearly demonstrates that the Respondent is not preparing or compounding medications containing controlled substances on an individualized patient basis, the Respondent's activities constitute manufacturing under the CSA and it must be registered as a manufacturer to conduct such activity.

The Deputy Administrator also finds that in order to dispense controlled substances, those substances must be delivered to the patient or ultimate user by the dispenser. Sending controlled substances to another DEA practitioner for dispensing is distribution, not dispensing. The Respondent argues in its Post Hearing Brief that ''Wedgewood dispenses controlled substances to physicians for administration to their patients.'' Respondent argues that since the physicians are not dispensing, but administering, that Respondent is dispensing to the physician and not distributing. The Respondent's analysis is incorrect. Dispensing controlled substances, by definition, includes administering and prescribing. *See* 21 U.S.C. 802(15). The essence of dispensing, and by incorporation administration, is delivery of a controlled substance to the patient or ultimate user. The physician or other individual practitioner who receives controlled substances from the Respondent is not the ultimate user, but another DEA practitioner registrant, who is also authorized by DEA registration to dispense, prescribe and administer controlled substances. Therefore, the Respondent is not dispensing, but distributing controlled substances to these physicians or other individual practitioners such as veterinarians.

DEA regulations permit the Respondent to distribute up to five percent of ''the total number of dosage

units of all controlled substances distributed and dispensed by the practitioner during the same calendar year.'' See 21 CFR 1307.11(a)(1)(iv). This is to ensure that those practitioners registered to dispense controlled substances do not become distributors of controlled substances without being properly registered, to permit them to distribute limited quantities to other practitioners for office use. By its own admission, and documented by its own records, the Respondent is distributing controlled substances to physicians and other individual practitioners throughout the United States for further dispensing by these individual practitioners. The Respondent is rarely dispensing controlled substances to specific patients or ultimate users, and, in the majority of cases, has no documentation of the identity of the patients to whom the controlled substances will ultimately be dispensed or administered.

Evidence in the record shows that the Respondent is distributing identical products to many different individual practitioners and therefore not compounding on a patient by patient basis. For example, records in evidence indicate that the Respondent made several lots of stanolzolol 50 mg/ml injection. This is a Schedule III anabolic steroid. Each lot produced approximately 10,000 ml or 300, 30 ml. vials of product. Many times, the yield of each lot would be divided and shipped to several different physicians or veterinarians.

While the Deputy Administrator does not rely on FDA's position on compounding, her interpretation of the CSA is consistent with the legislative history of the pharmacy compounding provisions of the Food and Drug Administration Modernization Act of 1997 and with FDA's current guidelines regarding compounding by pharmacies. Retail pharmacies may compound and avoid the requirements of regulation by the FDA and the DEA when they do so for a specific patient on a patient by patient basis. The traditional definition of compounding, found in the Supreme Court's decision in *Thompson* v. *Western States Medical Center, supra* is also consistent with this statement. Respondent's practice, by its own evidence and admission, does not consist of compounding a specific formulation containing a controlled substance on a patient by patient basis. It consists of manufacturing and distributing controlled substances for office use by other DEA practitioners.

The Respondent maintains that the State of New Jersey approves of its practice because it issued the Respondent a new pharmacy registration at the new business location. The Deputy Administrator notes that the New Jersey statutes included by the Respondent as part of the record do not specifically address the issue of compounding controlled substances; however, New Jersey does have a State Controlled Dangerous Substances Act. The definitions of manufacture, distribute, and dispense are the same as those in the Federal statute. Also included in the New Jersey Administrative Code is a provision that states, ''[a] prescription may not be issued in order for an individual practitioner to obtain controlled substances for supplying the individual practitioner for the purpose of general dispensing to patients.'' N.J.A.C. 8:65–7.4(b). The Deputy Administrator does not seek to interpret the laws of the State of New Jersey. The Deputy Administrator notes that the record does reflect that the State of New Jersey has not taken action against the Respondent and has renewed its pharmacy license at its new location.

The Deputy Administrator finds that the Respondent's activities with regard to controlled substances are manufacturing and distributing as those terms are defined in the CSA, and that the Respondent is not registered with the DEA to conduct either activity, and was acting outside the bounds of its registration as a retail pharmacy. The activity conducted by the pharmacy which it argues is compounding, is not patient specific, but rather manufacturing and distribution to physicians or other practitioners for their dispensing to an individual patient. The Respondent appears to dispute this reading of the CSA and has refused to comply with the August 21, 2003, letter from DEA advising that it is in violation of the statute.

The Respondent pharmacy also obtains bulk phenylpropanolamine (PPA), a listed chemical under the CSA, and sells PPA capsules, which it produces, to veterinarians. In a two-year period Respondent purchased a total of 131 kilograms of PPA from one supplier. In 2002 Respondent sold over 700,000 dosage units of PPA to veterinarians for which they had no records for over threshold or regulated transactions. The Respondent may act as a retail distributor of listed chemicals under its DEA pharmacy registration. A retail distributor of listed chemicals is defined as a drug store who distributes PPA products for personal use and that such distribution is primarily to ''walk-in customers or in face-to-face'' transactions. A separate registration is required to manufacture and distribute PPA which is a List I chemical. The Deputy Administrator notes that the record indicates that since being notified by DEA Investigators, the Respondent has begun to keep records for regulated transactions with PPA products.

The Respondent filed extensive exceptions in this matter in which it alleged that the outcome of the Order to Show Cause proceeding was ''pre-ordained,'' that the agency's record was ''farcical,'' and that the Administrative Law Judge's Recommendation was ''fraught with a legion of legal and factual errors.'' Respondent raises a number of issues, many of which the Deputy Administrator has already addressed in this decision. Most of the facts upon which the Deputy Administrator relies are not in dispute. The Deputy Administrator would note that while the agency did not present witnesses in its case, the Respondent was not precluded from doing so, and also presented no witnesses.

The Deputy Administrator recognizes that the agency has the burden of proof and she concludes that the agency has met the burden of demonstrating by a preponderance of the evidence that the Respondent's registration was inconsistent with the public interest because the Respondent was acting as a manufacturer and distributor of controlled substances without being registered to do so. The Respondent's own exhibits, which consist of all the records seized by the DEA during its inspection in March 2003, demonstrate the nature of the Respondent's business with regard to controlled substances and listed chemicals. The sworn testimony of the Respondent's owner, George Malmberg, before the New Jersey State Board of Pharmacy on October 9, 2002, also demonstrates the specific activities which the Respondent was conducting. Mr. Malmberg testified in response to a question about the nature of his business that, ''[i]t's virtually all compounding today.'' The Respondent contends its activities constitute compounding and dispensing, the agency argues that this conduct is manufacturing and distributing controlled substances and listed chemicals. The Respondent has been on notice by both the FDA and DEA that their activities were manufacturing and distribution, but has chosen to contest the position of the agencies.

The Respondent also takes exception to agency references to the high volume of its business. The Respondent is correct that volume alone does not show that its activity is manufacturing rather than compounding. It is one of many factors that describe the nature of its

business. The Deputy Administrator notes that the DEA registers many mail order and high volume retail pharmacies that dispense quantities of controlled substances far in excess of those distributed by the Respondent. These pharmacies also ship nationwide as does the Respondent. They differ from the Respondent, however, because they dispense controlled substances directly to the patient or ultimate user. These retail pharmacies do not manufacture or even compound the majority of the controlled substances that they handle. They do not distribute controlled substances to physicians and other practitioners. The Respondent's high volume and out-of-state shipping are included as descriptions of the nature of its business.

The Respondent also objects to the Administrative Law Judge's use of a DEA Report of Investigation, which was entered into evidence, as the source of many factual findings in the ALJ's Findings of Fact. While the report is the record of a diversion investigator's findings, those conclusions are supported by the records submitted into evidence by both the agency and the Respondent. The Deputy Administrator does not accord significant weight to the many recordkeeping violations cited in the report and the Order to Show Cause. The primary focus of this decision rests on the Respondent's acting outside the scope of its DEA registration even after being advised that it was doing so by DEA. The facts supporting this conclusion are not in dispute.

The Deputy Administrator concludes that the Respondent's activities of manufacturing and distributing controlled substances without the appropriate DEA Certificate of Registration, of its continued activity even when advised by the agency in writing that its activities were in violation of the statute, demonstrate that the Respondent's continued registration with DEA is inconsistent with the public interest. The Respondent is distributing more than one million dosage units of controlled substances a year to customers across the country. Because it is not registered as a manufacturer or distributor of controlled substances, it is not subject to the security and recordkeeping requirements for that type of registrant. The evidence in the record documents two thefts of controlled substances from the Respondent during 2002. Security requirements for dispensers of controlled substances are fairly minimal and include that the controlled substances may be intermingled with non-controlled substances. No type of alarm system is required. Manufacturers of controlled substances are required to store Schedule III through V raw materials, bulk materials awaiting processing, and finished products in a safe, vault, a building, room or caged area with limited access and self-closing, self-locking doors. These areas must be equipped with an electronic alarm system which is connected to a central station. Recordkeeping and reporting requirements required of manufacturers are much more stringent than those for dispensers of controlled substances.

Accordingly, the Deputy Administrator of the DEA, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.014, hereby orders that DEA Certificate of Registration AW1289126, issued to Wedgewood Village Pharmacy, be, and is, hereby revoked. The Deputy Administrator further orders that any pending application for renewal or modification of such registration be, and they hereby are, denied.

This order is effective May 3, 2006.

Dated: March 22, 2006.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. E6–4771 Filed 3–31–06; 8:45 am]

BILLING CODE 4410–09–P

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act; Meeting

March 22, 2006.

**TIME AND DATE:** 10 a.m., Thursday, April 6, 2006.

**PLACE:** The Richard V. Backley hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The commission will consider and act upon the following in open session: *Secretary of Labor on behalf of Wendell McClain, Coy McClain, Wade Dameron, and Gary Conway* v. *Misty Mountain Mining, Inc., Stanley Osborne, and Simon Ratliff,* Docket Nos. KENT 2005–96–D, KENT 2005–97–D, KENT 2005–98–D, and KENT 2005–99–D. (Issues include whether the Administrative law Judge properly awarded back pay in an amount reduced from that sought by the Secretary, and properly concluded that the complainants were not entitled to a further reinstatement offer once they had turned down such offers).

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs, subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**FOR FURTHER INFORMATION CONTACT:** Jean Ellen, (202) 434–9950/(202) 708–8300 for TDD Relay/1–800–8339 for toll free.

**Jean H. Ellen,**

*Chief Docket Clerk.*

[FR Doc. 06–3184 Filed 3–29–05; 4:34 pm]

BILLING CODE 6735–01–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 06–022]**

### U.S. Space-Based Positioning, Navigation, and Timing Advisory Board; Notice of Establishment of a NASA Advisory Committee, pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. §§ 1 et seq.

**AGENCY:** National Aeronautics and Space Administration (NASA).

*Explanation of Need:* The President authorized a new national policy on December 8, 2004 that establishes guidance and implementation actions for space-based positioning, navigation, and timing programs, augmentations, and activities for U.S. national and homeland security, civil, scientific, and commercial purposes. The policy supersedes Presidential Decision Directive/National Science and Technology Council-6, U.S. Global Positioning System Policy, dated March 28, 1996. The new national policy states that a space-based Positioning, Navigation, and Timing Advisory Board shall be established. The Advisory Board shall be comprised of experts from outside the United States Government, and shall be chartered as a Federal Advisory Committee. In accordance with the new national policy, the NASA Administrator is establishing the U.S. Space-Based Positioning, Navigation, and Timing Advisory Board. This notice follows consultation with the Committee Management Secretariat, General Services Administration.

*Name of Committee:* U.S. Space-Based Positioning, Navigation, and Timing (PNT) Advisory Board.

*Purpose and Objective:* The U.S. Space-Based Positioning, Navigation, and Timing Advisory Board will provide advice on U.S. space-based PNT policy, planning, program management, and funding profiles in relation to the current state of national and international space-based PNT services. The U.S. Space-Based Positioning, Navigation, and Timing Advisory Board

will function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act (FACA).

*Lack of Duplication of Resources:* The U.S. Space-Based Positioning, Navigation, and Timing Advisory Board functions cannot be performed by the agency, another existing committee, or other means such as a public meeting.

*Fairly Balanced Membership:* Membership shall be comprised to ensure a balanced representation in terms of the points of view represented and the functions to be performed.

*Duration:* Continuing.

*Responsible NASA Official:* Dr. Scott Pace, Associate Administrator for Program Analysis and Evaluation, National Aeronautics and Space Administration, 300 E Street, SW., Washington, DC 20546, telephone (202) 358–1811.

Dated: March 27, 2006

**P. Diane Rausch,**

*Advisory Committee Management Officer National Aeronautics and Space Administration.*

[FR Doc. E6–4730 Filed 3–31–06; 8:45 am]

**BILLING CODE 7510–13–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–0219–LR; ASLBP No. 06–844–01–LR]**

## Atomic Safety and Licensing Board; In the Matter of Amergen Energy Company, LLC; License Renewal for Oyster Creek Nuclear Generating Station

March 28, 2006.

Before Administrative Judges: E. Roy Hawkens, Chairman, Dr. Paul B. Abramson, Dr. Anthony J. Baratta.

### Notice of Hearing

*Application for 20-Year License Renewal*

This proceeding concerns the application by AmerGen Energy Company, LLC (''AmerGen'') to renew its operating license for the Oyster Creek Nuclear Generating Station (''Oyster Creek'') for twenty years beyond the current expiration date of April 9, 2009. In response to the September 15, 2005, Notice of Opportunity for Hearing (70 FR 54,585 (Sept. 15, 2005)), two Requests for Hearing and Petitions to Intervene were filed on November 14, 2005. One Petition was filed by the New Jersey Department of Environmental Protection [hereinafter referred to as New Jersey], and the other Petition was filed by the Nuclear Information and Resource Service (''NIRS''), Jersey Shore Nuclear Watch, Inc., Grandmothers, Mothers and More for Energy Safety, New Jersey Public Interest Research Group, New Jersey Sierra Club, and New Jersey Environmental Federation [hereinafter referred to collectively as NIRS]. On December 9, 2005, this Atomic Safety and Licensing Board was established by the Commission to preside over the proceeding.

On February 27, 2006, this Board issued a Memorandum and Order in which we (LBP–06–07, 63 NRC _, _ (slip op. at 2) (Feb. 27, 2006)): (1) denied New Jersey's Request for Hearing and Petition to Intervene; [1] and (2) granted NIRS's Request for Hearing and Petition to Intervene. We concluded that NIRS's contention was admissible to the extent it challenged AmerGen's aging management program for measuring corrosion in the sand bed region of the drywell liner (*id.* at 33); however, it was not admissible with respect to the areas above or below the sand bed region (*id.* at 32–33 & nn.27, 28).[2]

In light of the foregoing, please take notice that a hearing will be conducted in this proceeding. The hearing will be governed by the informal hearing procedures set forth in 10 CFR part 2, subpart L (10 CFR 2.1200–.1213). During the course of the proceeding, the Board may conduct an oral argument (*id.* § 2.331), may hold pre-hearing conferences (*id.* § 2.329), and may conduct evidentiary hearings (*id.* § 2.1207).[3] The public is invited to attend any oral argument, pre-hearing conference, or evidentiary hearing unless otherwise ordered by the Commission (*id.* §§ 2.327–.328). Notices of these sessions will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Room, located at One White Flint, 11555 Rockville Pike (first floor), Rockville, Maryland, and through the NRC Web site, *http://www.nrc.gov*.

Additionally, as provided in 10 CFR 2.315(a), any person not a party to the proceeding may submit a written limited appearance statement setting forth his or her position on the issues in this proceeding. These statements do not constitute evidence, but may assist the Board and/or parties in defining the issues being considered. Persons wishing to submit a written limited appearance statement should send it by mail to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. A copy of the statement should also be served on the Chairman of this Atomic Safety and Licensing Board by mail to the Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. At a later date, the Board may entertain oral limited appearance statements at a location or locations in the vicinity of the Oyster Creek facility. Notice of any oral limited appearance sessions will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Room and on the NRC Web site, *http://www.nrc.gov*.

Documents relating to this proceeding are available for public inspection at the NRC's Public Document Room or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS may contact the NRC Public Document Room reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

It is so ordered.

For the Atomic Safety and Licensing Board.[4]

March 28, 2006.

**E. Roy Hawkens,**

*Chairman, Administrative Judge, Rockville, Maryland.*

[FR Doc. E6–4785 Filed 3–31–06; 8:45 am]

**BILLING CODE 7590–01–P**

[1] Although New Jersey established standing, the Board concluded that it failed to proffer an admissible contention.

[2] On February 7, 2006, NIRS filed a Motion for Leave to Add Contentions or Supplement the Basis of the Current Contention, which AmerGen and the NRC Staff opposed. On March 22, 2006, this Board issued a Memorandum and Order denying NIRS's Motion (LBP–06–11, 63 NRC __ (slip op.) (Mar. 22, 2006)).

[3] The parties to this proceeding are advised that they will be contacted in the near future by the Board's law clerk for purposes of setting up a scheduling conference (10 CFR 2.332; 10 CFR Pt. 2, App. B (II), Model Milestones for Hearings Conducted Under 10 CFR Part 2, Subpart L).

[4] Copies of this Notice of Hearing were sent this date by Internet e-mail to counsel for: (1) AmerGen; (2) New Jersey; (3) NIRS; and (4) the NRC Staff.

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–263]**

### Nuclear Management Company, Monticello Nuclear Generating Plant; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–22, issued to the Nuclear Management Company, LLC (the licensee), for operation of Monticello Nuclear Generating Plant (MNGP), located in Wright and Sherburne Counties, Minnesota.

The proposed amendment would revise Section 4.3, ''Fuel Storage,'' of the MNGP Technical Specifications to allow for installation of an additional temporary 8 x 8 (64-cell) high-density spent fuel storage rack in the spent fuel pool to maintain full core off-load capability.

Before issuance of the proposed 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 required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff's own analysis, done in accordance with the standards of 10 CFR 50.92, is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The temporary spent fuel rack would have essentially the same design purpose, function, standards, and quality as the permanent fuel racks already in place in the spent fuel pool. Other than a slight increase in storage capacity and the resultant slight increase in spent fuel heat generation, there is no other change to the original design and method of operation of the spent fuel pool. Since there is no other change to plant equipment or method of operation, there is no change in the probability of occurrence of an accident, and no change to the accident scenario previously analyzed for the MNGP licensing basis and previously evaluated by the NRC staff.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment does not introduce new equipment operating modes, nor does it alter existing system and component design beyond the installation of the temporary spent fuel storagerack. Accordingly, the proposed amendment does not introduce new failure modes, nor does it alter the equipment required for accident mitigation. The postulated accident scenarios previously evaluated are not changed in any way. Therefore, the proposed amendment will 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 the margin of safety?

No. The proposed amendment would allow the licensee to install a temporary spent fuel storage rack in the spent fuel pool. Other than this change, which will be reviewed by the NRC staff, the licensee is proposing no other changes to other analytical models, assumptions, parameters, or acceptance criteria. Accordingly, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on its own analysis above, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days of the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing 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 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for 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 O1F21, 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 by the above date, 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 requestors/petitioner's interest. The petition must also identify 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 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 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 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, 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 requested amendment 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 requested amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

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(c)(1)(i)–(viii).

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 Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to ''any matter which the Commission determines to be in controversy among the parties.''

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, ''Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors.'' Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed together with a request for hearing/petition to intervene, filed in accordance with 10 CFR 2.309. If it is determined a hearing will be held, the presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, Subpart L apply.

For further details with respect to this action, see the application for amendment dated March 7, 2006, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 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/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 24th day of March, 2006.

For the Nuclear Regulatory Commission.

**Peter S. Tam,**

*Senior Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E6–4778 Filed 3–31–06; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Revised Meeting Notice

The agenda for the 531st ACRS meeting, scheduled to be held on April 5–8, 2006, has been revised as noted below. Notice of this meeting was previously published in the **Federal Register** on Thursday, March 23, 2006 (71 FR 14724).

The discussion of the topic on the Application of the TRACG Code for ESBWR Stability scheduled to be held on Thursday, April 6, 2006 between 2:30 and 4:30 p.m. is now scheduled between 8:35–10:30 a.m. as requested by the NRC staff. The discussion of the item on Draft Final Regulatory Guide on fire protection scheduled to be held on Thursday, between 8:35 and 10 a.m. is now scheduled between 3 and 4:30 p.m. The times for other items scheduled for Thursday, April 6, 2006, previously published in the **Federal Register**, have been adjusted as noted in the revised agenda to facilitate effective use of the Committee's time. A revised agenda is posted on the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

**FOR FURTHER INFORMATION CONTACT:** Mr. Sam Duraiswamy, ACRS, (Telephone: 301–415–7364), between 7:30 a.m. and 4:15 p.m., ET.

Dated: March 28, 2006.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. E6–4781 Filed 3–31–06; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment (PRA) will hold a meeting on April 28, 2006, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

**Friday, April 28, 2006—8:30 a.m. Until 12:30 p.m.**

The Subcommittee will hear the status of the Risk Management Tech Spec (RMTS) Initiative 4b, ''Use of Configuration Management for Determining Technical Specification Completion Times, Related to the Use of Probabilistic Risk Assessment (PRA) and Risk Monitoring Tools.'' The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and industry regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. John G. Lamb, (Telephone: 301–415–6855) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individuals at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: March 28, 2006.

**Michael R. Snodderly,**

*Acting Branch Chief, ACRS/ACNW.*

[FR Doc. E6–4784 Filed 3–31–06; 8:45 am]

BILLING CODE 7590–01–P

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**Summary of Proposal(s)**

(1) *Collection title:* Application for Survivor Death Benefits.

(2) *Form(s) submitted:* AA–21, AA–21cert, G–273a, AA–11a and G–131.

(3) *OMB Number:* 3220–0031.

(4) *Expiration date of current OMB clearance:* 6/30/2006.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households, Business or other for-profit.

(7) *Estimated annual number of respondents:* 20,600.

(8) *Total annual responses:* 20,600.

(9) *Total annual reporting hours:* 5,150.

(10) *Collection description:* The collection obtains the information needed to pay death benefits and annuities due but unpaid at death under the Railroad Retirement Act. Benefits are paid to designated beneficiaries or to survivors in a priority designated by law.

*Additional Information or Comments:* Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

**Charles Mierzwa,**

*Clearance Officer.*

[FR Doc. E6–4796 Filed 3–31–06; 8:45 am]

BILLING CODE 7905–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–53557; File No. SR–BSE–2006–09]**

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter VII, Section 1(g) Relating to the Exercise of Options Contracts

March 28, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 2006, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change as described in Items I and II below, which Items have been prepared by the Exchange. The BSE filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission.[5] 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 BSE, pursuant to Section 19(b)(1) of the Act [6] and Rule 19b–4 thereunder,[7] proposes to amend the Rules of the Boston Options Exchange (''BOX''), an options trading facility of the BSE, to amend Chapter VII, Section 1(g) relating to the exercise of options contracts and the deadline within which one may make a final decision to exercise or not exercise an expiring option. The text of the proposed rule change is available on the BSE's Web site at (*http://bostonstock.com*), at the BSE's principal office, and at the Commission's Public Reference Room.[8]

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The BSE proposes to amend Chapter VII, Section 1(g) of the BOX Rules to clarify the amount of time that is set forth as the deadline to make a final decision to exercise or not exercise an options contract.

On January 11, 2006, the BSE filed a proposed rule change, which the Commission subsequently approved on an accelerated basis, relating to the change in the closing time for trading options on individual stocks from 4:02 p.m. Eastern Time (''ET'') to 4 p.m. ET.[9] However, that proposed rule change did not address a corresponding change to Chapter VII, Section 1(g) of the BOX Rules relating to the time frame within which to exercise or not exercise an options contract. Therefore, the BSE now seeks to amend this rule text for purposes of consistency with the new hours of trading in equity options on individual stocks. The BSE proposes to change all references in Chapter VII, Section 1(g) from 28 minutes to 30 minutes to reflect the two minute change in the closing time for trading of options on individual stocks.

According to the Exchange, the proposed rule change is based on similar rule changes submitted by the Pacific Exchange, Inc., the Philadelphia Stock Exchange, Inc. and the International Securities Exchange, Inc.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] in particular, because it is designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[13]

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The BSE has neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30-days after the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30-days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The BSE has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the BSE to immediately clarify its rule and conform it to the industry-wide close of trading times now in effect. Accelerating the operative date will facilitate efficient and effective market operation by offering clarity and internal consistency with existing BSE rules. For these reasons, the

[3] 15 U.S.C. 78s(B)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] As required by Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii), the BSE submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

[6] 15 U.S.C. 78s(b)(1).

[7] 17 CFR 240.19b–4.

[8] In its proposal, the Exchange indicated that no change is being made to subsections .01 and .02 of the Supplementary Material following Chapter VII, Section 1 of the BOX Rules. During a telephone conversation on March 21, 2006, the Exchange clarified that no change is to be made to subsections .03 through .05 of the Supplementary Material following Chapter VII, Section 1 of the BOX Rules. Telephone conversation between Bill Meehan, General Counsel, BSE, and Johnna B. Dumler, Attorney, Division of Market Regulation (''Division''), Commission, on March 21, 2006.

[9] *See* Securities Exchange Act Release No. 53245 (February 7, 2006), 71 FR 8010 (February 15, 2006) (approving SR–BSE–2006–02). The BSE filed SR–BSE–2006–02 on January 11, 2006 and subsequently filed a partial amendment on February 2, 2006, which requested the implementation date for the new closing time be changed from February 1, 2006, as originally proposed, to February 13, 2006.

[10] *See* Securities Exchange Act Release Nos. 53249 (February 7, 2006), 71 FR 8035 (February 15, 2006) (SR–PCX–2005–138); 53407 (March 3, 2006), 71 FR 12764 (March 13, 2006) (SR–Phlx–2006–12); 53439 (March 7, 2006), 71 FR 13643 (March 16, 2006) (SR–ISE–2006–11). *See also* 53438 (March 7, 2006, 71 FR 13641 (March 16, 2006) (SR–CBOE–2006–19).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] The Exchange clarified that it is relying on the statutory bases set forth above, as opposed to the factors enumerated in the ''Basis'' Section of Exhibit 1. Telephone conversation between Bill Meehan, General Counsel, BSE, and Johnna B. Dumler, Attorney, Division, Commission, on March 21, 2006.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] *Id.*

Commission designates the proposed rule change as effective and operative immediately upon filing with the Commission.[17]

At any time within 60-days after 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–BSE–2006–09 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2006–09. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. 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–BSE–2006–09 and should be submitted on or before April 24, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–4755 Filed 3–31–06; 8:45 am]

BILLING CODE 8010–01–P

[17] For the purposes only of waiving the 30-day operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–53556; File No. SR–NASD–2005–098]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to the Submission of SEC Rule 15c2–11 Information on Non-Nasdaq Securities

March 27, 2006.

On August 18, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), a proposed rule change to NASD Rule 6740 relating to the submission of SEC Rule 15c2–11 information on non-Nasdaq securities pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'');[1] and Rule 19b–4 thereunder.[2] On January 10, 2006, NASD submitted Amendment No. 1 to the proposed rule change.[3] The Commission published the proposed rule change, as amended, for comment in the **Federal Register** on February 21, 2006.[4] The Commission received no comments on the proposal.

NASD Rule 6740 prohibits a member from initiating or resuming the quotation of a non-Nasdaq security[5] in a quotation medium unless the member has demonstrated compliance with the requirements of SEC Rule 15c2–11 pertaining to the review and maintenance of specified information about the security and issuer. To demonstrate compliance with both NASD Rule 6740 and SEC Rule 15c2–11, a member must file with NASD a Form 211, together with the information required under SEC Rule 15c2–11(a), at least three business days before the quotation is published or displayed.

The proposed rule change, as amended, relieves members of the obligation to file with NASD copies of information that is electronically accessible through the SEC's EDGAR system. Although members will not be required to file the information with NASD, they will nonetheless remain obligated under NASD Rule 6740 to review and maintain information as required by SEC Rule 15c2–11. Further, where copies of documents are not submitted to NASD because they are available through EDGAR, members will continue to be required to provide on the Form 211 the type and date of each report or statement, as well as other information as may be requested by NASD relating to each report or statement for the reporting issuer that the member relied upon in satisfying its information review obligations under NASD Rule 6740 and SEC Rule 15c2–11(a).[6]

In addition, the proposed rule change, as amended, would except members from the requirements of NASD Rule 6740 where the Commission has granted an exemption to publish or submit any quotation under SEC Rule 15c2–11(h). To the extent that the Commission's exemption is subject to any terms and conditions, those same terms and conditions would apply to the exclusion under NASD Rule 6740.

Finally, the proposed rule change, as amended, replaces, as a technical change, several references in NASD Rule 6740 to ''the Association'' with the name ''NASD.''

NASD has stated that the effective date of the proposed rule change will be 30 days following publication of NASD's *Notice to Members* announcing Commission approval, and the Commission believes that this is reasonable.[7]

[1] 5 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made certain technical and clarifying changes to the original rule filing of August 18, 2005 and superseded and replaced the original rule filing in its entirety.

[4] *See* Securities Exchange Act Release No. 53276 (February 13, 2006), 71 FR 8875 (February 21, 2006).

[5] For purposes of this rule, ''non-Nasdaq security'' is defined in NASD Rule 6710(c) as ''any equity security that is neither included in The Nasdaq Stock Market nor traded on any national securities exchange.''

[6] If information other than the type and date of the statement or report is required to be submitted by members under this proposed provision, NASD will provide notice of these additional requirements in a Notice to Members.

[7] NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval.

The Commission believes that the proposed rule change, as amended, should harmonize NASD Rule 6740 and SEC Rule 15c2–11, so that members are not required to review, maintain and file information under the NASD rule when they are not required to review and maintain such information under the SEC rule. NASD Rule 6740 seeks to ensure that members are in compliance with SEC Rule 15c2–11. Therefore, where the Commission has granted an exemption under Rule 15c2–11(h), it is appropriate that the same treatment apply under NASD Rule 6740. The Commission also believes that relieving members of the obligation to file with NASD copies of information that is electronically accessible through the EDGAR system will eliminate the administrative burden and cost imposed on members in furnishing such information to NASD while preserving the requirement that the members maintain and review information as required by SEC Rule 15c2–11.

For the above reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association [8] and, in particular, the requirements of Section 15A of the Act [9] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Sections 15A(b)(6) and 15A(b)(9) of the Exchange Act.[10]

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,[11] that the proposed rule change (SR–NASD 2005–098), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–4757 Filed 3–31–06; 8:45 am]

**BILLING CODE 8010–01–P**

[8] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(6) and (b)(9).

[11] 15 U.S.C. 78s(b)(2).

[12] 12 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–53530; File No. SR–OCC–2006–02]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Definition of Non-Customer

March 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 14, 2006, 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 proposed rule change would clarify the definition of non-customer as it relates to member affiliates.

### 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.[2]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The proposed rule change clarifies that a broker-dealer member affiliate of a clearing member neither needs to consent to being treated as a non-customer nor to execute a non-conforming subordination agreement in order to be treated as a non-customer for purposes of OCC's By-Laws and Rules.

In File No. SR–OCC–99–5, OCC changed its rules to allow an affiliate of a clearing member to designate itself as a non-customer under the Commission's hypothecation rules and OCC's By-Laws and Rules in order for the affiliate's transactions and positions to be commingled in its clearing member's firm and/or proprietary cross-margin account, in order to make more favorable margin treatment of such positions possible.[3] The purpose of File No. SR–OCC–99–5 was to conform OCC's Rules to the terms of a no-action letter issued by the Division of Market Regulation, which set forth requirements for a member affiliate to designate itself as a non-customer.[4] Specifically, that letter required each non-broker-dealer member affiliate whose securities positions would be hypothecated to consent to being treated as a non-customer and to execute a non-conforming subordination agreement meeting certain criteria accompanied by an opinion of counsel regarding the legal authority of the member affiliate to so subordinate its claims. The requirement that a non-broker-dealer member affiliate provide its clearing member with an executed non-conforming subordination agreement was intended to ensure that such member affiliate would not be a customer for purposes of SEC Rule 15c3–3. Because broker-dealers are already excluded from the definition of customer in Rule 15c3–3, there was no need to require broker-dealer affiliates to execute such a subordination agreement. OCC is filing this rule change to clarify the definition of non-customer as it relates to member affiliates so that it more closely conforms to the terms of the no-action letter.

OCC believes that the proposed change is consistent with Section 17A of the Act because it clarifies an existing OCC rule to allow the positions of broker-dealer member affiliates to be included in a clearing member's firm account and/or proprietary cross-margining account, which will result in more favorable margin treatment and encourage participation in cross-margining. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 43668 (December 4, 2000), 66 FR 77413 (December 11, 2000).

[4] Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, to William H. Navin, EVP and General Counsel, OCC (June 15, 2000).

*(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 [5] and Rule 19b–4(f)(4) [6] 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–2006–02 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2006–02. 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–2006–02 and should be submitted on or before April 24, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–4756 Filed 3–31–06; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19–4(f)(4).

[7] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 10428 and # 10429]**

### Missouri Disaster Number MO–00002

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1631–DR ), dated March 16, 2006.

*Incident:* Severe Storms, Tornadoes, and Flooding.

*Incident Period:* March 11, 2006 through March 13, 2006.

*Effective Date:* March 24, 2006.

*Physical Loan Application Deadline Date:* May 15, 2006.

*EIDL Loan Application Deadline Date:* December 15, 2006.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, National Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of Missouri, dated March 16, 2006, is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Counties:*

Benton, Boone, Bates, Carroll, Cass, Cedar, Cooper, Greene, Henry, Howard, Iron, Jefferson, Lawrence, Lincoln, Mississippi, Montgomery, Morgan, New Madrid, Newton, Phelps, Putnam, Scott, St. Clair, Taney, Vernon, Webster, Wright

*Contiguous Counties: Missouri*

Adair, Barry, Barton, Caldwell, Callaway, Cole, Crawford, Dade, Dent, Dunklin, Franklin, Gasconade, Jasper, Laclede, Livingston, Maries, Mcdonald, Mercer, Miller, Moniteau, Osage, Ozark, Pemiscot, Pike, Pulaski, Ray, Reynolds, Schuyler, St. Charles, St. Louis, Stoddard, Sullivan, Texas, Warren, Washington, Wayne

*Arkansas*

Boone, Carroll, Marion

*Illinois*

Alexander, Calhoun

*Iowa*

Appanoose, Wayne

*Kansas*

Bourbon, Cherokee, Crawford, Johnson, Linn, Miami

*Kentucky*

Ballard, Carlisle, Fulton, Hickman

*Oklahoma*

Ottawa

*Tennessee*

Lake

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Roger B. Garland,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E6–4752 Filed 3–31–06; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 10430 and # 10431]**

### New York Disaster # NY–00007

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster

for the State of New York dated March 22, 2006.

*Incident:* Severe Storms and Flooding.

*Incident Period:* October 7, 2005 through October 26, 2005.

*Effective Date:* March 22, 2006.

*Physical Loan Application Deadline Date:* May 22, 2006.

*Economic Injury (EIDL) Loan Application Deadline Date:* December 22, 2006.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, National Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:*

Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk

*Contiguous Counties: New York*

Westchester

*New Jersey*

Bergen Hudson

The Interest Rates are:

| | Percent |
|---|---|
| Homeowners with Credit Available Elsewhere | 5.375 |
| Homeowners without Credit Available Elsewhere | 2.687 |
| Businesses with Credit Available Elsewhere | 6.557 |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere | 4.000 |
| Other (Including Non-Profit Organizations) with Credit Available Elsewhere | 4.750 |
| Businesses and Non-Profit Organizations without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 10430 6 and for economic injury is 10431 0. The States which received an EIDL Declaration # are New York, New Jersey.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 22, 2006.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. E6–4753 Filed 3–31–06; 8:45 am]

**BILLING CODE 8025–01–P**

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. Fax: 410–965–6400.

The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Request for Withdrawal of Application—20 CFR 404.640—0960–0015.* The filing of an application for Social Security benefits may be to the claimant's disadvantage. The withdrawal procedure provides a method for overcoming and nullifying this disadvantage. The SSA–521 collects the required information to effectuate withdrawal from benefits or of an application for benefits. The respondents are applicants or claimants for Social Security benefits.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 100,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 5 minutes.

*Estimated Annual Burden:* 8,333 hours.

2. *Statement of Claimant or Other Person—20 CFR 404.702, 416.570—0960–0045.* The SSA–795 is used to obtain information from claimants or other persons having knowledge of facts in connection with claims for Social Security or Supplemental Security Income (SSI) benefits when there is no standard form which collects the needed information. The information is used by SSA to process claims for benefits or for ongoing issues related to the above programs. The respondents are applicants/beneficiaries for Social Security benefits or SSI payments, or others who are in a position to provide information pertinent to the claim(s).

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 305,500.

*Frequency of Response:* 1.

*Average Burden Per Response:* 15 minutes.

*Estimated Annual Burden:* 76,375 hours.

3. *Application for Search of Census Records for Proof of Age—20 CFR 404.716—0960–0097.* The information collected on Form SSA–1535–U3 is needed to provide sufficient identifying information to allow an accurate search of census records to establish proof of age for an individual applying for Social Security benefits. It is used for individuals who must establish proof of age as a factor of entitlement, and cannot otherwise document their date of birth. The respondents are applicants for Social Security benefits who must establish their date of birth as a factor of entitlement.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 18,030.

*Frequency of Response:* 1.

*Average Burden Per Response:* 12 minutes.

*Estimated Annual Burden:* 3,606 hours.

4. *Claim for Amounts Due in the Case of a Deceased Beneficiary—20 CFR 404.503(b)—0960–0101.* Completion of the SSA–1724 to assure proper payment of an underpayment due to a deceased beneficiary is required when there is insufficient information in the file to identify the person(s) entitled to the underpayment, or that person's address. Generally, the SSA–1724 is used in cases where a surviving widow(er) is not already entitled to a monthly benefit on the same earnings record, or is not filing for a lump-sum death payment as a living-with spouse. The respondents

are applicants for underpayments in cases of deceased beneficiaries.

*Type of Request:* Revision of an OMB-approved information collection.

*Number of Respondents:* 300,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 50,000 hours.

5. *Statement of Care and Responsibility for Beneficiary—20 CFR 404.2020, 404.2025, 408.620, 408.625, 416.620, 416.625—0960–0109.* Form SSA–788 is used to obtain information from the beneficiary's custodian about the representative payee applicant's concern and responsibility for the beneficiary. The respondents are individuals who have custody of the beneficiary where someone else has filed to be the beneficiary's representative payee.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 130,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 21,667 hours.

6. *Self-Employment/Corporate Officer Questionnaire—20 CFR 404.435(e), 404.446—0960–0487.* Form SSA–4184 is used to develop earnings and corroborate the claimant's allegations of retirement when the claimant is self-employed or a corporate officer. The information collected is used to determine the benefit amount. The respondents are self-employed individuals or corporate officers who apply for retirement or survivors' insurance benefits.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 50,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 20 minutes.

*Estimated Annual Burden:* 16,667 hours.

7. *Application for Special Benefits for World War II Veterans—20 CFR 408, Subparts B, C and D—0960–0615.* Title VIII of the Social Security Act (Special Benefits for Certain World War II Veterans) allows for the payment of a monthly benefit to a qualified World War II veteran who resides outside the United States. The regulations set out the requirements an individual must meet in order to qualify for and become entitled to Special Veterans Benefits (SVB). SSA–2000–F6 is the application used to elicit the information necessary to determine entitlement to SVB. The respondents are individuals who are applying for SVB under Title VIII of the Social Security Act.

*Type of Request:* Revision of an OMB-approved information collection.

| Section No. | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated annual hour burden |
|---|---|---|---|---|
| § 408.202(d); § 408.210; § 408.230(a); § 408.305; §§ 408.310–.315 | 325 | 1 | 20 | 108 |
| § 408.232(a) | 5 | 1 | 15 | 1.25 |
| § 408.320 | 5 | 1 | 15 | 1.25 |
| § 408.340 | 5 | 1 | 15 | 1.25 |
| § 408.345 | 2 | 1 | 15 | .50 |
| § 408.351(d) & (f) | 2 | 1 | 30 | 1.00 |
| § 408.355(a) | 5 | 1 | 15 | 1.25 |
| § 408.360(a) | 2 | 1 | 15 | .50 |
| § 408.404(c) | 20 | 1 | 15 | 5.00 |
| §§ 408.410–412 | 20 | 1 | 15 | 5.00 |
| § 408.420(a), (b) | 230 | 1 | 15 | 58.00 |
| §§ 408.430 & .432 | 215 | 1 | 30 | 108.00 |
| § 408.435(a), (b), (c) | 230 | 1 | 15 | 58.00 |
| § 408.437(b), (c), (d) | 20 | 1 | 30 | 10.00 |
| Totals | 1,086 | | | 359 |

Estimated Annual Burden: 359 hours.

8. *Prohibition of Payment of SSI Benefits to Fugitive Felons and Parole/Probation Violators—20 CFR 416.708(o)—0960–0617.* Section 1611(e)(4) of the Social Security Act precludes eligibility for SSI benefits for certain fugitives and probation/parole violators. Regulations at 20 CFR 416.708(o) require that an individual report to SSA that he or she is fleeing to avoid prosecution for a crime, fleeing to avoid custody or confinement after conviction of a crime, or violating a condition of probation or parole. The respondents are SSI applicants/recipients or representative payees of SSI recipients who are reporting that a recipient is a fugitive felon or probation/parole violator.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 1,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 1 minute.

*Estimated Annual Burden:* 17 hours.

9. *Application for SSA Employee Testimony—20 CFR 403.100–155—0960–0619.* SSA's regulations at 20 CFR 403.100–155 establish policies and procedures whereby an individual, organization, or governmental entity may request official Agency information, records, or testimony of an agency employee in a legal proceeding to which the agency is not a party. The request, which must be in writing to the Commissioner, must fully set out the nature and relevance of the sought testimony. Respondents are individuals or entities who request testimony from SSA employees in a legal proceeding.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 100.

*Frequency of Response:* 1.

*Average Burden Per Response:* 60 minutes.

*Estimated Annual Burden:* 100 hours.

10. *Representative Payee Report-Special Veterans Benefits—20 CFR 408.665—0960–0621.* Title VIII allows the payment of monthly benefits by the Commissioner of Social Security to qualified World War II veterans who reside outside the U.S. A representative payee may be appointed to receive and manage the monthly payment for the beneficiary's use and benefit. The SSA–

2001–F6 is completed by the payee to determine if he has used the benefits properly and continues to demonstrate strong concern for the beneficiary. Respondents are persons or organizations who act on behalf of beneficiaries receiving Special Veterans Benefits.

*Type of Request:* Revision of an OMB-approved information collection.

*Number of Respondents:* 100.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 17 hours.

Dated: March 27, 2006.

**Elizabeth A. Davidson,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. E6–4740 Filed 3–31–06; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice 5359]**

### 30-Day Notice of Proposed Information Collection: Form DS–6001, Request for an Advisory Opinion, OMB Control Number 1405–XXXX; Form DS–6002, Prior Notification, OMB Control Number 1405–XXXX; Form DS–6003, Request for Reconsideration of Unclassified Proviso(s), OMB Control Number 1405–XXXX; Form DS–6004, Request To Change End User, End Use and/or Destination of Hardware, OMB Control Number 1405–XXXX

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the following information collection requests to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Request for an Advisory Opinion.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, (PM/DDTC).
- *Form Number:* DS–6001.
- *Respondents:* Business organizations.
- *Estimated Number of Respondents:* 250.
- *Estimated Number of Responses:* 250.
- *Average Hours Per Response:* 1 hour.
- *Total Estimated Burden:* 250 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Mandatory.
- *Title of Information Collection:* Prior Notification.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, (PM/DDTC).
- *Form Number:* DS–6002.
- *Respondents:* Business organizations.
- *Estimated Number of Respondents:* 15.
- *Estimated Number of Responses:* 15.
- *Average Hours Per Response:* 1 hour.
- *Total Estimated Burden:* 15 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Mandatory.
- *Title of Information Collection:* Request for Reconsideration of Unclassified Proviso(s).
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, (PM/DDTC).
- *Form Number:* DS–6003.
- *Respondents:* Business organizations.
- *Estimated Number of Respondents:* 100.
- *Estimated Number of Responses:* 200 (respondents may submit more than one response).
- *Average Hours Per Response:* 1 hour.
- *Total Estimated Burden:* 200 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Mandatory.
- *Title of Information Collection:* Request to Change End User, End Use and/or Destination of Hardware.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, (PM/DDTC).
- *Form Number:* DS–6004.
- *Respondents:* Business organizations.
- *Estimated Number of Respondents:* 300.
- *Estimated Number of Responses:* 650 (respondents may submit more than one response).
- *Average Hours Per Response:* 1 hour.
- *Total Estimated Burden:* 650 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Mandatory.

**DATES:** Submit comments to the Office of Management and Budget (OMB) for up to 30 days from April 3, 2006.

**ADDRESSES:** Direct comments and questions to Alexander Hunt, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at (202) 395–7860. You may submit comments by any of the following methods:

- *E-mail: ahunt@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20530.
- *Fax:* 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** You may obtain copies of the proposed information collection and supporting documents from Michael T. Dixon, Director, Office of Defense Trade Controls Management, Bureau of Political-Military Affairs, SA–1, Room H1200, 2401 E Street, NW., Washington, DC 20037, who may be reached via e-mail at *DixonMT@state.gov.*

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed collection of information is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

*Abstract of proposed collection:* Form DS–6001 is used when a person, registered with the Directorate of Defense Trade Controls, desires an opinion as to whether DDTC would likely grant a license or other approval for an export transaction involving defense articles. Also, the DS–6001 may be used to satisfy the prior approval requirements of 22 CFR 126.8 for a proposal to sell or manufacture abroad significant military equipment to foreign persons. Prior notification in accordance with 22 CFR 126.8(a)(2) regarding the sale of significant military equipment is submitted using form DS–6002. In order to request a change in the proviso(s) placed on an export license, the DS–6003 is submitted. Form DS–6004 is used to request approval prior to any sale, transfer, transshipment or disposal of classified or unclassified defense articles, whether permanent or temporary to any end-user, end-use or destination other than as stated on the license or other approval or on a Shipper's Export Declaration.

*Methodology:* These forms/information collections may be sent to the Directorate of Defense Trade Controls via the following methods: Mail, personal delivery, and/or electronically.

Dated: February 27, 2006.

**Gregory M. Suchan,**

*Deputy Assistant Secretary for Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.*

[FR Doc. E6–4779 Filed 3–31–06; 8:45 am]

BILLING CODE 4710–25–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Membership in the National Parks Overflights Advisory Group Aviation Rulemaking Committee

**ACTION:** Notice.

**SUMMARY:** The National Park Service (NPS) and the Federal Aviation Administration (FAA), as required by the National Parks Air Tour Management Act of 2000, established the National Parks Overflights Advisory Group (NPOAG) in March 2001. The NPOAG was formed to provide continuing advice and counsel with respect to commercial air tour operations over and near national parks. This notice informs the public of six vacancies (due to completion of membership on October 9, 2006), on the NPOAG (now the NPOAG Aviation Rulemaking Committee (ARC)) for members representing general aviation (one vacancy), commercial air tour operators (two vacancies), environmental concerns (two vacancies) and Native American tribes (one vacancy), and invites interested persons to apply to fill the vacancies.

**DATES:** Persons interested in serving on the NPOAG ARC should contact Mr. Brayer in writing and postmarked or e-mailed on or before May 8, 2006.

**FOR FURTHER INFORMATION CONTACT:** Barry Brayer, Executive Resource Staff, Federal Aviation Administration, Western Pacific Region Headquarters, 15000 Aviation Blvd., Hawthorne, CA 90250, telephone: (310) 725–3800, e-mail: *Barry.Brayer@faa.gov*, or Karen Trevino, National Park Service, Natural Sounds Program, 1201 Oakridge Dr., Suite 350, Ft. Collins, CO 80525, telephone (970) 225–3563, e-mail: *Karen_Trevino@nps.gov*.

**SUPPLEMENTARY INFORMATION:**

**Background**

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

The advisory group provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.'' Members of the advisory group may be allowed certain travel expenses as authorized by Section 5703 of Title 5, United States Code, for intermittent Government service. By FAA Order No. 1110–138, signed by the FAA Administrator on October 10, 2003, the NPOAG became an Aviation Rulemaking Committee (ARC). FAA Order No. 1110–138, was amended and became effective as FAA Order No. 1110–138A, on January 20, 2006.

The current NPOAG ARC is made up of one member representing general aviation, three members representing the air tour industry, four members representing environmental concerns, and two members representing Native American interests. Current members of the NPOAG ARC are: Heidi Williams, Aircraft Owners and Pilots Association; Alan Stephen, fixed-winged air tour operator representative; Elling Halvorson, Papillon Airways, Inc.; Richard Larew, Rainier Heli-Lift, Inc.; Chip Dennerlein, Siskiyou Project; Charles Maynard, formerly with Great Smoky Mountain National Park; Mark Peterson, National Audubon Society; Don Barger, National Parks Conservation Association; Rory Majenty, Hualapai Nation (Upon publication of this notice. See Changes in Membership below.), and Richard Deertrack, Taos Pueblo.

**Public Participation in the NPOAG ARC**

In order to retain balance within the NPOAG ARC, the FAA and NPS invite persons interested in serving on the ARC, to represent general aviation, commercial air tours, environmental concerns, or Native American tribes, to contact Mr. Barry Brayer (contact information is written above in **FOR FURTHER INFORMATION CONTACT**). Requests to serve on the ARC must be made to Mr. Brayer in writing and postmarked or e-mailed on or before May 8, 2006. The request should indicate whether or not you are a member of an association representing general aviation, commercial air tours, environmental concerns or Native American tribes or have another affiliation with issues relating to aircraft flights over national parks. The request should also state what expertise you would bring to the NPOAG ARC as related to environmental interests. The term of service for NPOAG ARC members is 3 years.

**Changes in Membership**

To maintain the balanced representation of the group, the FAA and the NPS recently published a notice in the **Federal Register** asking interested persons to apply to fill an earlier vacancy representing Native American tribes on the NPOAG. The person selected to fill this position is Rory Majenty, Hualapai Nation.

In consideration of the foregoing, the Federal Aviation Administration amends FAA Order No. 1110.138 as follows:

**FAA Order No. 1110–138A, National Parks Overflights Advisory Group Aviation Rulemaking Committee**

1. The authority citation for FAA Order No. 1110.138A continues to read as follows:

*Purpose.* This order constitutes the charter for the National Parks Overflights Advisory Group (NPOAG) Aviation Rulemaking Committee that is designated and established pursuant to the Administrator's authority under 49 U.S.C. 106(p)(5).

**Sec. 2. Distribution [Amended]**

2. Section 2 is amended by removing the words ''Regulation and Certification'' and adding, in their place, the words ''Aviation Safety;'' removing the words ''Soundscape Program

Center'' and adding, in their place, the words ''Natural Sounds Program Office.''

**Sec. 6. Organization and Administration [Amended]**

3. Section 6.a is amended by removing the words ''The general membership of the NPOAG will be composed of a representative of general aviation (two members), commercial air tour operators (two members),'' and adding, in their place, the words ''The general membership of the NPOAG will be composed of a representative of general aviation (one member), commercial air tour operators (three members).''

4. Section 6.b is amended by removing the words '' The term of office will be staggered as follows: One general aviation representative, one commercial air tour operator representative, two environmental representatives and one Native American representative will serve for a period of two years from the date of this charter. The remaining representatives will serve a three-year term from the date of this charter. Thereafter, the term of each office for each member will be three years. Those individuals chosen for the initial two-year term will be selected either by volunteering for a two-year term, or by blind draw,'' and adding, in their place, the words ''Membership will continue with individuals already serving on the NPOAG, at the request of the Administrator and the Director. The term of office for each member will be three years. The three year membership begins on the original date of appointment.''

5. Section 6.c is amended by removing the words ''The first members of the NPOAG are listed in Attachment A to this order.''

**Sec. 8. Meetings [Amended]**

6. Section 8 is amended by removing the words ''The schedule for regular meetings will be set by the Chairperson after consideration of recommendations from the group'' and adding, in their place, the words ''The Chairperson will set the schedule for regular meetings, after consideration of recommendations from the group.''

7. Section 8 is also amended by removing the words ''The meeting location will be set by the Chairperson after considering recommendations from the group'' and adding, in their place, the words ''The Chairperson will set the meeting location after considering recommendations from the group.''

**Sec. Addendum to: The National Parks Overflights Advisory Group Aviation Rulemaking Advisory Committee Order**

**1110.38 [Removed]**

*General Aviation Representatives*

David Kennedy—National Air Transportation Association.
Heidi Williams—Aircraft Owners and Pilots Association.

*Commercial Air Tour Operators Representatives*

Lash Larew—ERA Helicopter, USATA, HAI.
Alan Stephen—Grand Canyon Airlines.

*Environmental Concerns Representatives*

Steven Bosak—National Parks Conservation Association.
Chip Dennerlein—State of Alaska Fish and Game.
Susan Gunn—The Wilderness Society.
Charles Maynard—Friends of the Smokies.

*Native American Tribes Representatives*

Richard Deertrack—Native American Tribes.
Germaine White—CS and KT Tribes.

Issued in Washington, DC, on March 23, 2005.

**Barry Brayer,**

*Manager, Executive Resource Staff, Western-Pacific Region.*

[FR Doc. E6–4793 Filed 3–31–06; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Policy Statement No. ANM–03–112–16]**

### High Altitude Cabin Decompression Interim Policy (Reference Amendment 25–87)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of final policy.

**SUMMARY:** The Federal Aviation Administration (FAA) announces the availability of final policy that provides FAA certification policy on the compliance issues associated with high altitude flight.

**DATES:** The final policy was issued by the Transport Airplane Directorate on March 24, 2006.

**FOR FURTHER INFORMATION CONTACT:** Stephen Happenny, Propulsion and Mechanical Systems Branch, ANM–112, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–2147; fax (425) 227–1232; e-mail: *stephen.happenny@faa.gov*

**SUPPLEMENTARY INFORMATION:**

**Discussion of Comments**

A notice of proposed policy was published in the **Federal Register** on May 30, 2003 (68 FR 32570). Five (5) commenters responded to the request for comments.

**Background**

The policy provides applicants with information on how the FAA will evaluate petitions for exemption from § 25.841(a), as amended by Amendment 25–87. For airplanes with wing-mounted engines, this regulation in effect limits the maximum operating altitude of airplanes approved to this standard to 40,000 feet. An Aviation Rulemaking Advisory Committee (ARAC) recommended that the FAA to develop a new safety standard, which is being addressed in rulemaking activities. That committee also asked for interim policy to be used during the rulemaking process, to provide relief because high altitude operations offer benefits in terms of reduced fuel consumption and better airspace utilization. This policy applies to the regulatory provisions regarding cabin pressure failures caused by uncontained engine failures. This policy does not provide relief from the regulatory cabin pressure limits for the more common types of failures (*i.e.*, environmental systems and structural failures).

The final policy as well as the disposition of public comments is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Issued in Renton, Washington, on March 24, 2006.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 06–3174 Filed 3–31–06; 8:45am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2005–22997]**

**RIN 2120–AI23**

### Reduction of Fuel Tank Flammability in Transport Category Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** This notice announces the availability of and request for comments on the following documents:

- ''Peer Review of Sandia National Laboratories 'Assessment of Preventing Ignition Sources With SFAR 88 Airworthiness Directives'.''
- FAA Disposition of ''Peer Review of Sandia National Laboratories 'Assessment of Preventing Ignition Sources With SFAR 88 Airworthiness Directives'.''
- ''Peer Review Document DOT/FAA/AR–05/8 Fuel Tank Flammability Assessment Method User's Manual.''
- FAA Disposition of ''Peer Review Document DOT/FAA/AR–05/8 Fuel Tank Flammability Assessment Method User's Manual.''

The FAA is making available these documents to support its Notice of Proposed Rulemaking (NPRM) entitled ''Reduction of Fuel Tank Flammability in Transport Category Airplanes.'' The NPRM and these documents can be found at the DOT Docket Web site, at *http://dms.dot.gov,* Docket No. FAA–2005–22997.

**DATES:** Comments must be received on or before May 8, 2006.

**ADDRESSES:** You may send comments, identified by Docket No. FAA–2005–22997, using any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Dostert, FAA, Propulsion/Mechanical Systems Branch (ANM–112), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2132, facsimile (425) 227–1320; e-mail: *mike.dostert@faa.gov.*

#### Comments Invited

Interested parties are invited to submit comments on these documents. Commenters must submit comments to the address specified above. The FAA will consider all communications received on or before the closing date for comments.

#### Discussion

The FAA commissioned peer reviews of two reports related to the NPRM we issued on November 17, 2005, ''Reduction of Fuel Tank Flammability in Transport Category Airplanes'' (70 FR 70922, November 23, 2005). Those reports are entitled, ''The Fuel Tank Flammability Assessment Method'' and the ''Assessment of Preventing Ignition Sources with SFAR 88 Airworthiness Directives.'' The peer reviews have been completed and have been sent to the FAA, and the FAA has finished its disposition of the findings from these peer reviews.

The peer reviews and dispositions are required by the Office of Management and Budget's (OMB's) ''Final Information Quality Bulletin for Peer Review.'' The FAA is adding peer review reports and our dispositions to the public docket so the public will have an opportunity to view the documents and to add their comments to the docket.

The NPRM, the reports and the peer reviews can be found at the DOT Docket Web site, at *http://dms.dot.gov,* Docket No. FAA–2005–22997.

Issued in Washington, DC on March 27, 2006.

**Anthony F. Fazio,**

*Director, FAA Office of Rulemaking.*

[FR Doc. E6–4790 Filed 3–31–06; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[FMCSA Docket No. FMCSA–2005–22056]**

### Public Meeting To Discuss the Implementation of the North American Standard for Cargo Securement

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** FMCSA announces the third in a series of public meetings concerning the implementation of the North American Standard for Protection Against Shifting or Falling Cargo. On September 27, 2002, FMCSA published a Final Rule revising its regulations concerning protection against shifting and falling cargo for commercial motor vehicles (CMVs) engaged in interstate commerce. The final rule is based on the North American Cargo Securement Standard Model Regulations, which reflect the results of a multi-year comprehensive research program to evaluate U.S. and Canadian cargo securement regulations. Motor carriers operating in the United States had until January 1, 2004, to comply with the new regulations. On September 23, 2004, Canada's Council of Ministers Responsible for Transportation and Highway Safety approved a new National Safety Code Standard for cargo securement. Full implementation of the new cargo securement requirements in Canada began in the summer of 2005. This meeting is the third in a series of meetings to discuss the process for ensuring the consistent interpretation and enforcement of the harmonized cargo securement standards by FMCSA and the Canadian Provinces. The meeting is being held in connection with the Commercial Vehicle Safety Alliance (CVSA)'s 2006 Annual Conference.

**DATES:** The meeting will be held on April 23–24, 2006. The meeting will begin at 8 a.m. and end at 5 p.m. on April 23, and continue from 1:30 p.m. until 5 p.m. on April 24.

**ADDRESSES:** The meeting will be held at the Marriott Hartford Downtown & Connecticut Convention Center, 200 Columbus Boulevard, Hartford, Connecticut.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Huntley, Chief of the Vehicle and Roadside Operations Division (MC–PSV), Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Phone: 202–366–5370.

**SUPPLEMENTARY INFORMATION:**

#### Background

On September 27, 2002 (67 FR 61212), FMCSA published a final rule revising its regulations concerning protection against shifting and falling cargo for CMVs operated in interstate commerce (49 CFR part 393). The new cargo securement standards are based on the North American Cargo Securement Standard Model Regulations, which reflect the results of a multi-year comprehensive research program to

evaluate U.S. and Canadian cargo securement regulations. The program included evaluations of the motor carrier industry's best practices, and recommendations presented during a series of public meetings involving U.S. and Canadian industry experts, Federal, State and Provincial enforcement officials, and other interested parties. The intent of the rulemaking was to reduce the number of crashes caused by cargo shifting on or within, or falling from, CMVs operating in interstate commerce, and to harmonize to the greatest extent practicable U.S., Canadian, and Mexican cargo securement regulations. Motor carriers had until January 1, 2004, to comply with the new regulations.

**Maintaining Uniformity Between U.S. and Canadian Cargo Securement Standards**

FMCSA believes it is necessary to continue working with U.S. and Canadian industry experts, Federal, State and Provincial enforcement officials, and other interested parties to maintain to the greatest extent practicable, harmonization of U.S. and Canadian cargo securement standards. A major part of this effort includes uniformity in interpreting the meaning of the requirements adopted by the U.S. and Canada. While there are some differences between certain provisions of the regulations adopted by FMCSA and Canada's National Safety Code Standard 10, most of the contents of the model regulations have been adopted, or will soon be adopted, by almost all jurisdictions in the U.S. and Canada. To ensure consistency in the interpretation and enforcement of the requirements, FMCSA is working with its partners in Canada to share information about requests for interpretation, and to exchange technical information that would be helpful to the regulatory agencies in developing responses to such requests. FMCSA is also working with its partners in Canada to ensure that interpretations are made available to all interested parties in an efficient and timely manner.

As part of the process for ensuring consistent interpretations of the harmonized cargo securement regulations, FMCSA is participating in this public meeting to provide all interested parties the opportunity to discuss interpretation and implementation issues with the Agency and its Canadian counterparts. This is the third in a series of public meetings on this subject. The first meeting was held April 21–22, 2005, in Albuquerque, New Mexico. The second meeting was held September 29–30, 2005, in Indianapolis, Indiana. Minutes from the Albuquerque and Indianapolis meetings, and the presentations made by participants have been placed in the public docket (Docket No. FMCSA–2005–22056). The minutes and presentations from the Hartford meeting and any future cargo securement implementation issues meetings will also be placed in this docket. Future public meetings will be announced in the **Federal Register**.

**Meeting Information**

The meeting will be held on April 23–24, 2006, at the Marriott Hartford Downtown & Connecticut Convention Center, 200 Columbus Boulevard, Hartford, Connecticut. The meeting is scheduled from 8 a.m. to 5 p.m. on April 23, and from 1:30 p.m. to 5 p.m. on April 24. The meeting is being held in connection with the Commercial Vehicle Safety Alliance (CVSA)'s 2006 Annual Conference. Attendance for the cargo securement meeting is free of charge and open to all interested parties. However, anyone interested in attending the sessions and committee meetings of the CVSA's 2006 Annual Conference must register with the CVSA and pay the appropriate registration fee. For further information about registration for other sessions or meetings of the CVSA's 2006 Annual Conference please contact the CVSA at (202) 775–1623.

Issued on: March 27, 2006.

**Annette M. Sandberg,**

*Administrator.*

[FR Doc. E6–4792 Filed 3–31–06; 8:45 am]

BILLING CODE 4910–EX–P

Federal Register

Monday,
April 3, 2006

# Part II

# Department of Agriculture

## Forest Service

## 36 CFR Part 251

## Special Uses: Managing Recreation Residences and Assessing Fees Under the Cabin User Fee Fairness Act; Procedures for Appraising Recreation Residence Lots and for Managing Recreation Residence Uses Pursuant to the Cabin User Fee Fairness Act; Final Rules

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 251**

**RIN 0596–AB83**

## Special Uses; Managing Recreation Residences and Assessing Fees Under the Cabin User Fee Fairness Act

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Cabin User Fee Fairness Act of 2000 directs the Forest Service to promulgate regulations and adopt policies for carrying out provisions of the act. Accordingly, the Department is adopting this final rule that revises special uses regulations and related agency directives, published elsewhere in this part of today's **Federal Register**. The final rule and agency directives set out requirements and provide direction to agency personnel for managing recreation residence uses and assessing fees for those uses of National Forest System lands pursuant to the act.

**DATES:** *Effective Date:* This rule is effective May 3, 2006.

**ADDRESSES:** The documents used in developing this final rule are available for inspection and copying at the office of the Director, Lands Staff, Forest Service, USDA, 4th Floor South, Sidney R. Yates Federal Building, 1400 Independence Ave., SW., Washington, DC, during regular business hours (8:30 a.m. to 4 p.m.), Monday through Friday, except holidays. Those wishing to inspect these documents are encouraged to call ahead (202) 205–1248 to facilitate access to the building.

Other documents not in the rulemaking record that were requested in the comments on the proposed rule are beyond the scope of this rulemaking conducted pursuant to 5 U.S.C. 553(c). Those interested in obtaining these documents may request them under the Freedom of Information Act by writing to the USDA Forest Service, Freedom of Information Act/Privacy Act Branch, Office of Regulatory and Management Services, 1400 Independence Ave., SW., Mail Stop 1143, Washington, DC 20250–1143.

**FOR FURTHER INFORMATION CONTACT:** Julett Denton, Lands Staff, (202) 205–1256.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

1. Background
   Recreation Residence Special Uses Program
   Need for Amending the Existing Rule
2. Purely Technical, Nonsubstantive Revisions
3. Public Comments on Proposed Rule
   Overview
   Response to Comments
   - Response to General Comments on Proposed Rule
   - Response to Comments in Preamble of Proposed Rule
   - Response to Major Provisions of the Cabin User Fee Fairness Act of 2000 (CUFFA)
   - Response to Specific Sections of Proposed Rule
4. Regulatory Certifications
   Environmental Impact
   Regulatory Impact
   No Takings Implications
   Civil Justice Reform
   Federalism and Consultation and Coordination with Indian Tribal Governments
   Energy Effects
   Unfunded Mandates
   Controlling Paperwork Burdens on the Public
5. Text of the Final Rule

### 1. Background

*Recreation Residence Special Uses Program*

Forest Service regulations at 36 CFR part 251, subpart B, govern authorizations for occupancy and use of National Forest System lands. Section 251.50 characterizes special uses as ''all uses of National Forest System lands, improvements, and resources, except those authorized by the regulations governing the disposal of timber (part 223), disposal of minerals (part 228), and the grazing of livestock (part 222).'' The regulation requires an authorization for all special uses, with certain exceptions.

Approximately 74,000 special use authorizations are in effect on National Forest System (NFS) lands. These uses cover a variety of activities, ranging from individual private uses to large-scale commercial facilities and public services. Examples of authorized land uses include road rights-of-way accessing private residences and non-Federal lands, domestic water supplies and water conveyance systems, utility rights-of-way, communications uses, ski areas, resorts, marinas, outfitting and guiding services, and public parks and campgrounds. Approximately 15,000 of the 72,000 special use authorizations on NFS lands are term special use permits for recreation residence uses, which authorize the holder to construct, operate, and maintain a recreation residence and related improvements on NFS lands.

On August 16, 1988, in a notice published in the **Federal Register** (53 FR 30924), the Forest Service adopted a policy that set forth procedures for administering term special use permits that authorize privately owned recreation residences on National Forest System (NFS) lands. The 1988 policy included direction concerning the tenure and renewal of recreation residence term special use permits, and described procedures to be followed when a recreation residence site was needed for a higher public purpose. The 1988 policy also established a new procedure for assessing fair market value fees for this type of use and occupancy. In the 1988 policy the Forest Service designated as ''base fees'' those annual fees for recreation residence special uses permits that were established during the years 1978 through 1982. Those base fees were determined as a result of appraisals of the fee simple fair market value of lots that were completed during that time period. The time period from 1978 through 1982 served as ''year 1'' in a 20-year appraisal cycle in the 1988 policy.

That policy was appealed to the Secretary of Agriculture on September 15, 1988. In general, the appellants alleged that certain aspects of the policy were flawed, in that they exceeded limitations in the statute authorizing recreation residence uses of the National Forests. In a decision dated February 15, 1989, the Assistant Secretary of Agriculture for Natural Resources and Environment remanded the 1988 policy to the Forest Service for reconsideration, and stayed the implementation of those specific provisions in the policy that were the subject of the appeal. None of the appeal or remand issues involved provisions in the 1988 policy concerning the appraisals of recreation residence lots, nor the determination and assessment of land use fees generally. Rather, the remand directed the agency to reconsider: (1) Nonrenewal provisions in recreation residence special use permits that would be applied when the agency determined a need to convert the use of a recreation residence site to a higher, or alternative, public purpose; (2) provisions requiring an automatic permit renewal 10 years prior to expiration (unless procedures for nonrenewal had been established); (3) provisions requiring the offering of an in-lieu lot to those permit holders who received nonrenewal notices pursuant to the agency's finding to convert the use of a recreation residence site to some alternative public purpose; and (4) provisions weighted against consideration of commercial uses for sites when nonrenewal of the recreation residence use was contemplated.

A final revised policy for recreation residences was adopted and published

in the **Federal Register** on June 2, 1994 (59 FR 28713). It revised the 1988 policy with new provisions identified in the appeal and remand concerning tenure, and clarified policy for determining the annual fee for recreation residences. However, those provisions that were revised and clarified in 1994 pertained only to annual fees for those permits affected by notices of nonrenewal for an alternative public purpose.

The 1988 policy established base fees for recreation residence lot appraisals conducted during the years 1978 through 1982. Those base fee amounts were then indexed annually, using the annualized change in the economic indexing factor known as the Implicit Price Deflator-Gross National Product (IPD–GNP), as provided in the 1988 policy. The 1988 policy also established a 20-year appraisal cycle for keeping recreation residence fees current with changes in fair market value.

In accordance with the provisions of the 1988 and 1994 policies, the Forest Service began to appraise recreation residence tracts in 1996, which was year 18 of the 20-year appraisal cycle for those lots appraised in 1978. The appraisals that were completed in 1997 revealed varying degrees of increases in the market value of recreation residence lots since they were last appraised in the late 1970's and early 1980's. In some locations and markets the increase in value was dramatic. Because annual land use fees are calculated on the basis of 5 percent of the fee simple value of each lot, increases in the appraised fee simple values of some lots exceeded the cumulative effect of 18 to 20 years of annual IPD-GNP indexing of fees, which resulted in corresponding increases in land use fees. Some of the more dramatic fee increases as a result of new appraisals were of significant concern to recreation residence permit holders, and to State and national associations that represent them. In response, recreation residence permit holders and associations of holders began to contact their Congressional representatives, requesting relief from the increased fees.

Congress initially responded to these concerns on November 14, 1997, in the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1998, Public Law 105–83, Section 343 by providing for a 3-year phase-in of recreation residence fee increases, when a new appraisal of a recreation residence lot resulted in fees that exceeded 100 percent of the previous land use fees.

In fiscal year 1999, Congress directed the Forest Service not to increase recreation residence fees for fiscal year 1999 on the Sawtooth National Forest in Idaho by more than 25 percent of the fee paid during the prior fiscal year.

In fiscal year 2000, Congress provided additional relief to recreation residence permit holders in section 342 of Public Law 106–113 (Consolidated Appropriations for Fiscal Year Ending September 30, 2000) which directed that recreation residence permit fees assessed during fiscal year 2000 could not exceed the fiscal year 1999 fee amount by more than $2000.

Congress further addressed concerns about fee assessments for recreation residence uses with the October 11, 2000, passage of the Cabin User Fee Fairness Act of 2000 (CUFFA). The primary purpose of CUFFA is to establish a more consistent process for appraising the fee simple value of recreation residence lots on NFS lands.

*Need for Amending the Existing Rule*

The Cabin User Fee Fairness Act of 2000 (CUFFA) directs the Forest Service to promulgate regulations and adopt policies for carrying out provisions of the act. The Forest Service published a proposed rule for notice and comment on May 13, 2003 in the **Federal Register** (68 FR 25748) to revise current regulations at 36 CFR part 251, subpart B, and proposed agency directives (68 FR 25751) to incorporate the provisions of CUFFA into the Forest Service Directive System.

**2. Purely Technical, Nonsubstantive Revisions**

All references to enactment of CUFFA as having occurred on October 12, 2000 have been revised to reflect that CUFFA was actually enacted on October 11, 2000. In addition, Forest Service Manual 2347.12, governing caretaker cabin user fees, has been revised for clarity and for purposes of using the terminology in the corresponding provisions in CUFFA.

**3. Public Comments on the Proposed Rule**

*Overview*

The proposed rule (68 FR 25748) and proposed agency directive notice (68 FR 25751), publised May 13, 2003, provided for a 90-day comment period which ended August 11, 2003.

The proposed rule and agency directives were posted electronically on the World Wide Web/Internet on the **Federal Register** site at *http://www.gpoaccess.gov* and on the FirstGov e-rulemaking site at *http://www.regulations.gov.* The agency also posted the proposed rule, appraisal guidelines, and recreation residence directives on its World Wide Web site for special uses at *http://www.fs.fed.us/recreation/permits.* The public was afforded the opportunity to respond either by regular mail, fax, or electronic format. In addition, the Forest Service individually notified each of its approximately 15,000 holders of recreation residence term special use permits about the publication and availability of these notices and how to obtain copies of them by either electronic or in paper copy format. No formally organized, agency-wide, public meetings or hearings were held. However, Forest Service personnel at all levels of the organization used meetings with individual permit holders and recreation residence tract associations to inform interested parties of the opportunity to review and comment on the proposed rule and agency directives.

The Forest Service received 950 responses. There were no requests for an extension of time for comments. Each respondent was grouped by the respondent's declaration of affiliation with one of the following organizations, or within one of the following categories:

| Affiliation or category | Number of responses |
|---|---|
| Term Special Use Permit Holder of a Recreation Residence | 595 |
| Representing Organizations that in Whole or in Part, Represent the Interests of Recreation Residence Special Use Permit Holders | 32 |
| Individuals (that didn't clearly identify themselves as being a permit holder, nor affiliated with an organization | 319 |
| Representatives of Appraisal Organizations | 3 |
| Forest Service employees | 1 |
| Total | 950 |

The 950 respondents represented 37 States and the District of Columbia. The majority of comments were from individuals who identified themselves as recreation residence term special use permit holders or organizations representing their interests. The second largest group of respondents were from individuals who chose not to identify their affiliation or status.

Approximately 162 (17%) of the responses received were submitted in the form of a standardized letter. Another 392 responses (41%) of the responses were submitted as a ''fill-in-the-blanks'' form letter. Approximately 167 of those who completed such a form also elected to supplement their response with individually written ''additional comments'' on the document.

The public was encouraged to respond to specific sections of the proposed rule and agency directives and most who responded did so. However, some respondents offered only general comments either supporting or not supporting the proposed rule and directives, or offered specific comments about current regulations or existing Forest Service policy that were beyond the scope of the proposed rule and directives. Non-responsive comments also included those comments expressing a dislike for the Forest Service's administration and management of recreation residence special uses in general, comments focused on permit-specific issues, concerns, or disputes (e.g., the manner in which a respondent's lot or tract had previously been appraised), or comments which were not received by the Forest Service in a timely manner.

*Response to Comments*

This section contains the Department's response to comments received on the proposed revisions to the rule at 36 CFR part 251, subpart B, published in the **Federal Register** on May 13, 2003 (68 FR 25748). The response to comments received on the agency's proposed appraisal guidelines and revisions to the agency's proposed directives, and published in the **Federal Register** on May 13, 2003 (68 FR 25751), are published elsewhere in this part of today's **Federal Register**.

Responses to General Comments on the Proposed Rule

*Comment.* A number of respondents commented about the manner in which the Forest Service established an electronic comment database to provide the public with the opportunity to submit responses and comments electronically via the internet. Some respondents were complimentary of the electronic format and database and commented about the ease and convenience that it provided them in responding to the proposed rulemaking. Others commented negatively, saying that they had difficulty navigating within the Web site and that they, along with many others, become so frustrated that they didn't provide comment at all. Some respondents asserted that the electronic comment option provided in the draft rulemaking notice was purposely designed by the Forest Service to discourage interested parties from commenting.

*Response.* The Department realizes that for a large segment of the public the option to provide comments electronically during a Federal government rulemaking and policymaking procedure is a new experience. Therefore, the range of positive and negative comments received about the electronic/internet response option to this particular rulemaking effort was not unexpected. The Department disagrees, however, with the assertion that the electronic comment database was in any way designed to frustrate those who used it, to discourage interested parties from commenting, or to minimize responses to this proposed rulemaking and policymaking effort. Instead, it was intended to provide another format for interested members of the public to provide responses to the proposed rule and policy revisions, using a technology which is fast and inexpensive. Likewise, the Forest Service has no evidence to support one commenter's assertion that due to user frustration with the electronic database only a portion of those who wanted to respond actually did so, or the assertion by a commenter that some people became so frustrated with the electronic format, that they did not respond at all using any one of the other available means such as written responses using regular mail, express mail, or fax.

*Comment.* Many respondents expressed a general concern about some of the language in the agency's proposed rulemaking and policymaking, suggesting that any new or amended Departmental rules, agency policies, or appraisal guidelines, should reflect, verbatim, the language in CUFFA. This same general comment was often repeated and made a part of other comments about more specific sections of the proposed rule, appraisal guidelines, and policies.

*Response.* Most of the procedures prescribed in CUFFA are clear and the Department agrees that such direction should simply be repeated verbatim in regulation, appraisal guidelines, and agency directives. However, some of the direction in CUFFA is unclear, ambiguous, or subject to interpretation. In these instances, the Department disagrees with the comment that the language in the rule, appraisal guidelines, and agency policies should be nothing more than a reiteration of that language. One of the primary purposes of promulgating these regulations, agency directives, and appraisal guidelines is to provide for clarity and consistency in the administration of recreation residence special use permits, consistent with the intent and purpose of CUFFA. Therefore, where language that appears in CUFFA is subject to varying interpretations, the Department's rules and the agency's directives and guidelines will further refine and define that language as needed to assure a clear understanding to permit holders and consistent administration by agency personnel in exercising CUFFA's direction and authority.

Response to Comments in Preamble of Proposed Rule

*Comment.* Some respondents, including one national organization representing a significant percentage of recreation residence special use permit holders, commented that the background information included in the May 13, 2003, **Federal Register** notice (68 FR 25748–25749) did not accurately reflect the purposes for which the Congress passed CUFFA. One commenter asserted that the proposed regulations, policies, and appraisal guidelines were not a good faith attempt to implement the provisions of CUFFA. One organization commented that the background discussion should have documented (1) the Federal laws that the Forest Service used, presumably prior to the passage of CUFFA, as the basis for requiring special use fees based on the fair market value of the use; and (2) disclosed that it was the intent of the Congress in its passage of CUFFA to provide the Forest Service with specific direction on how to conduct appraisals to estimate the fair market value of a lot for use in establishing base cabin user fees.

*Response.* The Department disagrees with the comment that the agency was not acting in good faith in publishing the proposed regulations, policies, and appraisal guidelines. In drafting its proposed regulations, policy revisions, and appraisal guidelines, the agency put forth its best effort to reflect the clear and concise provisions of CUFFA, and its interpretation of those provisions of CUFFA that appear ambiguous or subject to multiple interpretations. The purpose of publishing the regulations, appraisal guidelines, and policy revisions in draft form, and soliciting public comment, was to provide a transparent and good faith opportunity for interested members of the public to review and express opinions about the agency's interpretation and proposed implementation of CUFFA.

The Department has reviewed the background information in the proposed rule and found that it provided a thorough chronology of events beginning in the mid-1980's through the mid-1990's describing a series of policymaking procedures that were conducted by the Forest Service concerning the management of recreation residence special uses on National Forest System (NFS) lands.

The background information described how, in 1988, the agency adopted a policy describing how annual ''base fees'' for most recreation residence special use permits would be established, based on the appraised market value of lots as they were determined from appraisals of lots conducted between 1978 and 1982. In 1988, the Forest Service also revised its recreation residence policy to direct that appraisals of recreation residence lots be conducted at least once every 20 years. That represented a change from the agency's previous practice, dating at least as far back as the early 1960's, that conducted appraisals of recreation residence lots every 5 years.

The background information in the proposed rule also identified how, as a product of appraisals of recreation residence lots that the Forest Service started to conduct in 1996, some annual land use fees for recreation residence special use permits were going to increase dramatically. Included, was a chronology describing how Congress reacted to the outcome of some of those Forest Service appraisals, by limiting the agency's ability to increase recreation residence special use permit fees with language in annual appropriations authorities for Fiscal Years 1998 through 2000. The culmination of Congress's involvement with recreational residence fees was the enactment of CUFFA, as Title VI to the appropriations authority for the Department of the Interior and Related Agencies for Fiscal Year 2001.

The Department agrees that the background information in the proposed rule did not address the statutory authority under which the Forest Service had, prior to passage of CUFFA, asserted the need to assess and collect annual fees for recreation special use permits based on the principle of fair market value. Nor did it address the specific manner in which appraisals were being conducted prior to the passage of CUFFA, or the purposes for which CUFFA was enacted.

In response to these comments, the Department notes that Title V of the Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 9701), provides the statutory authority that, prior to the passage of CUFFA, served as the basis by which annual land use fees were assessed and collected for recreation residence special uses. The IOAA is one of several statutes authorizing the use and occupancy of NFS lands that serve as the premise upon which Departmental regulations at 36 CFR 251.57 were promulgated and which direct the assessment of special use permit fees based on the fair market value of the authorized use. In 1993, the Office of Management and Budget (OMB) issued OMB Circular A–25 that provided specificity and consistency in the implementation of Title V of the IOAA. OMB Circular A–25 directed all Executive agencies and departments and establishments of the Federal Government to assess and collect from identifiable recipients of a special benefit, a user charge based on the market price of the benefit being provided. The enactment of CUFFA now serves as the authority to determine, assess, and collect a land use fee for recreation residence special uses.

*Comment.* Some respondents, including one national organization whose membership includes a significant percentage of recreation residence special use permit holders, commented that the background information of the proposed rule should have informed readers that (1) a percentage of the lot's appraised value determines the annual land use fee that represents fair market value; (2) instructing appraisers on the procedures to follow to achieve an accurate reflection of the local market has proven difficult; and (3) it was the intent of Congress in the passage of CUFFA to provide specific direction on how to conduct appraisals of recreation residence lots.

*Response.* The Department agrees with these three comments. Congress documented in section 602(2) of CUFFA ''that current appraisal procedures have, in certain circumstances, been inconsistently applied in determining fair market values for residential lots demonstrates that problems exist in accurately reflecting market values.'' It is clear that Congress wanted to create greater consistency in the manner in which the appraisals for determining the market value of recreation residence lots are conducted, and that it did so by establishing in section 606(a) of CUFFA specific requirements for conducting appraisals of recreation residence lots, and instructing the Secretary of Agriculture to establish specific appraisal guidelines that include specific provisions identified in section 606(b). Furthermore, section 607(a) of CUFFA established in Federal statute a long-standing Forest Service policy dating back to the 1960's, that is, the annual land use fee for a recreation residence special use permit shall be 5 percent of the market value of the recreation residence lot.

Responses to Comments on the Major Provisions of the Cabin User Fee Fairness Act of 2000 (CUFFA)

*Comment.* Many comments were received questioning the use of The Appraisal Foundation (TAF), saying that TAF testified against the provisions of CUFFA before Congress and that many members of TAF believe that testifying before Congress and reviewing the proposed appraisal guidelines exceeds the scope of TAF's charter. Comments also suggested that TAF lacks the expertise to make legal judgments about the appraisal guidelines.

*Response.* The Forest Service contracted with TAF to assist in the development and review of the proposed appraisal guidelines and to fulfill the statutory requirement of section 606(a)(3) of CUFFA directing the Secretary to enter into a contract with an appropriate professional appraisal organization to manage the development of specific appraisal guidelines.

Only one sponsor organization member of TAF registered an objection to the Forest Service's use of TAF as the appropriate professional appraisal organization to assist the Forest Service in the development of the appraisal guidelines. This objection was made outside of the public comment process provided for in the proposed rule. The fact that TAF was requested by Congress to provide testimony on CUFFA and complied with that request does not diminish TAF's qualifications or responsibilities as the single authority in the United States for development and interpretation of appraisal standards. TAF was requested by Congress to testify on a wide variety of issues affecting the real estate appraisal industry. Its testimony does not disqualify TAF as the authority for appraisal standards and appraiser qualifications. No sponsor member organization of TAF has provided the Forest Service any evidence that either testifying before Congress or reviewing the proposed Forest Service appraisal guidelines exceeds the scope of TAF's charter. TAF did not offer a legal judgment about the draft Forest Service appraisal guidelines. TAF was requested and provided its professional opinion as the single authority for development and interpretation of appraisal standards.

Response to Specific Sections of the Proposed Rule

*Section 251.51—Definitions.* This section of the proposed rule added a definition for a ''recreation residence lot.''

*Comment.* Almost all who responded to the proposed rule commented on the definition of a recreation residence lot. The majority of those comments were nearly identical and many were made in the form of a ''check-the-box'' form letter. The most common concerns raised in these comments were that (1) the definition of a recreation residence lot at 36 CFR 251.51 should be verbatim the definition of a ''lot'' in section 604(9) of CUFFA; (2) the proposed definition was contrary to the language in CUFFA; (3) the proposed definition is an impermissible attempt to enlarge the subject of an appraisal; (4) the proposed definition seeks to redefine a lot as a ''site''; and (5) the definition is objectionable, erroneous, and in violation of and in conflict with CUFFA.

*Response.* Section 604(9) of CUFFA defines a ''lot'' as ''a parcel of land in the National Forest System—(A) on which a cabin owner is authorized to build, use, occupy and maintain a cabin and related improvements; and (B) that is considered to be in its natural, native state at the time at which use of the lot described in paragraph (A) is first permitted by the Secretary.'' If this definition in CUFFA were clear and unambiguous, the Department would agree that the definition in section 604(9) of CUFFA should be simply repeated in section 251.51. However, that is not the case. By including the words ''and related improvements'' in the definition, Congress was expressing its intent that a recreation residence lot include more than just that area of National Forest System (NFS) land being occupied by the recreation residence itself; that is, more than just the land occupied by the footprint of a cabin. The language in CUFFA clearly states that a recreation residence ''lot'' also includes those areas of NFS land being used and occupied by ''related improvements,'' or improvements owned and used by the owner of the recreation residence and used in conjunction with that owner's recreation residence experience.

However, CUFFA is silent with respect to defining or describing what constitutes such ''related improvements.'' The Department believes that CUFFA's definition of a recreation residence ''lot'' has the high potential of being a source of inconsistency and inequity. The Department consequently believes that additional language in regulation and agency policy is necessary to provide clarity to CUFFA's definition of a lot, and to in turn assure consistency in implementing the provisions of CUFFA.

The ambiguity that this part of the definition of a recreation residence ''lot'' creates is evidenced by the comments received from many who responded to this part of the proposed rule. Many responses included comments that the terms ''related improvements'' could be interpreted by the Forest Service to include extenuating facilities, such as 3 miles of National Forest road used to access a recreation residence or publicly provided facilities (such as, National Forest picnic facilities, trails, boat docks, and so forth) used by recreation residence permit holders. Individual concerns and interpretations included in the comments received as to what constitutes ''related improvements'' makes it clear that a definition of a recreation residence lot clearly needs to be expanded upon. This is further evidenced by some comments to the proposed rule which suggested that without further clarity, where does an appraiser, or the agency, stop when it comes to identifying the boundaries of a ''lot''? Therefore, the Department disagrees with the numerous comments which suggested that regulations and agency policies should be limited to simply mirroring the language contained in the statute.

The Department disagrees with those who commented that the wording in the proposed definition of a ''recreation residence lot'' at 36 CFR 251.51 is inconsistent with, in violation of, or in conflict with the provisions of CUFFA. The proposed rule attempted to more clearly articulate those facilities and uses that constitute ''related improvements.'' It did so by stating at 36 CFR 251.51 that ''a recreation residence lot is not necessarily confined to the platted boundaries shown on a tract map or permit area map. A recreation residence lot includes the physical area of all National Forest System land being used or occupied by a recreation residence permit holder, including, but not limited to land being occupied by ancillary uses, such as septic systems, water systems, boat houses and docks, major vegetative modifications, and so forth.'' This list of some of the uses or occupancies of NFS land are those that are commonly conducted in conjunction with, and as a part of, a permit holder's recreation residence use. It was intended to refer to only those recreation residence related improvements and facilities that are owned, operated, and maintained by the holder of the recreation residence special use permit.

The Department agrees with many of the comments which suggest that the proposed rule's expansion of the definition of a lot didn't clearly articulate this intent. Therefore, the definition in the final rule is revised to make it clear that only ancillary uses ''owned and maintained by the holder'' would be included in what constitutes a ''recreation residence lot.'' Furthermore, these comments have prompted the inclusion in the final directives in section 33.05 (Definitions) of Forest Service Handbook (FSH) 2709.11, examples of what constitutes ''related improvements'' in the context of defining the extent of a recreation residence lot. In addition, when considering the boundaries of a recreation residence ''lot,'' the authorized officer will identify as ''related improvements'' the cumulative area of NFS land being occupied by permit holder owned facilities, such as outbuildings, wood piles, water systems, wastewater treatment facilities, retaining walls, boat docks, picnic tables, driveways, private trails, boardwalks, campfire rings, and so forth. The authorized officer will also consider as ''related improvements'' those areas of NFS land where the holder has manipulated and/or is maintaining a manipulation of native vegetation and/or the natural contour of the land. Common examples are the establishment and maintenance of lawns, or the installation of landscaping features (terracing, bordering developed trails, and so forth). Conversely, agency policy will also specify that a recreation residence lot will not be defined by those areas of NFS land that are solely used to manage native vegetation, with approval of the authorized officer, for the purpose of protecting property or to mitigate safety hazards, such as the need to occasionally remove or fall a hazard tree or treat or manage vegetation to reduce fuel loading and create defensible space to combat a wildfire.

The Department believes that this approach to identifying the extent of a recreation residence lot is consistent with the definition of a lot as used in CUFFA. Furthermore, it is entirely consistent with the manner in which the Forest Service identifies the ''authorized area'' for nearly all other types of special uses of NFS lands, such as private access roads, fences, irrigation ditches, and so forth. It is reasonable to identify the ''authorized area'' or ''permit area,'' or in the case of a recreation residence special use, the ''lot,'' as being all NFS land being used and occupied as part of the authorized special use activity. It should include all NFS land that is occupied by facilities owned or controlled by the permit holder. The lot should also include all areas of NFS land upon which activities are being conducted by the holder, which could not be conducted by the general public's

use of the land without specific approval from a Forest Officer, and uses and occupancies which can only legally occur when authorized with a Forest Service-issued special use authorization. For example, the construction and maintenance of trails, boardwalks, and boat docks, and the placement of picnic tables and permanent campfire rings are common to, and a part of, many recreation residence uses. All are facilities that could not be placed on NFS land without a special use permit, and wherever these types of improvements or facilities are situated, the NFS land being used, occupied, and manipulated should be included in the ''lot'' as a recreation residence lot as defined in CUFFA.

Finally, a large number of comments were received asserting that the proposed rule attempted to redefine a lot as a ''site'' and that doing so was in direct contravention to the language in CUFFA. The Department reviewed the proposed rule, and failed to find any use of the word ''site'' in the proposed definition of a lot at 36 CFR 251.51. After a thorough review of both the proposed rule and the corresponding proposed revisions to agency policy, the only place where the word ''site'' was used in conjunction with reference to a recreation residence ''lot'' was in the proposed revision to section 33 of FSH 2709.11. In section 33, the Forest Service proposed a series of additional definitions, including the definition of ''natural, native state'' as being ''The condition of a lot or site, free of any improvements, at the time at which the lot or site was first authorized for recreation residence use by the Forest Service.'' The Department believes that use of the word ''site'' in this definition is what prompted more than 900 comments asserting an attempt to define a ''lot'' with use of the term ''site.'' The proposed definition of ''natural, native state'' quoted above was extracted almost verbatim from section 604 (10) of CUFFA, which includes use of the term ''site'' in the exact manner in which it was proposed in section 33 of FSH 2709.11. However, the Department agrees that the use of the term ''site'' is confusing. Therefore, the term ''site'' will not be included in the definition of a recreation residence ''lot.'' Neither will the term ''site'' be used interchangeably with the word ''lot'' in appraisal guidelines, contracts, or reports. However, to be reflective of the language in CUFFA, the Forest Service will continue to use the term ''site'' in its definition of ''native natural state'' in FSH 2709.11.

*Comment.* Several comments related to the proposed definition of a recreation residence lot and suggested that many of the related improvements associated with a recreation residence use, such as water systems, boat houses, docks, septic systems, and so forth, should not be considered part of the recreation residence term special use permit, but should instead be authorized under separate types of special use authorizations, such as separate easements or permits, and that a separate land use fee be assessed for those types of facilities. By doing so, many respondents suggested that the recreation residence lot could then be kept to the minimum size possible. Other comments suggested that any related improvements that are not owned by a single cabin owner, but are instead used by a group or tract of cabin owners, should not be included as part of the related improvements of any one recreation residence lot, but that such improvements should be authorized by a separate special use authorization issued in the name of the group of cabin owners that actually owns and uses them.

*Response.* The Department disagrees with the concept that facilities and uses such as water systems, powerlines, telephone lines, boardwalks, boat houses, docks, lawns, picnic areas, and other facilities and uses that are associated with a cabin owner's recreation residence use of NFS land should be authorized with separate types of permits and easements and assessed with individual land use fees. Doing so would significantly increase administrative inefficiencies and costs.

The Department does agree, however, with those respondents who suggested that when a facility or use that is ancillary to recreation residence uses are owned, operated, and maintained by more than a single cabin owner, then such a use or facility should be authorized under the terms and conditions of a separate special use authorization. This is already common practice in most areas where, for example, facilities such as community owned boat docks, swimming areas, water systems, or sewage systems are authorized with a permit issued in the name of the tract association or some other entity representing the owners of those facilities. The final directives in FSH 2709.11 clarifies that uses owned and operated by a tract association, or other entity representing the owners of those facilities, shall be authorized by a separate authorization. Where that exists, the area of NFS land being used and occupied by such improvements or facilities authorized under a separate special use authorization will not be considered as part of any one recreation residence lot for recreation residence permit administration or appraisal purposes and a separate land use fee for such permits will be assessed and collected, pursuant to agency policy for special uses.

*Comment.* At least one respondent suggested that to remove all ambiguity concerning what constitutes a recreation residence lot, the Forest Service should provide every holder of a recreation residence term special use permit with a surveyed plat of each lot and a precise legal description of the bounds of that lot, to reflect comparable lots located in subdivisions in the private sector. Doing so would eliminate inconsistency and ambiguity by appraisers and administrators in estimating the market value of lots and administering permits.

*Response.* The Department agrees that there may be instances in which all of the NFS land currently being occupied by a recreation residence and related improvements has not yet been clearly defined nor agreed to between the Forest Service and the cabin owner. This is in part because CUFFA established a new definition of a recreation residence ''lot,'' which can extend beyond any previously paper platted boundaries of a lot. It is also in part because the Forest Service has not always adequately identified all of the related improvements in existing permits and, in some cases, because cabin owners have added improvements without prior authorization by the authorized officer. In the next 3 years, nearly all of the 15,000 recreation residence term special use permits will be due to expire. As they do, the Forest Service will be diligently inspecting the facilities and improvements located on each lot and will identify those uses to be included as authorized uses in the preparation and issuance of a new permit upon the expiration of the existing permit. In doing so, the cumulative area of NFS land being used and occupied by the recreation residence and all related improvements that will be authorized in those new permits will define the size, shape, and configuration of the recreation residence ''lot'' authorized by each permit.

In the interim, the inventory of improvements that is required in section 606(1)(a) of CUFFA will be conducted for every typical lot used for appraisal purposes. That inventory will identify all the improvements that are owned by the holder of each typical lot and, if those lots are typical of each of the lots within the representative group of lots, the cumulative area of NFS land being occupied by those holder-owned

improvements, as documented in the inventory, will define the size, shape, and configuration of the ''lot'' for appraisal and administration purposes. If some of the recreation residences uses within a group of lots represented by the typical lot are occupying a significantly smaller or larger area of NFS land, the authorized officer may consider, in consultation with the holders, a new group of lots and associated representative typical lot. Alternatively, any lot within a grouping of lots that is of significantly different size to the typical lot representing that group might serve as the basis for the authorized officer to make minor adjustments to a cabin user fee to accommodate such differences.

The Department disagrees with comments that every recreation residence lot needs to be marked, monumented, surveyed, and platted, along with an associated legal description. The definition of the size, shape, and configuration of each recreation residence lot will be accomplished and documented through the procedures and mechanisms previously described, without incurring the unnecessary and often significant expense of conducting legal surveys and preparing survey plats. However, permit holders who wish to establish a legal description with on-the-ground monuments that clearly mark the extent, size, shape, and configuration of their lot, as defined by CUFFA and these regulations, may make requests to the authorized officer for approval to do so.

*Section 251.57—Rental Fees.* This section of the proposed rule added language to incorporate the provision in section 607 of CUFFA that the base cabin user fee shall be 5 percent of the market value of a recreation residence lot ''established by an appraisal or other sound business management principles'' (§ 251.58(a)(3)), and section 606 of CUFFA that each permit or term permit for a recreation residence use shall be conditioned to state that the Forest Service shall recalculate the base cabin user fee at least every 10 years (§ 251.57(i)).

*Comment.* Many comments were received suggesting that use of the words ''or other sound business management principles'' as a means of determining the market value of a recreation residence lot, and the subsequent base cabin user fee, was inconsistent with the provisions of CUFFA and should be eliminated. The comments suggested that CUFFA directs that the only means by which the market value of a recreation residence lot may be determined is with an appraisal, conducted pursuant to the provisions of CUFFA.

*Response.* The Department agrees with these comments. Use of the words ''or other sound business management principles'' was carried forward from current language in other sections of this part of 36 CFR 251.57 as an acceptable means for determining a fair market value land use fee for other special uses of NFS lands. However, with respect to recreation residence special uses, section 607 of CUFFA is clear in directing that the market value of a recreation residence lot, for fee determination purposes, be established by appraisal, pursuant to the principles in section 606 of CUFFA. Therefore, ''or other sound business management principles'' will be deleted from section 251.57 of the final rule.

*Comment.* Comments were received concerning various sections in the proposed rule and directives which referenced the annual fee for a recreation residence special use, or the base cabin user fee, as a ''rental fee.'' The base cabin user fee, and how it would be determined pursuant to CUFFA, was identified and included under section 251.57 of the proposed rule, which is entitled ''Rental fees.'' Respondents commented that a base cabin user fee is not the same as a rental fee, and that equating it to a rental fee will confuse appraisers in their implementation of the appraisal provisions of CUFFA and the Forest Service's appraisal guidelines.

*Response.* The Department agrees with the concerns in these comments. A cabin user fee is an annual fee collected for a special use permit and is legally equivalent to a rental payment, which is more typically collected pursuant to the terms and conditions of a lease or a rental agreement. However, the Department will keep the reference to a base cabin user fee under ''Rental fees'' because that is the most appropriate section in the existing regulatory framework to address this issue. However, the Forest Service will eliminate the use of the terms ''rent,'' ''rental,'' or ''rental fees'' wherever they appear in agency directives, appraisal guidelines, and instructions to appraisers involving special use permit fees for recreation residence uses. Instead, the agency will use either the term ''cabin user fee,'' or ''base cabin user fee'' (pursuant to the provisions of CUFFA), or the term ''land use fee,'' when referencing the annual fee assessed and collected from the holder of a term special use permit for a recreation residence use.

*Comment.* Several comments questioned why section 251.57(a)(3) of the proposed rule did not include the qualifier ''fair'' when referencing that the base cabin user fee is ''5 percent of the market value of the recreation residence lot.'' The respondents questioned why the terminology of ''fair market value'' was not used here, because that is the terminology used in section 602 of CUFFA. Without that qualifier, respondents questioned whether market value is always ''fair.''

*Response:* Section 602 cited findings of Congress in its creation of CUFFA, which state that ''the fact that current appraisal procedures have, in certain circumstances, been inconsistently applied in determining fair market values for residential lots demonstrates that problems exist in accurately reflecting market values.'' However, section 607 of CUFFA specifically directs that a cabin user fee shall be established ''as the amount that is equal to 5 percent of the market value of the lot.'' Section 606 of CUFFA directs that the Secretary ''establish an appraisal process to determine the market value of the fee simple estate of a typical lot or lot.'' The prescriptive provisions of sections 605, 606, and 607 use the terminology ''market value'' without use of the qualifier ''fair''. Therefore, ''market value'' is reflected in the final rule at section 251.57(a)(3).

**4. Regulatory Certifications**

*Environmental Impact*

The final rule makes terminology in part 251 consistent with CUFFA. The changes are intended to improve administrative efficiencies and have no environmental effects. Section 31.1b of FSH 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions. The agency's assessment is that this final rule falls within this category of actions and that no extraordinary circumstances exist as currently defined that require preparation of an environmental assessment or environmental impact statement.

*Regulatory Impact*

This final rule has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. It has been determined that this is not a significant rule. This final rule does not have an annual effect of $100 million or more on the economy, nor does it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or

local governments. This final rule does not interfere with an action taken or planned by another agency, nor does it raise new legal or policy issues. Finally, this final rule does not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of such programs. Accordingly, this final rule is not subject to Office of Management and Budget review under Executive Order 12866.

This final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). Based on a threshold Regulatory Flexibility Act analysis, prepared by the Forest Service for this final rule, it has been determined that this final rule does not have a significant economic impact on a substantial number of small entities as defined by the act because the final rule does not impose recordkeeping requirements on them; it does not affect their competitive position in relation to large entities; and it does not affect their cash flow, liquidity, or ability to remain in the market.

*No Takings Implications*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that the final rule does not pose the risk of a taking of private property.

*Civil Justice Reform*

This final rule has been reviewed under Executive Order 12988 on civil justice reform. After adoption of this final rule, (1) all State and local laws and regulations that conflict with this rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) the Department will not require administrative proceedings before parties may file suit in court challenging its provisions.

*Federalism and Consultation and Coordination With Indian Tribal Governments*

The agency has considered this final rule under the requirements of Executive Order 13132 on federalism, and has made an assessment that the final rule conforms with the federalism principles set out in this Executive Order; does not impose any compliance costs on the States; and does not have substantial direct effects on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary.

Moreover, this final rule does not have tribal implications as defined by Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, and therefore, advance consultation with tribes is not required.

*Energy Effects*

This final rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this final rule does not constitute a significant energy action as defined in the Executive Order.

*Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This final rule does not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

*Controlling Paperwork Burdens on the Public*

The information collection associated with the permitting and administration of recreation residences are covered under the approved Office of Management and Budget (OMB) control number 0596–0082. However, as provided by Section 614 of the Cabin User Fee Fairness Act of 2000 ((CUFFA) 16 U.S.C. 6210–13) the final directive, published elsewhere in this part of today's **Federal Register**, does contain a new one-time information collection requirement in FSH 2709.11, §§ 33.8 through 33.83. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do apply. Approval of this information collection requirement has been submitted for approval to the OMB. The agency expects the new information collection required by CUFFA to be approved by OMB prior to implementation of the provisions in §§ 33.8 through 33.83.

**5. Text of the Final Rule**

**List of Subjects in 36 CFR Part 251**

Administrative practice and procedure, Electric power, National forests, Public lands rights-of-way, Reporting and recordkeeping requirements, Water resources.

■ For the reasons set out in the preamble, the Forest Service amends subpart B of part 251 of title 36 of the Code of Federal Regulations to read as follows:

## PART 251—LAND USES

### Subpart B—Special Uses

■ 1. The authority citation for 36 CFR 251 is revised to read as follows:

**Authority:** 16 U.S.C. 472, 479b, 551, 1134, 3210, 6201–13; 30 U.S.C. 1740, 1761–1771.

■ 2. In § 251.51 add a definition for ''recreation residence lot'' in the appropriate alphabetical order to read as follows:

**§ 251.51 Definitions.**

* * * * *

*Recreation Residence Lot*—a parcel of National Forest System land on which a holder is authorized to build, use, occupy, and maintain a recreation residence and related improvements. A recreation residence lot is considered to be in its natural, native state at the time when the Forest Service first permitted its use for a recreation residence. A recreation residence lot is not necessarily confined to the platted boundaries shown on a tract map or permit area map. A recreation residence lot includes the physical area of all National Forest System land being used or occupied by a recreation residence permit holder, including, but not limited to, land being occupied by ancillary facilities and uses owned, operated, or maintained by the holder, such as septic systems, water systems, boat houses and docks, major vegetative modifications, and so forth.

* * * * *

■ 3. In § 251.57 add new paragraphs (a)(3) and (i) to read as follows:

**§ 251.57 Rental fees.**

(a) * * *

(3) A base cabin user fee for a recreation residence use shall be 5 percent of the market value of the recreation residence lot, established by an appraisal conducted in accordance with the Act of October 11, 2000 (16 U.S.C. 6201–13).

* * * * *

(i) Each permit or term permit for a recreation residence use shall include a clause stating that the Forest Service shall recalculate the base cabin user fee at least every 10 years and shall use an appraisal to recalculate that fee as provided in paragraph (a)(3) of this section.

Dated: December 26, 2005.

**David P. Tenny,**

*Deputy Under Secretary, Natural Resources and Environment.*

[FR Doc. 06–2888 Filed 3–28–06; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### 36 CFR Part 251

**RIN 0596–AB83**

## Procedures for Appraising Recreation Residence Lots and for Managing Recreation Residence Uses Pursuant to the Cabin User Fee Fairness Act

**AGENCY:** Forest Service, USDA.

**ACTION:** Issuance of final directives.

**SUMMARY:** The Cabin User Fee Fairness Act of 2000 directs the Forest Service to promulgate regulations and adopt policies for carrying out provisions of the act. Accordingly, the Forest Service is adopting final directives issued in the Forest Service Manual (FSM) Title 2300, Recreation, Wilderness, and Related Resource Management; FSM Title 2700, Special Uses Management; Forest Service Handbook (FSH) 2709.11, Special Uses Handbook; and FSH 5409.12, Appraisal Handbook. These final directives, and revised special uses regulations published elsewhere in this part of today's **Federal Register**, set out requirements and provide direction to agency personnel for managing recreation residence uses and assessing fees for those uses of National Forest System lands pursuant to the act.

**DATES:** These directives are effective May 3, 2006.

**ADDRESSES:** The documents used in developing these directives are available for inspection and copying at the office of the Director, Lands Staff, Forest Service, USDA, 4th Floor South, Sidney R. Yates Federal Building, 1400 Independence Ave., SW., Washington, DC, during regular business hours (8:30 a.m. to 4 p.m.), Monday through Friday, except holidays. Those wishing to inspect these documents are encouraged to call ahead (202) 205–1248 to facilitate access to the building.

Other documents not in the decision-making record that were requested during the comment period on the proposed directives are beyond the scope of this direction making process conducted pursuant to 5 U.S.C. 553(c). Those interested in obtaining these documents may request them under the Freedom of Information Act by writing to the USDA Forest Service, Freedom of Information Act/Privacy Act Branch, Office of Regulatory and Management Services, 1400 Independence Ave., SW., Mail Stop 1143, Washington, DC 20250–1143.

**FOR FURTHER INFORMATION CONTACT:** Julett Denton, Lands Staff, (202) 205–1256.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

1. Background
2. Purely Technical, Nonsubstantive Revisions
3. Public Comments on Proposed Revisions to Recreation Residence Directives
   Forest Service Manual
   - Chapter 2340—Privately Provided Recreation Opportunities
   - Chapter 2720—Special Uses Administration
   Forest Service Handbook 2709.11—Special Uses
   - Chapter 30—Fee Determination
   Forest Service Handbook 5409.12—Appraisal Handbook
   - Chapter 60—Appraisal Contracting
4. Regulatory Certifications
   Environmental Impact
   Regulatory Impact
   No Takings Implications
   Civil Justice Reform
   Unfunded Mandates
   Federalism and Consultation and Coordination With Indian Tribal Governments
   Energy Effects
   Controlling Paperwork Burdens on the Public
5. Text of the Final Directive
6. Table I—Section-by-Section Comparison Between the Proposed and Final Recreation Residence Directives

### 1. Background

A discussion of the history and development of direction and regulations for the administration of recreation residences is found in the final rule to Title 36, Code of Federal Regulations, part 251, subpart B, published elsewhere in this part of today's **Federal Register**.

Most of the changes required by the Cabin User Fee Fairness Act of 2000 (CUFFA) affect direction for administering recreation residences contained in the Forest Service Manual (FSM) and Forest Service Handbook (FSH) directives. Accordingly, the changes to recreation residence management identified in CUFFA will be implemented through revisions to the FSM and FSH pursuant to CUFFA. Table I at the end of this notice has been prepared as an aid to understanding the directive changes being adopted. Table I displays the recreation residence directive provision, its reference to the appropriate section of CUFFA, and a section-by-section comparison of the proposed and final direction.

### 2. Purely Technical, Nonsubstantive Revisions

All references to enactment of CUFFA as having occurred on October 12, 2000 have been revised to reflect that CUFFA was actually enacted on October 11, 2000. In addition, Forest Service Manual 2347.12, governing caretaker cabin user fees, has been revised for clarity and for purposes of using the terminology in the corresponding provisions in CUFFA.

### 3. Public Comments and Responses To Proposed Revisions To Recreation Residence Directives

A discussion on the general nature of comments and a response to comments on the proposed rule are found in a final rule published elsewhere in this part of today's **Federal Register**.

*Forest Service Manual*

Chapter 2340—Privately Provided Recreation Opportunities

2340.05—Definitions. This section included a definition of a ''caretaker cabin'' and reference that a cabin needed to be occupying a lot within a recreation residence tract.

*Comment.* Many respondents commented that limiting the use of cabins to only those situated on a lot within a recreation residence tract is inconsistent with CUFFA.

*Response.* The Forest Service agrees with these comments. The final direction includes a revised definition for a caretaker cabin. The revised definition is more reflective of the definition of a caretaker cabin that appears in CUFFA and does not necessarily require that the location of a caretaker cabin be situated within a recreation residence tract. In making this revision, however, the Forest Service is not implying that it will consider authorizing the construction of new cabins outside of existing recreation residence tracts for the purpose of creating a caretaker cabin use. However, the revised definition will provide the authorized forest officer with the option to authorize an existing privately-owned cabin on National Forest System (NFS) land to be used for caretaker cabin purposes in those rare circumstances where a privately-owned cabin may already exist outside of a designated recreation residence tract. Examples might be existing privately-owned cabins currently authorized by the Forest Service for use as an isolated cabin, a residence, or as part of a larger use and occupancy of NFS land, such as in conjunction with a grazing allotment or for mining purposes.

The Forest Service also discovered a technical error in this section of the proposed direction. The coding should have been 2340.5, not 2340.05. The final direction includes this correction.

*2347.1—Recreation Residences.* This section provided direction that the Forest Service would, to the maximum extent practical, manage the recreation residence program to preserve the opportunity for individual and family-oriented recreation.

There were no substantive comments received on this section. However, in the final directive, paragraph 7 has been added to address the concerns expressed by many respondents that community- or association-owned improvements should not be authorized to an individual under the recreation residence term permit, but rather, should be authorized under separate permit and authority to the association or entity representing the recreation residence owners.

*2347.12—Caretaker Cabins.* This section provided direction concerning the manner in which a caretaker cabin may be owned and authorized, the considerations that the authorized officer should take into account when determining whether to authorize caretaker cabin use, and the annual fee to be charged for caretaker cabin uses.

*Comment.* Many respondents commented that it was unclear as to how the proposed direction concerning caretaker cabin uses was different from current agency direction. Respondents suggested that the **Federal Register** notice should have included a discussion of those differences. These respondents also suggested that the proposed direction requiring that a caretaker cabin be authorized with an annual permit, Form FS–2700–4, as opposed to a term special use permit for a recreation residence, Form FS–2700–5a, is discriminating against caretaker cabin uses.

*Response.* The Forest Service agrees that there was no discussion in the preamble to the May 13, 2003, **Federal Register** notice (68 FR 25751) of the differences between the existing and proposed policy on caretaker cabins. However, the proposed direction included a table (Table I) which provided a section by section comparison between the current recreation residence direction and the proposed revision.

The proposed revision to Forest Service Manual (FSM) 2347.12a, which included language directing the use of an annual permit (Form FS–2700–4) to authorize a caretaker cabin, was not a proposed change from current agency direction for authorizing caretaker cabin uses. A caretaker cabin, by its nature can be, and often is, used as a year round, primary residence to fulfill its purpose of maintaining the security of a tract. As such, the authorized use is significantly different than a recreation residence use. Likewise, if a caretaker cabin use is authorized for a cabin situated outside of a recreation residence tract, as will be provided with the previously referenced revision to the definition of a caretaker cabin, then not only the use, but the location of the cabin would be inconsistent with the agency's direction that a recreation residence use be located within a recreation residence tract. In addition, the primary purpose of use and occupancy of a caretaker cabin is sufficiently different from that of a recreation residence use, and it should be authorized with the type of special use authorization appropriate for that special use. Therefore, the final directive will remain unchanged with respect to the type of special use authorization used to authorize the use of a cabin as a caretaker cabin.

The proposed direction under § 2347.12b includes the language which was intended to be reflective of section 607(b) of CUFFA, which directs that the fee for a caretaker cabin special use shall not exceed the fee charged for the authorized use of a similar typical lot in the tract. The final language in this part of the direction has been slightly revised to accommodate those situations where a caretaker cabin may not be located within a recreation residence tract. The revised language in the final direction provides direction for assessing an annual fee for a caretaker cabin that may be located neither on a recreation residence tract, nor on a recreation residence lot, by directing that the fee will be equal to a typical lot within the tract for which caretaker cabin services are being provided, that is most representative of the NFS land upon which the caretaker cabin is located.

Chapter 2720—Special Uses Administration

There were no substantive comments received on this chapter of the Forest Service Manual. No revisions have been made in the final directive.

*Forest Service Handbook 2709.11—Special Uses Handbook*

Chapter 30—Fee Determination

*33.05—Definitions.* This section included new definitions for terms used in CUFFA.

*Comment.* Numerous respondents suggested that the definitions of terms in the agency's directives mirror exactly the definitions of those terms as provided in CUFFA. Others suggested that the term ''market value'' should not be included in the final directive because it is a term of art which appraisers understand and that including the words ''giving due consideration to all available economic uses of the property at the time of the appraisal'' in the definition of market value was inconsistent with the provisions of CUFFA, is in conflict with the provisions defining Highest and Best Use in the appraisal specifications, and should be deleted.

*Response.* The Forest Service has reviewed the definition of all the terms included in the proposed directive revisions and has compared them to the corresponding definitions and the intent of CUFFA. A response to each definition is as follows:

*Cabin.* The definition has been revised to mirror the definition for a cabin as provided in section 604(4) of CUFFA.

*Market Value.* The term ''market value'' is not defined in CUFFA. However, the Forest Service believes that a definition for market value is necessary in agency direction. Section 605 of CUFFA directs the Forest Service, through the Secretary of Agriculture, to ensure, to the maximum extent practicable, that the basis and procedure for calculating cabin user fees results in a fee that reflects ''(1) the market value of the lot; and (2) regional and local economic influences.'' With this statutory mandate, the Forest Service believes that there is a need to clearly define the term ''market value,'' lacking any clear definition in CUFFA. The agency believes it would be remiss to simply rely on an assumption that market value is a term of art, which every appraiser understands and can articulate and apply consistently. Several definitions of market value have been utilized in appraisal publications and educational materials over time. The Forest Service believes it is important for all appraisers to utilize a current, common definition. Though other definitions may apply to transactions performed under other legal authorities, CUFFA directs that appraisals prepared under authority of the act be prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA). The two sets of appraisal standards have conflicting definitions, so the definition in the UASFLA takes precedence because those standards, though they are not themselves law, are based on Federal case law, legislation, and

administrative rules. Providing for a definition in agency direction is designed to maximize consistency in the interpretation and application of the concept of market value.

Within the proposed definition of market value, use of the language ''giving due consideration to all available economic uses of the property at the time of the appraisal'' was also evaluated in response to the comments received. The phrase cited is an integral part of the definition. However, this part of the definition is mitigated by the requirement in the appraisal guidelines that the identified highest and best use shall be the authorized use: A lot suitable for use as a recreation residence. No other potential highest and best uses shall be considered or discussed in the appraisal report.

*Natural, Native State.* The definition of this term in the proposed direction was very similar to that used in CUFFA and was not changed in the final direction.

*Recreation Residence.* This term was not defined in CUFFA. However, CUFFA includes several references to the ''recreation residence program,'' and CUFFA defines the term ''cabin,'' as a subset of recreation residence (see the final direction defining the term ''cabin''). Therefore, the Forest Service believes that for consistency in management, and clarity for the public, the term ''recreation residence'' must be defined to distinguish it from other types of cabin uses on NFS lands, such as historic cabins, isolated cabins, and cabins used for mining or grazing operations. The definition, however, has been revised in the final direction to remove the words ''auxiliary buildings and improvements,'' so that the definition of a ''recreation residence'' is equal to the definition of a ''cabin,'' as cabin is defined in CUFFA and this section of the direction. However, a recreation residence special use commonly includes the use and occupancy of NFS lands with not just a recreation residence, but also with ''auxiliary buildings and improvements.'' The cumulative location and distribution of the recreation residence, or cabin, and the associated permit holder owned auxiliary buildings and improvements on NFS land comprises the recreation residence ''lot,'' as the term ''lot'' is defined in the final rule at 36 CFR 251.51, published in a separate notice in this part of today's **Federal Register**. Auxiliary buildings and improvements are not a part of the recreation residence or cabin and have therefore, been deleted from the final definition of the term ''recreation residence.''

*Related Improvements.* A definition of ''related improvements'' was not included in the proposed rule or proposed directives. However, due to the comments received on the definition of ''recreation residence lot'' in the proposed rule, the Forest Service is adding this definition to clarify what constitutes a related improvement in the context of a recreation residence lot.

For the purpose of defining a recreation residence lot (36 CFR 251.51), ''related improvements'' include not only the examples of facilities and uses owned and maintained by the holder identified at 36 CFR 251.51, but may also include holder-owned facilities or uses of National Forest System lands operated or maintained by the holder in conjunction with the recreation residence use. For example, outbuildings, wood piles, retaining walls, picnic tables, driveways, parking areas, trails, boardwalks, campfire rings, seats, benches, the construction and maintenance of lawns, gardens, flower beds, landscaped terraces, and the manipulation and/or maintenance of native vegetation. Related improvements will not include native vegetation that is manipulated and/or maintained for the primary purpose of protecting property and mitigating safety concerns, such as the removal of hazard trees, and the treatment/management of vegetation, approved by the authorized officer, to reduce fuel loading and to create defensible space for wildfire suppression purposes, nor will it include tract association- or community-owned facilities that are authorized under a separate authorization to the recreation residence tract association or some other entity representing the owners of the recreation residence. The list of items identified in the definition of ''related improvements'' in section 33.05 is not intended to be an all-inclusive list.

*Simple Majority.* Section 614(c)(2) of CUFFA requires that a new appraisal or peer review of an existing appraisal be made by a majority of the cabin owners in a group of cabins represented in the appraisal process by a typical lot. To assure that Forest Service managers consistently understand and apply this provision of CUFFA, the agency believes that there is a need to clearly define what constitutes a ''majority'' as used in this section of CUFFA. The proposed direction did so by providing a definition of ''simple majority.'' However, since CUFFA and other sections of the directive use the term ''majority,'' instead of ''simple majority,'' this term has been changed to ''majority'' in section 33.05. The proposed direction provided a definition of ''more than 50 percent,'' and that definition remains the same in the final direction. In the case where a typical lot represents a grouping of an even number of lots, and a request is made for a new appraisal or peer review pursuant to section 614(c)(2) of CUFFA, the majority of the holders within that grouping would be at least 50% of the permit holders in that grouping, plus 1. A request for a peer review or new appraisal by only 50 percent of the holders within a grouping comprised of an even number of lots would not by definition, constitute a majority.

*Tract.* The definition of this term in the proposed direction was very similar to that used in CUFFA, and was not changed in the final direction.

*Typical Lot.* The first sentence of the definition of this term in the proposed direction was similar to the definition in CUFFA. The Forest Service expanded the definition in the proposed direction to describe to Forest Service managers how typical lots are to be used for appraisal purposes. There have been no changes to the definition of this term in the final directive.

*33.13—Annual Adjustment of Recreation Residence Fee.* This section prescribed the manner in which annual adjustments to recreation residence fees would be made and provided a series of examples for implementing the provisions of the proposed direction.

*Comment.* At least one respondent was critical of the Forest Service's proposal to continue to use the Implicit Price Deflator, Gross National Product (IPD–GNP) index in making annual changes to fees, stating that section 608(b) of CUFFA directs the agency to use the ''Index of Agricultural Land Prices,'' published and maintained by the Department of Agriculture. One respondent stated that since the proposed direction has no provisions to adopt the use of the Index of Agricultural Land Prices, it must mean that the Forest Service intends to incur an unnecessary expense of updating this section of the direction when the transition period (as prescribed in section 614 of CUFFA) is over, or the Forest Service hopes to bury the Index of Agricultural Land Prices and not use it at all.

*Response.* The proposed rule and proposed directives clearly disclosed the intent to use current and future indexing factors for making annual adjustments to recreation residence special use permit fees in compliance with the provisions in CUFFA. Section 614 of CUFFA describes the transition as that period of time during which the final rule, direction revisions, and new appraisal guidelines are promulgated,

adopted, and fully implemented, and a new base cabin user fee for all holders is established. Section 614(c) of CUFFA provides holders up to 2 years after the date of adoption of the final rule, direction revisions, and appraisal guidelines, to request a new appraisal or peer review. Additional time beyond the date of these requests will be needed for new appraisals and peer reviews to be conducted and a new base cabin user fee established. So it is conceivable that for some permit holders, the transition period described in CUFFA will continue for several years after the date of adoption of these final rules, direction revisions, and appraisal guidelines. During this transition period, section 614(a)(1) and (2) of CUFFA specifically direct that term special use permit fees for recreation residences shall be annually adjusted using the annualized 2nd quarter to 2nd quarter change in the IPD–GNP. The Forest Service's direction at § 33.13 of FSH 2709.11 reflects this provision of CUFFA.

In the preamble of the proposed rule (68 FR 25749), the Forest Service disclosed that it will begin to use the Index of Agricultural Land Prices to make annual adjustments to the base cabin user fee when the transition period (section 614 of CUFFA) ends. A notation on Table I, § 33.13 (68 FR 25779) stated that approximately 2 years after adopting the proposed rule and direction revisions (including the new appraisal guidelines), the Forest Service would develop supplemental direction to implement the provisions of section 608(a) and (b) of CUFFA. By waiting approximately 2 years before proposing and establishing agency direction for use of the Index of Agricultural Land Prices for annualized changes in recreation residence permit fees, the Forest Service will be able to then provide holders and interested members of the public, clear and focused fee direction concerning the use of that index.

*Comment.* Several comments were received which cited that in § 33.13 of the proposed directive, Example 2 displayed a year in which the annual fee increase could be in excess of 5 percent. At least one respondent who commented on this section of the direction suggested that it should be revised to result in situations where the annual fee will never increase by more than 5 percent because that is what is needed to comply with the limitation provision in section 608(d) of CUFFA.

*Response.* In Example 2, the increase in the fee from Year 2006 ($772) to the Year 2007 fee ($824) represented a fee increase of 6.7 percent. It appears, however, that the respondent's comment is based on an interpretation of the limitation provisions in section 608(d) of CUFFA, which suggests that the annual change in a cabin user fee can never exceed 5 percent. The Forest Service does not agree with this interpretation of section 608(d) of CUFFA. Section 608(d) directs that the Secretary shall:

(1) Limit any annual fee adjustment to an amount that is not more than 5 percent per year when the change in agricultural land values exceeds 5 percent in any 1 year; and

(2) Apply the amount of any adjustment that exceeds 5 percent to the annual fee payment for the next year in which the change in the index factor is less than 5 percent.

The Forest Service interprets this provision to mean that in any year in which the annual index amount exceeds 5 percent, the amount of the adjustment in excess of 5 percent will be carried forward in its entirety to the fee in the very next year in which the index factor is less than 5 percent, even if that results in a one year fee increase for that year in excess of 5 percent. Section 608(d) of CUFFA does not direct that there be a 5 percent fee increase limitation in the year in which the fee change in the index factor is less than 5 percent and the carryover adjustment(s) is applied. Example 2 in section 33.13 of the proposed direction was specifically designed with hypothetical index factors to demonstrate this interpretation of section 608(d) of CUFFA. Therefore, the Forest Service believes that the example is accurate, and disagrees with the interpretation of section 608(d) represented by the comment that agency direction should provide that an annual fee may never increase by more than 5 percent.

There were no revisions made to this section.

*33.2—Fees When Determination Is Made To Place Recreation Residence on Tenure.* This section provided direction for implementing the provisions of section 607(c) and (d) of CUFFA, describing the manner in which an annual fee will be assessed in the event that a decision is made to discontinue a recreation residence use.

*Comment.* Several respondents provided comments about particular provisions in the three options which call for a recovery of some of the foregone fees, in cases where the recreation residence use is going to be allowed to continue for at least 10 more years beyond the originally identified date of expiration and conversion to an alternative public purpose. The respondents noted that these provisions are not mandated in CUFFA, questioned the legality of requiring that a fee that includes as a ''surcharge'' a 10-year recovery of previously foregone permit fees, and that a 10-year recovery should not run with the lot and be made a part of the fee assessed to a subsequent owner of the recreation residence, should a change in ownership occur over the course of that 10-year fee recovery.

*Response.* Although it was not stated in the proposed direction, the options identified are a reiteration of current direction that has been in place since 1994. No changes from existing direction were proposed. Providing the 10-year recovery period was designed to benefit the owners of recreation residences, by preventing recreation residence owners from having to pay foregone fees in a single lump sum assessment. Rather, an economic impact to recreation residence owners has been mitigated in agency direction with the provision that allows owners to repay the foregone fees due the United States as an annual fee surcharge, in equal installments over a 10-year period.

While the Forest Service understands the burdens this fee recovery surcharge may impose on a new owner of the recreation residence, it is the responsibility of the prospective buyer, or any successor in interest, to be aware of the terms and conditions of the recreation residence special use permit, including fee obligations due the United States at the time they consider acquiring a recreation residence. The current owner's fee obligation to the United States, including any annual fee recovery surcharge can then be taken into account by prospective purchasers as a consideration in negotiating a purchase price with the seller of the recreation residence.

There were no revisions made to this section.

*33.4—Establishing the Market Value of Recreation Residence Lot.* This section provided general direction about the manner in which recreation residences are appraised and describes the basic concept of establishing groupings of lots having essentially the same or similar value characteristics.

*Comment.* Many comments were received concerning § 33.4, paragraph 1, that provided direction for fee adjustments made for measurable differences among recreation residences lots within a grouping. These respondents stated that this could be implied to mean that appraisers would have the authority to make (base cabin user fee) adjustments for measurable differences among recreation residences

within a grouping of lots, and to establish new groupings of lots and to select typical lots, and that giving this authority to appraisers violates the provisions of CUFFA. Other respondents stated that there should not be the need to make adjustments, because if there were measurable differences among recreation residence lots within a grouping, then that should trigger the need to establish a new grouping with a new typical lot. Some respondents suggested that one of the results of implementing the provisions of CUFFA, Departmental regulations, and agency policies may be the need to reconsider and reconfigure lot groupings, including the establishment of additional lot groupings and the corresponding selection of additional typical lots. Other comments suggested that recreation residence lots should be appraised in their native, natural state and suggested that the appraiser should be instructed to consider lots as inaccessible in the winter, unless snow is removed from the access road by either the Forest Service or a third party.

*Response.* The Forest Service agrees that as worded, paragraph 1 in § 33.4 could be interpreted to mean that an appraiser has the authority to make adjustments to base cabin user fees in cases where there might be measurable differences among recreation residence lots within a grouping of lots. Therefore, the language in paragraph 1 has been revised to clarify that only the authorized officer may make adjustments.

The Forest Service disagrees, however, with comments that suggested that measurable differences among recreation residence lots within a grouping of lots always signals the need to establish a new grouping and a new typical lot. While that may be appropriate in some cases, it may not always be an efficient or economically justifiable approach to establishing a base cabin user fee, particularly in cases where only one or two lots within a grouping of lots might have a measurable difference that, while measurable, will result in only a minor change to the base cabin user fee. Therefore, the Forest Service will leave this provision as an option for the authorized officer to consider and use in accommodating measurable differences between lots within a grouping as an alternative to establishing a new grouping and corresponding typical lot. However, paragraph 1 will be revised to include the word ''values'' to clarify that this provision means that adjustments to a base cabin user fee may be made when there are measurable value differences among recreation residence lots within a grouping of lots. The requirement that the authorized officer seek the advice of the assigned Forest Service review appraiser will also be added to paragraph 1.

The Forest Service disagrees that this sentence could also be interpreted to mean that an appraiser has the authority to create a new grouping of lots and select a correspondingly new typical lot. The direction in § 33.41 of the direction clearly directs that the establishment of groupings of lots, and the selection of a typical lot within each lot grouping, shall be made by the authorized officer with input from permit holders.

The comments that suggested that the appraiser should be instructed to consider the lots as inaccessible in the winter unless snow is removed from the access road may not have understood that this property characteristic is covered in § 33.4, paragraph 3(b). The appraiser is directed to consider, and adjust if appropriate, any limitation on access attributable to weather and other factors. The appraiser will consider the lot's access condition. If the property is inaccessible in winter, the appraiser will search for sales with similar access limitations.

The Forest Service also agrees that as part of the implementation of CUFFA and the adoption and implementation of the Secretary's regulations and agency policies, there may be an occasional need in some tracts for the authorized officer to either reconsider the groupings of lots and the identification of typical lots or make adjustments to base cabin user fees for certain lots within a grouping of lots. The need to do so would most likely occur in cases where the inventory of facilities, utilities, and access servicing a tract are not comparable to the facilities, utilities, and access servicing the typical lot. In these cases, the authorized officer will have the authority to, at his or her discretion, consider implementing one of the following options:

1. Establish a new grouping of lots having clearly different attributes of access, utilities, and facilities servicing those lots from those which have been inventoried and are servicing the typical lot and:

a. Identify with the holders a new typical lot to represent that new grouping.

b. Prepare a new permanent inventory of utilities, access, and facilities servicing that typical lot (sec. 33.42).

c. Conduct a new appraisal of that typical lot pursuant to the provisions of CUFFA. The Forest Service and the holder(s) shall pay equally for the cost of the new appraisal.

2. Where feasible, assign lots having clearly different attributes with another typical lot that may have been established in the tract and which has attributes of access, utilities, and facilities that are comparable to those lots.

3. Make adjustments to the base cabin user fee for those lots having utilities, access, and facilities that are so different from the attributes of the typical lot that it creates a measurable difference in value.

These options have been added to § 33.41.

*Comment.* Section 33.4 of the proposed direction also directed that an appraiser shall not select sales of land within developed urban areas when identifying comparable sales to arrive at an appraised value of a typical lot. Some respondents commented that the word ''urban'' should be defined because it has a specific meaning in most land use ordinances and that (1) cabin owners are concerned that appraisers may select comparable lots from urban and suburban-style subdivisions in rural areas and that (2) use of comparable lots from these sources has the potential to dramatically distort the valuation of NFS lots.

*Response.* The Forest Service agrees with those respondents who expressed these concerns. Urban is defined in ''The Dictionary of Real Estate Appraisal, Fourth Edition,'' as:

> Describes a mature neighborhood with a concentration of population typically found within city limits or a neighborhood commonly identified with a city.

A definition for ''urban'' has been added to section 33.05.

*33.42—Inventorying Utilities, Access, and Facilities.* This section directed the authorized officer to identify and inventory utilities, access, and facilities that provide service to each typical lot within a recreation residence tract. It also provides criteria or guidelines for the authorized officer to use in making a determination as to who paid for the capital costs to construct those utilities, access, and other facilities servicing each typical lot

*Comment.* Many comments were received concerning this section of the proposed direction. One of the purposes of this part of the proposed direction was to further define the fundamental premise in CUFFA, which directs that ''the Secretary shall presume that a cabin owner, or a predecessor of the owner, has paid for the capital costs of a utility, access, or facility serving the lot being appraised, unless the Forest Service produces evidence that the agency or a third party has paid for the

capital costs.'' Most who commented on §§ 33.42, and 33.42(a) and (b) of the proposed direction said it was inconsistent with the provisions in CUFFA, or '' defective'' in that the direction (1) attempts to determine by definition that certain improvements are not paid for by cabin owners, or their predecessors, and that an approach is not equivalent to producing evidence (as is required in CUFFA); (2) attempts to put the burden of proof (as to who paid for utilities, facilities, or access) upon the cabin owners, rather than on the Forest Service; and (3) establishes standards which would allow an authorized officer to make assumptions as to who paid for utilities, access, or facilities without producing actual evidence of that fact. Some who commented said that all evidence demonstrating payment of capital investments in utilities, access, and facilities must be in writing. Many respondents commented that this section of CUFFA requires the Forest Service to prove payment of the capital investment in access, utilities, and facilities by either the Forest Service or a third party. Many comments suggested that any time a holder is paying a standard rate for a utility service, included in that rate are the costs of capital investments of the facilities needed to convey/provide the service or utility. Lastly, almost all who commented on this part of the proposed direction disagreed with that portion of § 33.42(a) which specifically cited as an example, that the assessment of a tap fee or hook-up fee charged by a utility provider to a permit holder or their predecessor does not constitute a payment of the capital costs of providing those facilities to the lot.

*Response.* The primary purpose for the direction in section 33.42 was to provide clarity and consistency for implementing the inventory provisions of section 606(a)(1) of CUFFA. In the proposed directive, the Forest Service provided direction through the use of examples. Lacking this direction, permit administrators and authorized officers would be guided only by nondescript provisions in section 606(a)(1) of CUFFA which lends itself to differences in interpretation. That was clearly evident by the significant number of comments that were generated by the Forest Service's interpretation of section 606(a)(1) and demonstrates that there is no single, agreeable interpretation of this section of CUFFA. Therefore, the agency will exercise its discretion in providing further definition and guidance in its directives to assure consistency in interpretation and application of this part of CUFFA.

Most of the comments that were submitted concerning the examples provided in the proposed direction in §§ 33.42(a) and (b) disagreed with various elements of the proposed direction concerning evidence that constitutes payment for the capital costs of utilities, access, and facilities which provide access or services to a recreation residence lot. Those aspects of the comments received will be individually addressed, as follows:

1. *Responsibility for Determining Evidence of Payment of Capital Costs.* Many who commented interpreted the proposed direction in § 33.42(a) as requiring cabin owners to provide evidence that either the cabin owner or a predecessor of a cabin owner directly paid, paid a lump sum fee, or paid a surcharge for the capital costs of an inventoried utility, access, or facility. Many cited that it is the intent of section 606(a)(1) of CUFFA that it is the responsibility of the Forest Service to provide this evidence.

The Forest Service agrees. Major revisions to this section have been made to more clearly articulate that intent. The caption for § 33.42(a) has been revised to ''Types of Utilities, Access, and Facilities to Include in Inventories,'' and includes the list of itemized types of utilities, access, and facilities that were identified in the proposed direction under the general caption in § 33.42 as items 1 thru 4. The caption at § 33.42(b) has been revised to ''Criteria to be Considered in Determining Who Paid for Inventoried Utilities, Access, and Facilities,'' and revises the direction previously contained in §§ 33.42(a) and (b) to provide greater clarity to Forest Service employees and cabin owners concerning criteria for determining who paid for capital improvements and to clearly identify the burden of the Forest Service to produce evidence that capital improvements were paid by a party other than the cabin owner or their predecessor.

However, the Forest Service disagrees with those respondents who commented that CUFFA directs the Forest Service to ''prove'' that capital costs for access, utilities, and facilities were paid for by the Forest Service or a third party. That is a standard much higher than the clear language in CUFFA which simply requires the authorized officer to have evidence of the payment of capital costs by either the Forest Service or a third party.

2. *Hook-up or Tap Fee.* The proposed direction in § 33.42(a) stated that a hook-up fee or tap fee, which is commonly assessed by a utility provider when initiating service to a new customer, does not equate to payment of the capital costs of installment of the facilities that deliver or transport the utility service to the tract or lot being appraised. Many of the comments received disputed this statement, asserting that a hook-up or tap fees are an expense to the cabin owner and, therefore, are assessed by the provider to pay for the capital costs to construct and install the improvements or facilities which deliver the utility or service.

The Forest Service agrees that there may be cases where at least some of the hook-up or tap fee assessment is based upon the provider's capital costs to install the utility or facility that provides that service. Therefore, the direction has been revised in § 33.42(b) to instruct authorized officers that if evidence is produced to indicate that hook-up or tap fee assessments were implemented to pay for the capital costs to construct and install the improvements or facilities which deliver the utility or service, then that will serve as the basis for the authorized officer to determine that the cabin owner or their predecessor who paid a fee have paid for the capital costs of the utility or facility providing service to the lot. In most cases, however, the amount of the hook-up or tap fee assessed to a new customer is established primarily to pay for the utility provider's administrative costs incurred as part of activating a new customer, such as the establishment of a new file and account and expenses of a site visit to enable switches and install metering units owned and operated by the provider. In these instances, the hook-up or tap fee will not be considered payment by the cabin owner or their predecessor for the capital costs of facilities. The final direction has been revised to reflect the fact that it is the responsibility of the authorized officer to seek evidence to make that determination.

3. *Base User Fees.* Many comments disputed the proposed direction that provided that if the capital costs of a utility or facility are paid for and attributable to the entire service base, then those capital costs are assumed to be neighborhood enhancing developments and the costs being borne by the provider of a service or utility, not the cabin owner or their predecessor. These comments suggest that in effect, all customers who are assessed a base rate and/or user fee for services provided by a utility company or service provider, such as an electric company, telephone company, water

utility district, cable TV provider, and so forth are paying for the capital costs of utilities and facilities that provide those types of utility or service to a recreation residence lot. The logic of these comments would suggest that any cabin owner who is paying base rates and user fees for a utility service is paying capital costs to construct, operate, and maintain the facilities that provide or deliver that utility or service, even when those base rates and user fees are nothing more than that being assessed to every other customer in the service area.

The Forest Service disagrees with these arguments. Applying the logic of these comments would mean that only in the rarest of cases would there ever be a utility or facility that is providing service to a recreation residence lot that would be considered as having been provided by a third party, such as a utility or service company provider. If that had been the intent of the Congress in drafting this provision of CUFFA, then there would have been little purpose served to direct that the agency inventory and identify utilities provided by a third party. Rather, the Forest Service has interpreted CUFFA to mean that there clearly are circumstances in which utilities, access, and facilities can be identifiable as having been provided by a third party, and most commonly by the utility or service provider, without the customer directly incurring the capital costs of utilities, access, or facilities. It is the Forest Service's interpretation of section 606(a)(1) of CUFFA that if the capital costs of any utility, access, or facility were not directly paid by the cabin owner or their predecessor, then costs will be identified as having been paid for by a third party. The payment of a base rate and usage fee is not equivalent to direct payment of the capital costs of utility, access, or facilities delivering or providing a utility or service.

4. *Tax Supported Roads and Highways.* Similar to the issue raised in preceding paragraph 3, many respondents asserted that in those cases where a tract or lot is accessed by a Federal, State, or county highway or road, and where the cabin owner is paying a possessory interest tax to the State or county governmental entity who operates and maintains that road or highway, is proof that the cabin owner is paying for the capital costs of the highway or road through that tax.

The Forest Service disagrees. The only evidence demonstrating that the cabin owner or a predecessor of the cabin owner paid the capital costs for a road or highway would be evidence that a public road agency assessed a surcharge or lump sum assessment to the cabin owner or their predecessor, or a specific road or highway accessing their recreation residence.

Almost all who responded to this section of the proposed direction commented that simply making statements in agency direction does not equate to providing evidence that the capital costs of inventoried utilities, access, and facilities were or were not provided or paid for by the cabin owners or their predecessors, and that CUFFA requires evidence. The Forest Service agrees with those comments, but in doing so, the agency also wants to clarify that it is not the intent to have statements in agency direction satisfy the evidence requirements of CUFFA. Rather, as previously stated, the provisions in §§ 33.42(a) and (b) of the direction were designed to provide internal agency guidance to Forest Service special use permit administrators and authorized officers for their use in conducting inventories and in making a determination as to who paid for utilities, access, and facilities providing services to a lot. Some of those provisions describe circumstances which the agency will consider as being prima facie evidence for use by an authorized officer in determining who paid for the capital costs of certain access, utilities, and facilities.

The final direction has been revised to more clearly articulate this purpose.

*33.7—Holder Notification of Accepted Appraisal Report and Right of Second Appraisal.* This section directed the authorized officer to notify the affected holders when the Forest Service has accepted an appraisal report and has determined a new base fee based on that appraisal report.

*Comment.* A respondent suggested that the authorized officer should be required to provide the holders with written justification for his/her decision for accepting an appraisal report.

*Response.* The authorized officer, as stated in section 33.6, may accept the estimated value of the typical lot or lots in the appraisal for establishing a new base fee for that recreation residence lot or lots. The justification for the decision is that the assigned review appraiser has determined that the appraisal meets the required standards and the value estimate is supported and approved. By law, the authorized officer is required to calculate cabin user fees that reflect the market value of a lot, including regional and local economic influences. Market value incorporates those economic influences. It would be redundant for the authorized officer to say his/her justification for the decision (determining a new base fee) is because he/she complied with law.

There were no changes made to this section in the final directive.

*33.71b—Appraisal Guidelines.* This section of the proposed direction addressed the manner in which second appraisals may be conducted.

*Comment.* One appraisal organization suggested wording to clarify the intent of this section and to demonstrate why the recommended procedure does not present an ethical conflict in the context of the Uniform Standards of Professional Appraisal Practice (USPAP).

*Response.* The Forest Service agrees. Section 33.71b has been rewritten to more clearly articulate its purpose and explain how the procedure is in conformance with USPAP.

*33.72—Reconsideration of Recreation Residence Fee.* This section provided direction for reconsidering a recreation residence base fee following the authorized officer's receipt of reconsideration based on the results of a second appraisal.

*Comment.* Many comments were received regarding the fact that this section of the proposed direction failed to provide guidance to the authorized officer on how a final base fee will be established in cases where a second appraisal might be materially different from the first appraisal. Respondents suggested that it may not be appropriate to, as the proposed direction stated, establish a base fee from within the range of values established by the first and second appraisals, particularly if one of the appraisals was poorly done. For the same reason, many who commented were concerned that this provision in the proposed direction might lead authorized officers to simply average the first and second appraisals, to arrive at an average between the two in establishing a new base fee, a practice which might also be inappropriate if one or both of the two appraisals were poorly done.

*Response.* The language in this section of the proposed direction is nearly verbatim to the language provided in section 610(d) of CUFFA concerning the establishment of a new base fee pursuant to the results of a first and second appraisal. The comments suggest that the Forest Service direction restrict or qualify the manner in which the authorized officer may exercise discretion to establish a new base fee in an amount that is equal to the base fee established by the initial or the second appraisal, or is within the range of values, if any, between the initial and second appraisals. The Forest Service disagrees. The agency believes that this

discretion is necessary, and yet is adequately prescriptive to assure an acceptable degree of consistency by authorized officers in exercising it on a case specific basis.

Regarding comments concerning the inappropriateness of the use of appraisals that are ''poorly done,'' the Forest Service notes that any appraisal that is presented to an authorized officer for consideration in the establishment of a cabin user fee must, pursuant to agency direction, first be reviewed by a Forest Service Qualified Review Appraiser. The Qualified Review Appraiser determines whether the appraisal has been conducted, and the appraisal report has been prepared, in a manner consistent with Federal and agency standards, and in the case of recreation residence lot appraisals, consistent with the appraisal guidelines for recreation residence lots in existence at the time that the appraisal was conducted. Only when a Forest Service Qualified Review Appraiser conducts a review and makes a determination that the appraisal is acceptable for agency use, is it declared acceptable for use in determining a recreation residence fee. The same review standards will be applied to any second appraisal. Therefore, if the term ''poorly done'' equates to not having met established Federal and agency standards and specifications for conducting appraisals and writing appraisal reports, then it is likely that the appraisal would never be approved for agency use and would, therefore, not be used by the authorized officer as either a first appraisal or a second appraisal in establishing a cabin user fee.

3*3.8—Establishing a Recreation Residence Lot Value During the Transition Period of the Cabin User Fee Fairness Act.* This section of the proposed direction addressed the manner in which a base cabin user fee would be established upon adoption of the final regulations, policies, and appraisal guidelines pursuant to CUFFA. It identified that one of three options to be used in establishing a base cabin user fee during the transition period: (1) Conduct a new appraisal pursuant to these final regulations, policies, and appraisal guidelines; (2) Commission a peer review of an existing appraisal that had been completed after September 30, 1995; or (3) Establish a new base fee using the market value of the typical lot that has been identified in an existing appraisal that was completed and approved after September 30, 1995.

*Comment.* Some who responded to this section of the proposed direction suggested that permit holders should also be provided with a fourth option, one that would give the holders an opportunity, after the completion of either a new appraisal (option 1) or a peer review (option 2), to request a second appraisal, in accordance with the provisions for second appraisals as described in § 33.7.

*Response.* The Forest Service disagrees with those who interpreted CUFFA in this manner. The three options identified in section 33.8 of the proposed direction were intended to reflect the provisions of section 614 of CUFFA, which clearly provides that during the transition period, these are the only three means by which a new base cabin user fee may be established for permits for those lots which were appraised on or after September 30, 1995, but before October 11, 2000 (the date of enactment of CUFFA). Typical lots representing almost every recreation residence lot in the entire National Forest System were appraised between these two dates. The only part of section 614 of CUFFA that provides holders with the opportunity to seek a second appraisal is found in section 614(b)(1)(B), where it speaks to the right of a cabin owner to a second appraisal under section 610 of CUFFA. Section 610, however, only applies to lots which, at the time of enactment of CUFFA, had not been appraised after September 30, 1995. As stated above, typical lots representing almost every recreation residence lot in all of the National Forest System had been appraised between September 30, 1995 and the date of enactment of CUFFA (October 11, 2000). Section 610 of CUFFA, which provides for the right of a second appraisal, is interpreted by the Forest Service to apply to those lots which were not appraised between September 30, 1995 and October 11, 2000, but instead may have been appraised since October 11, 2000. There are only rare instances in which this has occurred. The provisions of section 610 of CUFFA, and as expanded upon in section 33.7 of the final policy direction concerning the right of a permit holder to a second appraisal will, of course, also apply to any and all appraisals of typical lots in the next regularly scheduled appraisal cycle, which will begin as early as 2006. The right of a second appraisal will not apply to the establishment of a new base cabin user fee during the transition period, as that period is defined in section 614 of CUFFA and in § 33.8 of the final policy direction.

The direction in § 33.8 has been revised in the final directive to make it clear that the options described in paragraphs 1 through 3, and explained in further detail in § 33.81 through 33.83, are the only means by which a new base cabin user fee is established during the transition period for those lots which were appraised between September 30, 1995 and October 11, 2000. Holders who request a new appraisal or the commissioning of a peer review will not have the right to request a second appraisal as provided for in section 33.7.

*33.83—Requests for Peer Review Conducted Under Regulations.* This section of the proposed direction addressed the manner in which peer reviews may be requested, conducted, and used.

*Comment.* One appraisal organization requested that the Department provide immunity or indemnification for its role in facilitating a peer review.

*Response.* The Forest Service consulted with the Office of the General Counsel and was advised that the government has no authority to provide either immunity or indemnification to the appraisal organization as requested. The Forest Service and Office of the General Counsel consulted with the appraisal organization staff and counsel to discuss alternatives the organization could take absent government immunity or indemnification. The appraisal organization agreed to pursue alternative means to address concerns about potential liability of its members.

There were no changes made to this section in the final directive.

*Comment.* Two appraisal organizations suggested wording to clarify the type of review intended in section 33.83.

*Response.* The Forest Service agrees. Section 33.83 will be rewritten to more clearly articulate its purpose and identify the type of review contemplated in conformance with Uniform Standards of Professional Appraisal Practice (USPAP).

*Comment.* Some who responded to this section of the proposed direction suggested that one of the products of a peer review is to recommend that the appraisal being reviewed is so seriously flawed that it be discarded for use.

*Response.* The Forest Service disagrees with these comments. Paragraphs ''a'' and ''b'' in section 33.83 of the proposed direction identified actions that will be taken, or could be taken, as a result of the findings of a peer review. They identified that when a peer review results in a finding that the appraisal being reviewed was not conducted in a manner consistent with the regulations, policies, and appraisal guidelines, the authorized officer shall either establish a new base fee that reflects consistency with CUFFA

regulations, policies, and appraisal guidelines, or provide the opportunity for the holders to request a new appraisal, in accordance with the provisions of CUFFA and these regulations, policies, and appraisal guidelines. If a new appraisal is requested and conducted, it would replace the existing appraisal and be used as the basis for establishing a new base cabin user fee. The Forest Service believes that these provisions in the proposed direction are consistent with the provisions for conducting and utilizing a peer review identified in section 614(c)(4) of CUFFA.

*Comment.* Some respondents suggested that one of the purposes or outcomes of the peer review should be to allow peers to recommend that the appraisal being reviewed be thrown out as just an incompetent appraisal. The provisions at § 33.83 don't provide for that, and instead identify that the results of the peer review are only to determine whether the appraisal was conducted in a manner consistent with regulations, policies, or the appraisal guidelines being adopted pursuant to CUFFA.

*Response.* The two situations described above are not in conflict. If a peer review results in a determination that the appraisal was not conducted in a manner consistent with the regulations, policies, and appraisal guidelines pursuant to CUFFA, the authorized officer shall either establish a new base fee to reflect consistency with the regulations, policies, and appraisal guidelines or conduct a new appraisal. Either of these options has the practical effect of ''throwing out'' the original appraisal because it is no longer the basis for the fee determination.

*Comment.* Many comments were received concerning those provisions which outlined the manner in which a peer review will be conducted, and that it will be based upon the membership in a professional appraisal organization of the appraiser who conducted the appraisal being reviewed. The direction went on to identify criteria for identifying the assignment of an appraiser to conduct the peer review and whether the appraiser who conducted the appraisal being reviewed was or was not a member of one or more appraisal sponsor organizations of The Appraisal Foundation. Those who commented on these criteria said that this constitutes a bias in favor of The Appraisal Foundation, and that given the history of the role of The Appraisal Foundation in the creation of CUFFA, there is no reason in preferring The Appraisal Foundation over any other appraisal organization.

*Response.* The Appraisal Foundation has no individual appraiser members, only sponsor organization members. Therefore, no appraisal may be referred to TAF for peer review.

There were no revisions made to this section.

*Forest Service Handbook 5409.12—Appraisal Handbook*

Chapter 60—Appraisal Contracting

*Section 66, Exhibit 03—Required Specifications for Appraisal of Recreation Residence.* This section containing exhibits 06 and 07 was coded in a single digit coding scheme when published for notice and comment. The section is now coded in a two digit coding scheme (sec. 66) to conform it to the other sections in FSH 5409.12, chapter 60, which were revised on February 23, 2005. The exhibits for recreation residences are now enumerated as exhibit 03 (previously exhibit 06) and exhibit 04 (previously exhibit 07) respectively.

This section contained the technical appraisal provisions and guidelines enumerated in section 606 of CUFFA. More than 1,500 comments were received addressing various provisions of the proposed appraisal specifications. Approximately 400 comments addressing specific sections of exhibit 06 were submitted via a fill-in-the-blank standard form. Each of those issues raised on the standard form are addressed in the order in which the subject of those comments appears in the appraisal specifications in exhibit 06.

*General Comment on Exhibit 03*

*Comment.* There are inconsistencies in definitions and the use of language throughout the specifications, and they will invite problems in the future. The language should mirror CUFFA and there should be no repetitions.

*Response.* The specifications were developed to incorporate direction found in CUFFA and mirror the language found there. However, there are areas where either CUFFA was silent on a particular aspect of the appraisal process or additional clarification and direction were necessary. These specifications were developed to be as clear and concise as possible, yet provide consistent guidance for appraisers preparing recreation residence lot appraisals. If the purpose of agency rule making and developing agency direction and guidelines were to simply repeat statutory language, then it would serve no purpose at all. Doing so would only establish unclear and ambiguous rules, policies, and guidelines, adding confusion and frustration to the appraisal process. Therefore, where some of the language in CUFFA may be subject to varying interpretations or applications, the department's rules and the agency's directives and guidelines serve to further refine and define that language as needed to preclude inconsistency in exercising CUFFA's direction and authority.

*Section C–2.1(e) of Section 66, Exhibit 03.* This section required that upon request by the government, during the 2-year period following the date of the appraisal report, the Contractor will update the value as of a specified date.

*Comment.* Those who commented suggested that the value of the typical lot being appraised should be as of the date of the inspection of that typical lot and it should not change for 2 years. The comments suggested that CUFFA does not provide for this.

*Response.* CUFFA is silent regarding the need for an update within a specified period of time. Generally, the date of value will remain constant. However, there may be a need to retain this option to accommodate unforeseen circumstances. For example, if there is severe timber blow down, fire, or flood, it may be necessary to reappraise the typical lot affected by the natural disaster to recalculate the fee if a decision is made to reauthorize the permit. If this occurs, the date of value may change to reflect the negative impact of the natural disaster upon the permitted lot.

There were no changes made to this section.

*Section C–2.1(g) of Section 66, Exhibit 03.* This section references appropriate places to find the definitions of terms.

*Comment.* Those who commented on this section suggested that the language in CUFFA should be included here, as an additional reference for definitions.

*Response.* The Forest Service agrees. Section C–2.1(g) will be modified to read, ''Unless specifically defined herein or in CUFFA Section 604, USPAP, or UASFLA, definitions of all terms are the same as those found in ''The Dictionary of Real Estate Appraisal'' (Appraisal Institute), current edition. UASFLA shall take precedence in any differences among definitions.''

*Section C–2.2(b)(1) of Section 66, Exhibit 03.* Item #7 in this section contained the language ''the adoption of an uninstructed assumption or hypothetical condition that results in other than 'as is' market value will invalidate the appraisal.''

*Comment.* This language is unnecessary because the appropriate prohibitions are already part of the

appraisal requirements in USPAP and this statement does nothing other than confuse the appraiser.

*Response.* The Forest Service disagrees. USPAP allows the appraiser the latitude to incorporate extraordinary assumptions and/or hypothetical conditions into the report, as long as it does not produce a misleading result. This is a different scenario than an ''as is'' market value. Most recreation residence lots cannot be valued in an ''as is'' state because of permit holder provided improvements made to the lot and direction provided in CUFFA.

There were no changes made to this section.

*Section C–2.2(b)(2)(3)(b) of Section 66, Exhibit 03.* This section referenced a ''Neighborhood Map.''

*Comment.* Use of the term ''neighborhood'' should be avoided, and in its place, the term ''tract'' should be used. Use of the term ''neighborhood'' leaves the impression that recreation residence tracts are subdivisions, which perpetuates errors in the selection of comparable sales. This would be inconsistent with section 606(b)(1)(B)(ii) of CUFFA, which specifically states that a ''* * * typical lot will not usually be equivalent to a legally subdivided lot.''

*Response.* The Forest Service partially agrees. The ''neighborhood map'' is intended to depict the tract and the surrounding area in order to provide the user of the appraisal report with perspective of the property around the recreation residence tract, including major geographic features, proximity to other uses, water features, access, and general services. Use of the term ''tract'' would limit this over-view of the area to only the tract, and would not provide a ''picture'' of the surrounding area. The term ''neighborhood'' has generally been replaced by ''market area'' which is defined in ''The Dictionary of Real Estate Appraisal,'' current edition, as ''the geographic or locational delineation of the market for a specific category of real estate, i.e., the area in which alternative, similar properties effectively compete with the subject property in the minds of probable, potential purchasers and users.'' References to ''neighborhood'' will be replaced by ''market area.''

*Section C–2.2(b)(2)(4)(a) of Section 66, Exhibit 03.* This section referred to timber and commercial value for mineral deposits in appraisals.

*Comment.* CUFFA does not allow the Forest Service to establish a cabin user fee based upon the value of the timber and minerals on a recreation residence lot. The inclusion of these factors will likely lead to confusion among appraisers. This section should reference ''timber'' as ''trees,'' and should eliminate all reference to mineral values.

*Response.* The Forest Service disagrees. Timber, minerals, and other resources are elements of value that have potential to impact the value concluded for an appraised property. The Forest Service appraisal guidelines confine the highest and best use analysis to use as a recreation site. The above-referenced property characteristics can only be reflected in the value opinion as they contribute to the property's highest and best use; a lot suitable for use as a recreation residence site.

There were no changes made to this section of exhibit 03.

*Section C–2.2(b)(2)(4)(e) of Section 66, Exhibit 03.* This section required the appraiser to cite a ten-year record of the sales of the appraised property.

*Comment.* This is directly contrary to the terms of CUFFA and will mislead appraisers. The sale of the cabin on the typical lot is not the same as the market value of the typical lot, and should not be used in establishing the appraised value of a typical lot. It has no bearing on determining the appraised value of a recreation residence lot.

*Response.* The cited section specifically states, ''include a ten-year record of all sales of the appraised property * * *''. The appraised property is the lot owned by the United States. The ''actual cabin'' is not owned by the United States and is not the subject of the appraisal. The appraiser is not required to cite the sale of the ''actual cabin.''

There were no changes made to this section of exhibit 03.

*Section C–2.2(b)(2)(4)(f) of Section 66, Exhibit 03.* This section referred to the highest and best use of the lot.

*Comment.* Highest and best use should not be addressed in this part of the appraisal specifications. A subsequent definition of ''highest and best use'' correctly defines it as a recreation residence use, so why have it in this part of the specifications.

*Response.* Section C–2.2(b)(2)(4)(f) discusses ''Zoning and Other Land-Use Restrictions.'' It is important to provide instruction to the appraiser indicating how these restrictions are to be considered, in order to ensure consistency. The Analysis of Highest and Best Use section follows immediately below the cited section and properly restricts the appraiser's consideration of highest and best use to the appraised property's suitability use as a recreation residence lot.

There were no changes made to this section of exhibit 03.

**4. Regulatory Certifications**

*Environmental Impact*

These directives revise the administrative procedures for determining market value for recreation residences on National Forest System lands. Section 31.1b of Forest Service Handbook (FSH) 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's preliminary assessment is that these final directives fall within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

*Regulatory Impact*

These final directives have been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. OMB has determined that this is not a significant action. The final directives would not have an annual effect of $100 million or more on the economy, or adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. The final directives would not interfere with an action taken or planned by another agency, or raise new legal or direction issues. Finally, these final directives would not alter the budgetary impacts of entitlements, grants, or loan programs or the rights and obligations of recipients of these programs.

*No Takings Implications*

These final directives have been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that the final directives do not pose the risk of a taking of protected private property.

*Civil Justice Reform*

These final directives have been reviewed under Executive Order 12988, ''Civil Justice Reform''. After adoption of these final directives, (a) all State and local laws and regulations that conflict with these final directives or that would impede full implementation will be preempted; (2) no retroactive effect would be given to these final directives; and (3) the Department will not require the use of administrative proceedings before parties may file suit in court challenging their provisions.

*Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of these final directives on State, local, and tribal governments and the private sector. These final directives would not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

*Federalism and Consultation and Coordination With Indian Tribal Governments*

The agency has considered these final directives under the requirements of Executive Order 13132 on federalism, and has made an assessment that the final directives conform with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary at this time.

Moreover, these final directives do not have tribal implications as defined by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'', and, therefore, advance consultation with tribes is not required.

*Energy Effects*

These final directives have been reviewed under Executive Order 13211 of May 18, 2001, ''Actions Concerning Regulations That Significantly Affect Energy Supply.'' It has been determined that these final directives do not constitute a significant energy action as defined in the Executive order.

*Controlling Paperwork Burdens on the Public*

The information collection associated with the permitting and administration of recreation residences are covered under the approved Office of Management and Budget (OMB) control number 0596–0082. However, as provided by Section 614 of the Cabin User Fee Fairness Act of 2000 ((CUFFA) 16 U.S.C. 6210–13) the final directive does contain a new one-time information collection requirement in FSH 2709.11, §§ 33.8 through 33.83. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do apply. Approval of this information collection requirement has been submitted for approval to the OMB. The agency expects the new information collection requirement required by CUFFA to be approved by OMB prior to implementation of the provisions in sections 33.8–33.83.

Dated: January 4, 2006.

**Dale N. Bosworth,**

*Chief.*

## 5. Text of Final Directives

**Note:** The Forest Service organizes its Directive System by alphanumeric codes and subject headings. Only those sections of the Forest Service Manual and Handbook that are the subject of this notice are set out here. The intended audience for this direction is Forest Service employees charged with issuing and administering recreation residence special use authorizations.

*Forest Service Manual*

Chapter 2340—Privately Provided Recreation Opportunities

*2340.5—Definitions.*

* * * * *

*Caretaker Cabin.* A residence that is authorized in limited cases to provide caretaker services and security to a recreation residence tract.

* * * * *

*2347.1—Recreation Residences.* (For further direction, see FSM 2721.23 and FSH 2709.11.) Recreation residences are a valid use of National Forest System lands. They provide a unique recreation experience to a large number of owners of recreation residences, their families, and guests. To the maximum extent practicable, the recreation residence program shall be managed to preserve the opportunity it provides for individual and family-oriented recreation. It is Forest Service direction to continue recreation residence use and to work in partnership with holders of these permits to maximize the recreational benefits of recreation residences.

* * * * *

7. Authorize community- or association-owned and maintained improvements under a separate permit and authority appropriate for that use (see FSH 2709.11, sec. 33.05, definition of ''related improvements'' and FSM 2721.23c, para. 3.)

* * * * *

*2347.12—Caretaker Cabins.*

*2347.12a—Permits.*

1. Authorize caretaker cabin use of a recreation residence lot with an annual permit, Form FS–2700–4, under the Organic Act (16 U.S.C. 551). Require applicants who have a recreation residence permit (Form FS–2700–5a) to relinquish that permit as a condition of qualifying for a caretaker cabin permit. A caretaker cabin may be owned by a tract association, and the permit may be issued in the name of the head of that association.

2. Coordinate applications for caretaker cabin permits with local governmental agencies to avoid creating unreasonable demands for public services such as snow plowing, mail delivery, garbage pickup, school bus services, or emergency services.

3. If a recreation residence ceases to be used as a caretaker cabin, the holder of the caretaker cabin permit may apply for and, if qualified, be issued a recreation residence permit.

*2347.12b—Caretaker Cabin Use.* The need for a caretaker cabin can rarely be justified where yearlong occupancy is already authorized in the tract. The Forest Supervisor may authorize a caretaker cabin in limited cases where it is demonstrated that caretaker services are needed for the security of a recreation residence tract and alternative security measures are not feasible or reasonably available. The base cabin user fee for a caretaker cabin permit shall not exceed the base cabin user fee charged for the use of the lot as a recreation residence. That fee shall be determined as follows:

1. The base cabin user fee for a caretaker cabin located in a recreation residence tract shall not exceed the base cabin user fee for a similar typical lot in that tract (see FSH 2709.11, section 30.05, for definitions of ''base cabin user fee'' and ''typical lot'').

2. When a caretaker cabin is not located in a recreation residence tract, the base cabin user fee for the caretaker cabin shall not exceed the base cabin user fee for a similar typical lot in the recreation residence tract being monitored by the caretaker cabin permit holder (see FSH 2709.11, section 30.05, for definitions of ''base cabin user fee'' and ''typical lot'').

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Chapter 2720—Special Uses Administration

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*2721.23—Recreation Residences.*

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*2721.23d—Fee Determination.*

1. Use market value as determined by appraisal in determining the base annual fees for recreation residence lots. Determine a new base fee at 10-year intervals.

*Forest Service Handbook (FSH)*
*2709.11—Special Uses Handbook*

Chapter 30—Fee Determination

* * * * *

*33—Recreation Residence Lot Fees.* Recreation residence lot fees shall be assessed and paid annually.

*33.05—Definitions.*

*Cabin.* A privately built and owned recreation residence that is authorized to use and occupy National Forest System land.

*Majority.* More than 50 percent.

*Market Value.* The amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal.

*Natural, Native State.* The condition of a lot or site, free of any improvements, at the time at which the lot or site was first authorized for recreation residence use by the Forest Service.

*Recreation Residence.* A privately owned, noncommercial residence located upon National Forest System lands and authorized by a recreation residence term special use permit. A recreation residence is maintained by the permit holder for personal, family, and guest use and enjoyment. A recreation residence shall not serve as a permanent residence.

*Recreation residence lot.* (For this definition, see 36 CFR 251.51.)

*Related Improvements.*

a. For the purpose of defining a recreation residence lot (36 CFR 251.51), ''related improvements'' include not only the examples of facilities and uses owned and maintained by the holder identified at 36 CFR 251.51, but may also include, but are not limited to, the following holder owned facilities or uses of National Forest System lands being actively operated and maintained by the holder in conjunction with the recreation residence use:

(1) Outbuildings;
(2) Wood piles;
(3) Retaining walls;
(4) Picnic tables;
(5) Driveways and parking areas;
(6) Trails and boardwalks;
(7) Campfire rings, seats, and benches.
(8) Lawns, gardens, flower beds, and landscaped terraces;
(9) Manipulated native vegetation, except as provided for in paragraph b(1).

b. Related improvements do not include:

(1) Native vegetation that is manipulated for the primary purpose of protecting property and mitigating safety concerns, such as the removal of hazard trees, and the treatment/management of vegetation, approved by the authorized officer, to reduce fuel loading and to create defensible space for wildfire suppression purposes.

(2) Tract association- or community-owned improvements or uses, such as boat docks, swimming areas, and water or sewer systems that are under a separate authorization issued in the name of a tract association or other entity representing the owners of the recreation residences.

*Term Permit.* (For this definition, see 36 CFR 251.51 and FSM 2705.)

*Tract.* An established location within a National Forest containing one or more cabins authorized in accordance with the recreation residence program.

*Typical Lot.* A recreation residence lot in a tract that is selected for appraisal purposes as being representative of value characteristics similar to other recreation residence lots within the tract. All recreation residence lots represented by a typical lot shall be characterized as a group for appraisal purposes. A tract may have one or more groups of lots, with each group represented by a typical lot. A typical lot may be the only recreation residence lot in a group, and may be appraised to represent only itself, when it has unique value characteristics unlike any other recreation residence lot in a tract.

*Urban.* A mature neighborhood with a concentration of population typically found within city limits or a neighborhood commonly identified with a city (The Dictionary of Real Estate Appraisal, Fourth Edition).

*33.1—Base Fees and Annual Adjustments.*

*33.11—Establishing New Base Fee.*

1. *Base Fee.* The base fee for a recreation residence special use permit shall be equal to 5 percent of the market value of the recreation residence lot as determined by appraisal. The base fee shall be recalculated at least once every 10 years.

2. *Notification of New Base Fee.* The authorized officer shall notify the holder in writing at least one (1) year in advance of implementation that a new base fee has been determined by appraisal conducted in accordance with procedures contained in section 33.4 of this Handbook. If a second appraisal, secured by the holder (sec. 33.7) and approved by the agency, prompts the authorized officer to reconsider the new base fee amount, the revision to the base fee may be implemented at any time after the end of the one-year period following the initial notification.

3. *Effective Date of New Base Fee.* The date of a billing for payment of a new base fee, or the date of a billing for the first payment of a phase-in amount (sec. 33.12) of a new base fee, shall constitute the date of implementation of the new base fee.

*33.12—Phase-in of Base Fee.* Require the holder to pay the full amount of a new base fee if that new base fee results in an increase of 100 percent or less from the amount of the most recent annual fee assessed the holder.

When the new base fee is greater than a 100 percent increase from the amount of the most recent annual fee assessed the holder, implement the new base fee increase in three (3) equal increments over a 3-year period. Annual adjustments (sec. 33.13) shall be included in the calculation of fees that are incrementally phased-in over the 3-year period. Exhibit 01 illustrates the manner in which a new base fee would be phased-in when the new base fee results in an increase of more than 100 percent from the most recent annual fee assessed the holder.

*33.12—Exhibit 01.*

PHASE-IN WHEN NEW BASE FEE RESULTS IN AN INCREASE OF MORE THAN 100 PERCENT FROM THE MOST RECENT ANNUAL FEE ASSESSED THE HOLDER

| 2007 Fee amount | 2008 New base fee | Increase |
|---|---|---|
| $700 | $1,600 | $900 (>100% increase). |

*2008 Phase-in Fee:* $700 (2007 fee) + $300 (⅓ of fee increase >100%) = $1,000.

*2004 Phase-in Fee:* $1,000 (2008 fee) + $300 (⅓ of fee increase >100%) × 1.03* (annual IPD–GNP increase of 3%) = $1,339.

*2010 Phase-in Fee:* $1,339 (2009 fee) + $300 (⅓ of fee increase >100%) × 1.03* (annual IPD–GNP increase of 3%) = $1,688.
*2011 Phase-in Fee:* $1,688 (2010 fee) × 1.03* (annual IPD–GNP increase of 3%) = $1,739.

* 3% annual IPD–GNP adjustment is used for illustrative purposes only. The actual annual IPD–GNP rate would be used for each of the phase-in amounts in years 2009 through 2011.

*33.13—Annual Adjustment of Recreation Residence Fee.* Recreation residence fees shall be adjusted annually using the 2nd quarter to 2nd quarter change in the Implicit Price Deflator, Gross National Product (IPD–GNP).

An annual adjustment to the base fee shall be no more than 5 percent in any single year. When the annual change to the IPD–GNP results in an annual adjustment of more than 5 percent, apply the amount of the adjustment in excess of 5 percent to the annual fee payment for the next year in which the change in the index factor is less than 5 percent. Exhibit 01 provides two examples on how annual fees are adjusted in years during which the annual change in the IPD–GNP index exceeds 5 percent.

*33.13—Exhibit 01.*

PHASE-IN OF FEES WHEN INCREASE EXCEEDS 5 PERCENT IN A SINGLE YEAR

*EXAMPLE 1—Only 1 year in which the IPD–GNP adjustment exceeds 5%:*

2007 FEE = $700

2008 IPD–GNP adjustment = 7%*
($700 × .07 = $49)
Maximum adjustment/year = 5% ($35)
2008 carryover adjustment = 2% ($14)

2008 FEE = $700 (2004 FEE) × .05 (MAX. ADJ/YR.) = $735

2009 IPD–GNP adjustment = 3%*
Carryover adjustment from 2008 = $14

2009 FEE = $735 (2008 FEE) + $14 (2008 CARRYOVER) × 1.03 = $771

*EXAMPLE 2—Multiple-year IPD–GNP adjustments exceeding 5%.*

2007 FEE = $700

2008 IPD–GNP adjustment = 7%*
($700 × .07 = $49)
Maximum adjustment/year = 5% ($35)
2008 carryover adjustment = 2% ($14)

2008 FEE = $700 (2007 FEE) × 1.05 (MAX. ADJ/YR.) = $735

2009 IPD–GNP adjustment = 7%*
($735 × .07 = $51)
Maximum adjustment/year = 5% ($37)
2009 carryover adjustment = 2% ($14)
Total carryover (2008 & 2009) = $28

2009 FEE = $735 (2008 FEE) × 1.05 (MAX. ADJ/YR.) = $772

2010 IPD–GNP adjustment = 3%* (<max. adj/yr.)
Total 2009 & 2010 carryover = $28

2010 FEE = $772 (2009 FEE) + $28 (2008 & 2009 CARRYOVER) × 1.03 = $824

* Annual IPD–GNP adjustments used are for illustrative purposes only.

*33.2—Fees When Determination Is Made To Place Recreation Residence on Tenure.*

A recreation residence use is placed on ''tenure'' when the authorized officer notifies the holder of the officer's decision to discontinue the use of the lot for recreation residence purposes and to convert the use of the recreation residence lot to some alternative public purpose. When a decision is made to discontinue the recreation use, the authorized officer shall provide the holder a minimum of 10 years notice prior to the date of converting the use and occupancy to an alternative public purpose. If the holder's 20-year term special use permit expires during that 10-year period, a new annual special use permit shall be issued with an expiration date that coincides with the specified date for converting the recreation residence lot to an alternative public purpose.

When a recreation residence use has been put on tenure, the fee for the tenth year prior to the date of converting the recreation residence use to an alternative public use becomes the base fee for the remaining life of the use. The fee for each year during the last 10 years of the authorization shall be one-tenth of the base fee multiplied by the number of years remaining prior to the date of conversion. For example, charge a holder with 9 years remaining, 90 percent of the base fee; with 8 years, 80 percent; and so forth. Do not apply annual adjustments to fees when a recreation residence has been put on tenure notice. Exhibit 01 provides a schedule to calculate the holder's fee during the 10-year period.

*33.2—Exhibit 01.*

PHASE-IN OF FEES WHEN DETERMINATION IS MADE TO PLACE RECREATION RESIDENCE ON TENURE

| Years remaining prior to date of conversion | Percent of base fee to charge |
|---|---|
| 10 | 100 |

PHASE-IN OF FEES WHEN DETERMINATION IS MADE TO PLACE RECREATION RESIDENCE ON TENURE—Continued

| Years remaining prior to date of conversion | Percent of base fee to charge |
|---|---|
| 9 | 90 |
| 8 | 80 |
| 7 | 70 |
| 6 | 60 |
| 5 | 50 |
| 4 | 40 |
| 3 | 30 |
| 2 | 20 |
| 1 | 10 |

Use one of the following fee determination procedures when a review of a decision to convert the recreation residence lot to an alternative public use shows that changed conditions warrant continuation of the recreation residence use beyond the determined date of conversion:

1. If a new 20-year term permit is issued, recover the amount of fees forgone while the previous permit was under notice that the recreation residence lot would be converted to an alternative public purpose. Collect this amount evenly over a 10-year period in addition to the annual fee due under the new permit. The obligation runs with the recreation residence lot and shall be charged to any subsequent purchaser of the recreation residence. The annual fee under the newly issued 20-year permit shall be the annually-indexed fee computed as though no limit on tenure had existed, plus the amount as specified in this paragraph until paid in full.

2. Do not recover past fees when a 20-year term permit is not issued and the occupancy of the recreation residence lot will be authorized for less than 10 years past the originally identified date of conversion. Determine the fee for a new permit in these situations by computing the fee as if notice that a new permit would not be issued had not been given, reduced by the appropriate percentage for the number of years of the extension. For example, a new permit with a 6-year tenure period results in a fee equal to 60 percent of the base fee.

3. When a 20-year term permit is not issued, and the occupancy of the subject recreation residence lot will be allowed to continue for more than 10 years, but less than 20 years, recover fees as outlined in the preceding paragraph 1, computed for the most recent 10-year period in which the term of the permit was limited.

*33.3—Fee When Recreation Residence Use Is Terminated or Revoked as Result of Acts of God or Other Catastrophic Events.*

When the authorized officer determines that the recreation residence lot cannot be safely occupied because of an act of God or other catastrophic event, the fee obligation of the recreation residence owner shall terminate effective on the date of the occurrence of the act or event.

A prorated portion of the annual fee, reflecting the remainder of the current billing period from the date of the occurrence of the act or event, shall be refunded to the holder. In the event that the holder is authorized to occupy an in-lieu lot (sec. 41.23d), the refund amount may instead be credited to the annual fee identified in a new permit for the in-lieu lot.

*33.4—Establishing the Market Value of Recreation Residence Lot.*

The market value of a recreation residence lot shall be established by appraisal (FSH 5409.12, ch. 60).

1. Appraisals shall be conducted and prepared by a private contract appraiser who is licensed to practice in the State within which the recreation residence lot or lots to be appraised are located. Select private contract appraisers who have adequate training through professional appraisal organizations and who have satisfactorily completed the basic courses necessary to demonstrate competence for the appraisal assignment. Require appraisers to sign an Assignment Agreement (FSH 5409.12, sec. 66, ex.04). The appraisal must evaluate the market value of the fee simple estate of the National Forest System land underlying the typical lot or lots in a natural native state. However, access, utilities, and facilities that service a typical lot and which have been determined by the authorized officer to have been paid for or provided by the Forest Service or a third party, shall be included as features of the typical lot to be appraised (sec. 33.42).

Do not appraise individual recreation residence lots within a grouping or tract. Appraise the typical lot or lots that have been selected from within a group of recreation residence lots that all have essentially the same or similar value characteristics, pursuant to the direction in section 33.41. The authorized officer may make adjustments for measurable value differences among recreation residence lots within a grouping based upon the advice of the assigned Forest Service review appraiser.

2. The appraiser shall conduct and prepare the appraisal in compliance with:

a. The edition of the Uniform Standards of Professional Appraisal Practice (USPAP) in effect on the date of the appraisal;

b. The edition of the ''Uniform Appraisal Standards for Federal Land Acquisitions'' in effect on the date of the appraisal;

c. The appraisal sections for recreation residence lots found in the FSH 5409.12, section 66, exhibit 03; and

d. Any other case-specific appraisal guidelines provided to the appraiser by the Forest Service.

3. The appraiser shall ensure that appraised values are based on comparable market sales of sufficient quality and quantity. The appraiser shall recognize that the typical lot will not usually be equivalent to a legally subdivided lot.

The appraiser shall not select sales of land within developed urban areas, and in most circumstances, should not select a sale of comparable land that includes land that is encumbered by a conservation easement or recreational easement held by a government or institution. Sales of land encumbered by an easement may be used in situations in which the comparable sale is a single home site and is sufficiently comparable to the recreation residence lot or lots being appraised.

The appraiser shall also consider, and adjust as appropriate, the prices of comparable sales for typical value influences, which include, but are not limited to:

a. Differences in the locations of the parcels;

b. Accessibility, including limitations on access attributable to weather, the condition of roads and trails, restrictions imposed by the agency, and so forth;

c. The presence of marketable timber;

d. Limitations on, or the absence of services, such as law enforcement, fire control, road maintenance, or snow plowing;

e. The condition and regulatory compliance of any lot improvements, and

f. Any other typical value influences described in standard appraisal literature.

4. When an appraisal of the market value of a recreation residence lot in a tract is scheduled to occur, the authorized officer, or the authorized representative, and the appraiser shall, with a minimum 30-day written advance notice, arrange a meeting with the affected permit holders and provide them with information concerning the pending appraisal. At the meeting, holders shall be advised of the appraisal process, the method of appraisal, and

selection of typical lots. Permit holders shall be afforded the opportunity to meet the appraiser individually, or as a group, concerning the selection of a typical lot or lots.

5. The appraiser shall provide the recreation residence permit holders with a minimum 30-day advance written notice (certified mail, return receipt requested) of the date and approximate time of the recreation residence lot visit. Documentation of the notification shall be included in the addenda of the appraisal report. At the recreation residence lot meeting, permit holders shall be given the opportunity to provide the appraiser with factual or market information pertinent to the valuation of the typical lot or lots. This information must be submitted in writing and shall be accounted for in the appraisal report.

*33.41—Selection and Appraisal of Typical Lot.*

The appraiser shall appraise only the typical lot or lots selected within a tract. Before an appraisal is initiated, the authorized officer must make every effort to obtain the concurrence of the permit holders concerning the composition of the group or groupings of lots, which are essentially the same or which have similar economic value characteristics, and the selection of a typical lot or lots. A representative typical lot shall be identified as economically typical of the recreation residence lots in each group. Exercise care in identifying and selecting a typical lot that is economically competitive with all of the recreation residence lots within the group it represents. The selection process shall be documented in a permanent case file for the tract.

With the advice of the appraiser, the authorized officer shall determine the composition of the group or groupings of recreation residence lots and the selection of a typical lot or lots when concurrence with the holders cannot be achieved. The inability to obtain concurrence with the holders on selection of the group or grouping of recreation residence lots and the selection of a typical lot or lots shall be documented and included in the permanent case file for the tract.

When the inventory of facilities, utilities, and access servicing a tract (sec. 33.42) suggest that all lots within a grouping are not comparable to the typical lots representing that group with respect to the facilities, utilities, and access servicing the typical lot, the authorized officer may consider one of the following actions:

1. Establish a new grouping of lots having clearly different attributes of access, utilities, and facilities servicing those lots from those which have been inventoried and are servicing the typical lot, and (a) identify with the holders a new typical lot to represent that new grouping, (b) prepare a new permanent inventory of utilities, access and facilities servicing that typical lot (sec. 33.42), and (c) conduct a new appraisal of that typical lot pursuant to the provisions of CUFFA. The Forest Service and the holder(s) shall pay equally for the cost of the new appraisal;

2. Where feasible, assign lots having clearly different attributes to another typical lot established in the tract which has attributes of access, utilities, and facilities that are comparable to those lots.

3. Make adjustments to the base cabin user fee for those lots having utilities, access, and facilities that are so different from the attributes of the typical lot that it creates a measurable difference in value.

*33.42—Inventorying Utilities, Access, and Facilities.*

The authorized officer is responsible for identifying, documenting, and inventorying all utilities, access, and facilities that service each of the typical lots within a recreation residence tract and providing that information to the appraiser as part of the appraisal assignment.

The inventory must include the authorized officer's determination of who paid for the capital costs of those utilities, access, or facilities. In doing so, the authorized officer shall presume that the permit holder, or the holder's predecessor, paid for the capital costs of the utility, access, or facility serving the typical lot, unless the authorized officer can document that either the Forest Service or a third party paid for those capital costs.

*33.42a—Types of Utilities, Access, and Facilities To Include in Inventories.*

The types of utilities, access, and facilities that should be inventoried for each typical lot include, but are not limited to:

1. Potable water systems;

2. Roads, trails, air strips, boat docks, and water routes used to access the recreation residence lot or tract;

3. Waste disposal facilities; and

4. Utility lines, such as telephone lines, fiber optic cable, electrical lines, and cable TV.

*33.42b—Criteria To Be Considered in Determining Who Paid for Capital Costs of Inventoried Utilities, Access, and Facilities.*

It is the responsibility of the authorized officer to collect all available evidence to be considered in determining whether each inventoried utility, access, or utility was paid for by the cabin owner (or a predecessor of the cabin owner), a third party, or the Forest Service. In evaluating and considering the evidence, the authorized officer shall be guided by the following criteria and principles:

1. Consider the capital costs of an inventoried utility, access, or facility as having been paid by the cabin owner, or their predecessor, when:

a. There is evidence of direct payment of the costs of materials and installation by the cabin owner, or their predecessor;

b. There is evidence that the cabin owner or their predecessor was assessed and paid a lump sum fee by the road agency, or utility or service provider, for construction/installation of the inventoried facility;

c. There is evidence that the cabin owner or their predecessor was assessed and paid a temporary utility or tax surcharge, in addition to other taxes, or the base rates and usage fees assessed to all of the customers in the utility provider's rate base, as a means of paying the capital costs of the inventoried utility, access, or facility;

d. There is evidence that some or all of a hook-up or tap fee assessed to and paid by the cabin owner, or their predecessor, as a new customer of the utility or service provider, was established to include the recovery of capital costs to the utility or service provider for installation of the inventoried utility or facility;

e. There is insufficient evidence to support any of the circumstances described in the criteria identified under the following paragraphs 2 through 4.

2. Consider the capital costs of an inventoried utility, access, or facility as having been paid by a third party when there is evidence to conclude:

a. An entity, such as for-profit utility company (electric company, telephone company, cable television provider, etc.), a not-for-profit cooperative, a water or sewer district, a municipality, and so forth, installed a utility service or facility; that the corresponding service to the subject lot was provided without any lump sum or surcharge to base rates or usage fees assessed to the cabin owner or their predecessor; and that any hook-up fees or tap fees that may have been assessed to the cabin owner, or their predecessor, were not established with the intent to recover the utility company or provider's capital costs in the inventoried utility, access, or facility.

b. Roads providing access were built by a State, county or local road agency, and were paid for from the general tax

base or tax revenues used by that agency for road construction, without a specific lump sum charge or tax rate surcharge having been assessed to the cabin owners or their predecessors.

c. An inventoried road or trail providing access was built by a cooperator, pursuant to road or transportation cost-share agreement with the Forest Service.

3. Consider the capital costs of an inventoried utility, access, or facility as having been paid by the Forest Service when there is evidence to conclude:

a. Forest Service appropriations were expended to construct the inventoried utility, access, or facility road, trail, or facility that provides access and/or service to the recreation residence lot.

b. An inventoried road was indirectly paid by the Forest Service in the form of ''purchaser (road) credits'' pursuant to a timber sale contract.

4. Consider the capital costs of an inventoried utility, access, or facility as having been paid by either the Forest Service or a third party when there is evidence that it existed prior to the time when the recreation residence lot or lots within the tract was (were) first authorized for recreation residence use by the Forest Service.

*33.5—Appraisal Specifications.*

Direction pertaining to appraisal specifications is found in FSH 5409.12, section 65.3, Recreation Residence Lots, and section 66, exhibits 03 and 04.

*33.6—Review and Acceptance of Appraisal Report.*

The assigned Forest Service review appraiser shall review the appraisal report to ensure that it conforms to the Uniform Standards of Professional Appraisal Practice, the Uniform Appraisal Standards for Federal Land Acquisition, and appraisal guidelines found in the FSH 5409.12, chapter 60.

If the appraisal report meets the standards as described in this section, and as documented in an appraisal review report prepared by the assigned Forest Service review appraiser, the authorized officer may accept the estimated market value of the typical lot or lots in the appraisal report for establishing a new base fee for that recreation residence lot or lots.

*33.7—Holder Notification of Accepted Appraisal Report and the Right of Second Appraisal.*

The authorized officer shall notify the affected holder or holders that the Forest Service has accepted the appraisal report (sec. 33.6) and has determined a new base fee based on that appraisal report. Upon written request, the authorized officer shall:

1. Provide the holder with a copy of the appraisal report and supporting documentation associated with the typical lot upon which the holder's fee is based.

2. Advise the holder that the holder has 60 days after receipt of this notification to notify the authorized officer in writing of the holder's intent to obtain a second appraisal report.

3. Inform the holder that if a request for a second appraisal report is submitted, the holder has one year following receipt of the notice to prepare, at the holder's expense, a second appraisal report, for Forest Service review, of the typical lot on which the initial appraisal was conducted, using the same date of value as the original appraisal report.

*33.71—Standards for Second Appraisal.*

*33.71a—Appraiser Qualifications.*

The appraiser selected by the holder or holders to conduct a second appraisal must:

1. Meet the same general State certification requirements as the original appraiser;

2. Have experience in appraising vacant, recreational use lands;

3. Have the same or similar professional qualifications as the appraiser who prepared the first appraisal; and

4. Be approved in advance by the assigned Forest Service review appraiser.

*33.71b—Appraisal Guidelines.*

1. *Second Appraisal Assignment.* The second appraisal report shall use the appraisal guidelines used in the initial appraisal (FSH 5409.12, sec. 65.3, ex. 03), as prescribed in a pre-work meeting among the holder's appraiser, the Forest Service review appraiser, and the holder or holders, or their authorized representative. Prior to starting the second appraisal report, the appraiser shall sign an Assignment Agreement as provided in FSH 5409.12, section 65.3, exhibit 04. The appraiser shall submit the second appraisal report to the client. If the holder chooses to have the second appraisal report reviewed by the Forest Service, the holder must submit the appraisal report to the authorized officer requesting review by the assigned Forest Service review appraiser.

2. *Reporting of Material Differences.* Section 610(b)(4) of CUFFA requires the appraiser selected to conduct the second appraisal to ''* * * notify the Secretary of any material differences in fact or opinion between the initial appraisal conducted by the agency and the second appraisal.'' However, CUFFA does not require or mention any analysis, opinion, or recommendation concerning material differences of fact or opinion between the initial and second appraisal reports. The absence of analysis, opinion, or recommendation differentiates this document from an appraisal review report, or appraisal consulting report, as defined in the Uniform Standard of Professional Appraisal Practice (USPAP).

The assigned Forest Service review appraiser shall provide a copy of the initial appraisal report to the approved second appraiser with a request to notify the review appraiser of any material differences in fact or opinion between the initial appraisal report and the second appraisal report. After completion of the second appraisal report, and in a separate document, the appraiser shall submit in writing to the assigned Forest Service review appraiser his or her report of material differences of fact or opinion between the initial appraisal conducted for or by the agency and the second appraisal. The report shall be a brief statement or listing of any material differences of fact or opinion found in comparing the initial and second appraisal reports.

If the second appraiser comments in any way, such as on the quality, including the completeness, adequacy, relevance, appropriateness, reasonableness, of the other appraiser's work (any part of the appraisal report or work file), the second appraiser shall complete an appraisal review report in conformance with Standard 3 of USPAP.

3. *USPAP Compliance.* The Confidentiality section of USPAP's Ethics Rule states, in part that ''An appraiser must not disclose confidential information or assignments results prepared for a client to anyone other than the client and persons specifically authorized by the client; state enforcement agencies and such third parties as may be authorized by due process of law * * *'' However, disclosure of the first appraisal report to the second appraiser is required by CUFFA and in this situation is permitted by the Confidentiality section of USPAP's Ethics Rule. Therefore, the Jurisdictional Exception Rule does not apply to this situation because there is no conflict between this requirement in CUFFA and USPAP.

*33.72—Reconsideration of Recreation Residence Base Fee.*

The authorized officer shall inform the holder that they must submit to the authorized officer a request for reconsideration of the base fee within 60 days of the date of the second appraisal review report, if approved by the assigned Forest Service review appraiser.

Within 60 days of receipt of the request for reconsideration of the base fee, the authorized officer shall:

1. Review the initial appraisal report and appraisal review report.
2. Review the results of the second appraisal report and appraisal review report.
3. Review the material differences in fact or opinion report.
4. Establish a new base fee in an amount that is equal to the base fee established by the initial or the second appraisal or is within the range of values, if any, between the initial and second appraisals.
5. Notify the holder or holders of the amount of the new base fee.

*33.8—Establishing Recreation Residence Lot Value During Transition Period of Cabin User Fee Fairness Act.*

The transition period, as identified in § 614 of the Cabin User Fee Fairness Act (CUFFA), is that period of time between the date of enactment of CUFFA (Oct. 11, 2000) and the date upon which a base cabin user fee for a recreation residence is established as a result of implementing the final regulations, policies, and appraisal guidelines established pursuant to CUFFA.

The authorized officer shall, upon adoption of regulations, policies, and appraisal guidelines established pursuant to CUFFA, notify all recreation residence permit holders whose recreation residence lots have been appraised after September 30, 1995, that they may request the Forest Service to take one of the following actions:

1. Conduct a new appraisal pursuant to regulations, policies, and appraisal guidelines established pursuant to CUFFA (sec. 33.82).
2. Commission a peer review of an existing appraisal report of the typical lot completed after September 30, 1995 (sec. 33.83).
3. Establish a new base fee using the market value of the typical lot identified in an existing appraisal report completed on or after September 30, 1995 (sec. 33.81).

A request to act on one of these options must be made by a majority of the holders within the group of recreation residence lots represented by the typical lot. To facilitate this process, the authorized officer shall provide each permit holder with the names and addresses of all of the other permit holders within the group of recreation residence lots that are represented by the typical lot, so that the holders within the group have the opportunity to collectively determine whether to exercise one of the options identified above. The options described in paragraphs 1 through 3, and explained in further detail in section 33.81 through 33.83, shall be the only means by which a new base cabin user fee is established during the transition period for those lots which were appraised between September 30, 1995 and October 11, 2000. Holders who request a new appraisal or the commissioning of a peer review will not have the right to request a second appraisal as provided for in section 33.7.

*33.81—Use of Appraisal Completed After September 30, 1995.*

1. Establish a new base fee using 5 percent of the fee simple value, indexed to the current year, of a Forest Service approved appraisal report of a typical lot completed after September 30, 1995, when:

a. Within 2 years following the adoption of regulations, policies, and appraisal guidelines established pursuant to CUFFA, a request to do so is submitted in writing to the authorized officer by a majority of the holders within the group of recreation residence lots represented by a typical lot included in the appraisal (sec. 33.8, para. 3).

b. A majority of permit holders in a group of recreation residence lots fail to submit, within 2 years following the adoption of regulations, policies, and appraisal guidelines established pursuant to CUFFA, a request for one of the three options identified in section 33.8.

c. A peer review is requested and completed (sec. 33.8, para. 2), and the review determines that the appraisal completed after September 30, 1995, is consistent with the regulations, policies, and appraisal guidelines adopted pursuant to CUFFA.

2. Implement the new base fee at the time of the next regularly scheduled annual billing cycle, subject to the phase-in provisions (sec. 33.12).

*33.82—Request for New Appraisal Conducted Under Regulations, Policies, and Appraisal Guidelines Established Pursuant to CUFFA.*

The holders must make a request for a new appraisal within 2 years following the adoption of regulations, directives, and appraisal guidelines for recreation residences established pursuant to CUFFA. The authorized officer shall inform the holders that the request for a new appraisal must be submitted in writing to the authorized officer and must be signed by the majority of the recreation residence holders within the group of recreation residence lots represented by the typical lot to be appraised. The authorized officer shall also inform those holders requesting a new appraisal that in their request they must agree to collectively pay for one-half of the cost to conduct the new appraisal. In addition, holders whose previous appraisal indicated that a base fee would increase more than $3,000 from the annual fee being assessed on October 1, 1996, shall be notified that they must include the statement in exhibit 01 as a part of their request for a new appraisal. The information required in the statement will be provided to the holder by the authorized officer.

*33.82—Exhibit 01.*

*Statement for Holders Requesting New Appraisal When Previous Appraisal Indicated a Base Fee Increase of More Than $3,000 from Annual Fee Assessed on October 1, 1996.*

We hereby agree that, if the new base fee established by the new appraisal results in an amount that is 90 percent or more of the fee determined by the previously completed appraisal of this typical lot (specifically, that appraisal dated _____, with an estimated fee simple value of $_____, and an indicated annual fee of $_____), each of the permit holders within this group of recreation residence (*indicate tract name and lots*) shall be obligated to pay to the United States the following:

1. The base fee that shall be established using the results of the new appraisal being requested, subject to the phase-in provisions of section 609 of CUFFA; and
2. The difference between (a) the annual fee that was paid during calendar years _____, _____, _____, (enter each calendar year beginning with that year when a new base fee based upon the above-referenced appraisal would have otherwise been implemented), and ending with calendar year _____ (enter the calendar year the request for a new appraisal is made), and (b) the amount that the annual fee for each of those identified calendar years would otherwise have been had a new base fee been assessed as a result of the above-referenced appraisal, pursuant to the phase-in provisions in effect and applicable during that time. This difference for those calendar years cumulatively totals $_____, as itemized on the enclosed worksheet (enter the cumulative difference and attach a worksheet showing how it was calculated, itemized for each of the calendar years identified above).

We agree that the cumulative amount identified in Item #2 (above) shall be assessed as a premium fee amount, payable in full or in three (3) equal annual installments, in addition to the phase-in of the new base user fee established by the results of the new appraisal.

The authorized officer shall, upon receipt of a formal request, initiate a new appraisal of the typical lot in accordance with the regulations, policies, and appraisal guidelines adopted pursuant to CUFFA. The date of value of the new appraisal shall be the same date of value as that identified in the appraisal report it is intended to replace.

*33.83—Request for Peer Review Conducted Under Regulations, Policies, and Appraisal Guidelines Established Pursuant to CUFFA.*

A request for a peer review of an existing appraisal report completed after September 30, 1995, shall be made within 2 years following the adoption of regulations, policies, and appraisal guidelines for recreation residences pursuant to CUFFA. The request shall be submitted in writing to the authorized officer and must be signed by a majority of the recreation residence holders within the group of recreation residence lots represented by the typical lot that was appraised. The holders requesting the peer review shall, in their request, agree to collectively pay for one-half the cost to commission the review. In addition, holders requesting a peer review where the appraisal to be reviewed established a base fee that was more than a $3,000 annual increase to the fee being assessed the holders on October 1, 1996, shall include the statement contained in exhibit 01 as a part of their request. The information required in the statement will be provided to the holder by the authorized officer.

*33.83—Exhibit 01.*

*Statement for Holders Requesting Peer Review When Previous Appraisal Indicated a Base Fee Increase of More Than $3,000 from Annual Fee Assessed on October 1, 1996.*

We hereby agree that, if the new base fee from the peer review results in an amount that is 90 percent or more of the fee determined by the previously completed appraisal of this typical lot (specifically, that appraisal dated _____, with an estimated fee simple value of $ _____, and an indicated annual fee of $ _____), then each of the permit holders within this group of recreation residence (*indicate tract name and lots*) shall be obligated to pay to the United States the following:

1. The base fee that shall be established pursuant to this peer review, subject to the phase-in provisions of section 609 of CUFFA; and

2. The difference between (a) the annual fee that was paid during calendar years _____, _____ , _____ (enter each calendar year beginning with that year when a new base fee based upon the above-referenced appraisal would have otherwise been implemented), and ending with calendar year _____ (insert the calendar year in which the request for a peer review is made), and (b) the amount that the annual fee for each of those identified calendar years would otherwise have been, had a new base fee been assessed as a result of the above-referenced appraisal, pursuant to the phase-in provisions in effect and applicable during that time. This difference for those calendar years cumulatively totals $ _____, as itemized on the enclosed worksheet (enter the cumulative difference, and include an attached worksheet showing how it was calculated, itemized for each of the calendar years identified above). We agree that the cumulative amount identified in Item #2 (above) will be assessed as a premium fee amount, payable in full or in three (3) equal annual installments, in addition to the phase-in of the new base user fee established by the results of the peer review.

The authorized officer shall commission a peer review of the existing appraisal report upon receipt of a written request to do so and upon submission of the appropriate documentation that shows that the request is being made by a majority of the holders affected. The manner in which the peer review is conducted shall be based upon the membership in a professional organization of the appraiser who conducted that appraisal as follows:

1. *Appraisals Prepared by an Appraiser Who Is a Member of a Single Appraisal Sponsor Organization of the Appraisal Foundation.* If the appraiser who prepared the appraisal report that will be reviewed is a member of a single appraisal sponsor organization of the Appraisal Foundation, the authorized officer shall submit the appraisal report, appraisal review report, and peer review report instructions to that appraisal sponsor organization for assignment to a member of an established panel of accredited or designated members selected by the sponsor organization for the purpose of peer review. In consultation with the accredited or designated panel member, the sponsor organization shall provide the authorized officer an estimate of total cost for the peer review. The authorized officer shall consult with a representative of the permit holders requesting the peer review to determine if the holders wish to proceed with the review, based on the estimated cost. If a peer review is conducted, the review report shall be prepared in compliance with the review instructions provided with the existing appraisal report. The peer review report shall be confined to an evaluation of whether the original appraisal report includes provisions or procedures that were implemented or conducted in a manner that is inconsistent with regulations, policies, or appraisal guidelines adopted pursuant to CUFFA and, if so, which provisions and to what effect. The peer review report is intended to be an administrative review report in conformance with the USPAP.

2. *Appraisals Prepared by an Appraiser Who Is Not a Member of a Sponsor Organization, or Is a Member of Two or More Sponsor Organizations of the Appraisal Foundation.* If the appraiser who prepared the appraisal report that will be reviewed is not a member of a sponsor organization of the Appraisal Foundation, or is a member of two or more sponsor organizations of the Appraisal Foundation, the authorized officer shall submit the appraisal report, appraisal review report, and peer review report instructions, after consultation with the requesting permit holders, to a sponsor organization that has established a panel for peer review of recreation residence lot appraisals. If the authorized officer and a majority of the requesting permit holders cannot agree on which sponsor organization to solicit for the peer review, the authorized officer shall make the decision based upon a recommendation from the Regional Appraiser. The authorized officer shall request the selected appraisal sponsor organization to assign a member of the established panel of accredited or designated members to conduct the peer review. The authorized officer shall also request the sponsor organization to provide the authorized officer, in consultation with the accredited or designated panel member, an estimate of total cost for the peer review. The authorized officer shall consult with a representative of the requesting permit holders to determine if the holders want to proceed with the review, based on the estimated costs. If a peer review is conducted, the review report shall be prepared in compliance with the review instructions provided with the existing appraisal report. The peer review report shall be confined to evaluation of whether the original appraisal report includes provisions or procedures that were implemented or conducted in a manner that is inconsistent with regulations, policies, or appraisal guidelines adopted pursuant to CUFFA and, if so, which provisions and to what effect. The peer review report is intended to be an administrative review report in conformance with the USPAP.

a. If the peer review shows that the appraisal report is consistent with the regulations, policies, and appraisal guidelines adopted pursuant to CUFFA, the authorized officer shall establish a new base fee using 5 percent of the fee simple value of the typical lot identified in the appraisal report.

b. If the peer review results in a determination that the appraisal report was not conducted in a manner consistent with the regulations, policies, and appraisal guidelines adopted pursuant to CUFFA, the authorized officer shall either:

(1) Establish a new base fee to reflect consistency with the regulations,

policies, and appraisal guidelines adopted pursuant to CUFFA, or

(2) Conduct a new appraisal in accordance with the provisions of CUFFA if requested by a majority of the affected holders.

* * * * *

*FSH 5409.12—Appraisal Handbook*

Chapter 60—Appraisal Contracting

*65—Contract Appraisals for Special Purposes.*

*65.3—Recreation Residence Lots.*

The standard specifications for recreation residence lot appraisals shall be used Service-wide (sec. 66, ex. 03). Do not modify or deviate from these specifications without the approval of the Washington Office, Director of Lands.

Require all appraisers conducting a second appraisal for a recreation residence lot to submit an Assignment Agreement (sec. 66, ex. 04).

*66—Exhibits.*

1. Exhibit 03—Basic Specifications for the Appraisal of Recreation Residence Lots.

2. Exhibit 04—Assignment Agreement for the Appraisal of Recreation Residence Lots.

BILLING CODE 3410–11–P

66 - Exhibit 03

## BASIC SPECIFICATIONS
## FOR THE APPRAISAL OF RECREATION RESIDENCE LOTS

These specifications replace Section C of the Basic Specifications for Real Property Appraisal in total. They are intended for use in the appraisal of recreation residence lots. The procedures for identifying, inventorying, and preparing for the appraisal of these lots are included in FSH 2709.11, Chapter 30.

### SECTION C-2 BASIC SPECIFICATIONS FOR REAL PROPERTY APPRAISALS

### SECTION C-2.1 - GENERAL SPECIFICATIONS

C-2.1(a) - Scope of Service. The Contractor shall furnish all materials, supplies, tools, equipment, personnel, travel (except those to be furnished by the Government as listed in Section I), and shall complete all requirements of this contract including performance of the professional services listed herein.

The project consists of one or more self-contained appraisal report(s) per bid item for the specified property(ies). For the purposes of these specifications ." . . . any appraisal report, whether identified by the appraiser as a self-contained report or a summary report, will be considered as meeting the "Uniform Standards of Professional Appraisal Practice" (USPAP) requirements for a 'self-contained' report if it has been prepared in accordance with . . ." the "Uniform Appraisal Standards for Federal Land Acquisitions" (UASFLA, 2000; Section A). The report shall provide an estimate of market value for the estate to be appraised, and shall conform to the current edition of USPAP, published by The Appraisal Foundation, as well as UASFLA.
***The Contractor may be provided a pre-determined date of value for the entire project; otherwise, the date of the value estimate shall be the last date the appraiser inspected the appraised property.***

If clarification of these specifications is needed, and/or to arrange for the lot inspection and pre-work meeting, the appraiser shall contact the assigned Forest Service review appraiser.

_____ (Review Appraiser)
_____ (Mailing Address)
_____ (Phone Number)

The Contractor's contact with Forest Service officials is limited to the Contracting Officer, the assigned review appraiser, and the Regional Appraiser. The Contractor shall notify the assigned review appraiser of any requests for information by other Forest Service officials.

**66 - Exhibit 03--Continued**

C-2.1(b) - Appraisal Report. The appraiser selected for the assignment shall make a detailed field inspection of the subject property as identified in Exhibit __, and shall make such investigations and studies as are necessary to derive sound conclusions and to prepare the appraisal report.

C-2.1(c) – Pre-Work Conference: At the request of the assigned Forest Service review appraiser, the appraiser will be required to attend a pre-work conference for discussion and understanding of these instructions. The pre-work conference may be held in conjunction with the property examination [C-2.1(d)].

C-2.1(d) - Examination Notice. The authorized Forest Service officer, assigned Forest Service review appraiser, and Contractor shall offer to meet with the affected permit holders to provide them with information concerning the appraisal. The Contractor shall provide the permit holders at least a 30-day written notice in advance of the meeting. At the meeting, holders will be advised of the appraisal process, the method of appraisal, and selection of typical lots. The holders shall be given the opportunity and invited to provide the appraiser with factual or market information pertinent to the valuation of the typical lot or lots. This information must be submitted to the Contractor in writing and shall be accounted for in the appraisal report. Permit holders will be afforded the opportunity to meet the Contractor individually, or as a group.

The Contractor shall provide the 30-day advance meeting notification by certified mail, return receipt requested, of the date and approximate time of the meeting. Documentation of notification shall be contained in the addenda of the appraisal report. The holders shall be given the opportunity to accompany the Contractor during the scheduled permitted recreation residence lot property examination. The Contractor shall certify that the signer of the report has personally visited the appraised property and all of the comparable transactions used in the comparative analyses.

C-2.1(e) - Updating of Report. Upon the request of the Government, the Contractor shall, during a 2-year period following the date of the appraisal report, update the value as of a specified date. The updated report shall be submitted in original and _____ copies (number of copies to be determined) and shall include sales data or other evidence to substantiate the updated conclusion of value. For the suggested format, see Section C-2.3.

C-2.1(f) - Testimony. Upon the request of the United States Attorney or the Department of Justice, the Contractor shall, in any judicial proceedings, testify as to the value of any and all property included in the appraisal report as of the valuation date.

C-2.1(g) - Definition of Terms. Unless specifically defined herein or in CUFFA Section 604, the USPAP, or the UASFLA, definitions of all terms are the same as those found in "The Dictionary of Real Estate Appraisal" (Appraisal Institute), current edition. The UASFLA shall take precedence in any differences among definitions.

**66 - Exhibit 03--Continued**

SECTION C-2.2 - TECHNICAL SPECIFICATIONS

Application of These Specifications. These technical specifications reflect the standards for the appraisal of property to be authorized for occupancy as a recreation residence lot by the Forest Service. The typical lot or lots to be appraised for this assignment are described in Exhibit ____.

Federal Law Controls. Federal law may differ in some important aspects from the laws of some states. Accordingly, it is incumbent upon the appraiser to understand the applicable Federal law as it affects the appraisal process in the estimation of market value.

Federal law is reflected in UASFLA. These specifications follow UASFLA format, with emphasis on issues of special concern to the Forest Service. It should not be construed that the appraiser is to consider only the emphasized items. Appraisal reports shall be prepared in compliance with UASFLA standards and Forest Service appraisal instructions provided by the assigned review appraiser.

One aspect of UASFLA that the appraiser should be aware of is the "unit rule." The unit rule requires valuing property as a whole rather than by the sum of the values of the various interests into which it may have been carved. A second aspect of the unit rule is that different elements or components of a tract of land are not to be separately valued and added together. See UASFLA, Section B-13, for further discussion of the unit rule.

Jurisdictional Exception Rule. Conflicts between UASFLA and USPAP are minimal. When there is conflict, UASFLA takes precedence. It may be necessary to invoke the Jurisdictional Exception Rule (USPAP) to meet certain standards of the UASFLA and the "Cabin User Fee Fairness Act of 2000" (CUFFA). Invocation of the Jurisdictional Exception Rule must include citation of the over-riding Federal direction, rule, regulation, or law that requires it. The planned use of the Jurisdictional Exception Rule of the USPAP shall be discussed with the assigned Forest Service review appraiser no later than the pre-work meeting.

Comprehensive Review. Federal law requires review of all appraisals by a qualified review appraiser to assure they meet applicable appraisal requirements, including those in UASFLA, Forest Service direction, and these specifications. Compliance with USPAP will also be reviewed. Findings of deficiency shall be discussed and corrections requested once the appraisal report has been delivered. A value opinion is acceptable for agency use only after the assigned Forest Service staff review appraiser has approved the appraisal report. (FSM 5411)

Freedom of Information Act. Freedom of Information Act and CUFFA provisions will result in release of all or part of the appraisal report to the public. Prepare the report accordingly:

**66 - Exhibit 03--Continued**

a. Analytical methods and techniques shall be explained (in so far as possible) in a manner understandable to the public, as well as the reviewer.

b. If providers of information request confidentiality, such information shall not be included in the report. Confidential information shall be made available to the reviewer upon request, but shall not be incorporated in a Forest Service system of records.

Unit of Comparison. The final opinion of value shall be on the basis of fee simple value for the typical lot, rather than a unit price expressed as a value per square foot, per acre, per front foot, or similar unit. Normally, the unit of comparison in the appraisal of recreation residence lots shall be the lot. Price per front foot for waterfront lot may be appropriate where it is demonstrated similar lots are bought and sold on a front-foot basis. However, the final opinion of value for the typical recreation residence lot shall be in terms of total fee simple value for the lot.

Lot. The appraiser shall identify the lot to be appraised in a manner that is consistent with the definition of a lot as identified at 36 CFR 251.51. When recreation residence uses and facilities occur beyond the platted boundaries displayed on a recreation residence tract map or beyond "lot" boundaries marked on the ground, the lot to be appraised shall extend beyond those plotted or marked boundaries to include all National Forest System land and related improvements being used or occupied by the permit holder.

1. Examples of uses or facilities that, in addition to the recreation residence itself, are considered related improvements may include, but are not limited to:

a. Outbuildings.

b. Wood piles.

c. Retaining walls.

d. Picnic tables.

e. Driveways and parking areas.

f. Trails and boardwalks.

g. Campfire rings, seats, and benches.

h. Constructing and maintaining of lawns, gardens, flower beds, and landscaped terraces.

**66 - Exhibit 03--Continued**

i. Manipulation and/or maintenance of native vegetation, except as provided for in paragraph 2a.

2. Related improvements do not include:

a. Manipulated and/or maintained native vegetation that is manipulated or maintained for the primary purpose of protecting property and mitigating safety concerns, such as the removal of hazard trees, and the treatment/management of vegetation, approved by the authorized officer, to reduce fuel loading and to create defensible space for wildfire suppression purposes.

b. Tract association- or community-owned improvements or uses such as boat docks, swimming areas, and water or sewer systems that are under a separate authorization and issued in the name of a tract association or other entity representing the owners of the recreation residences.

Physical Capacity of the Lot to Accommodate Essential Infrastructure. The physical capacity of the lot and appurtenant area to support essential infrastructure associated with recreation residence use, such as an appropriate septic system, domestic water source (well and pump) in conformance with local health and safety requirements, shall be documented in the appraisal and reflected in the value conclusion.

C-2.2(a) - Format. The report shall be typewritten on bond paper sized 8 1/2 by 11 inches with all parts of the report legible and shall be bound with a durable cover. The face of the report shall be labeled to identify the appraised property and to show the contract number, appraiser's name and address, and the date of the appraisal. All pages of the report, including the exhibits, shall be numbered.

C-2.2(b) - Contents. Following is a suggested format, based on UASFLA. Although it is not required that the appraiser strictly adhere to this format, all items must be addressed. It should be noted that in most instances, these specifications reference UASFLA without reprinting them here. Important items are noted below, but are not all-inclusive. It is incumbent upon the appraiser to read, understand, and comply with UASFLA and these specifications.

C-2.2(b)(1) - PART I – INTRODUCTION. Follow the UASFLA format.

1. Title Page.

2. Letter of Transmittal.

3. Table of Contents.

4. Appraiser's Certification: Follow the UASFLA (A-4) and USPAP guidelines,

**66 - Exhibit 03--Continued**

but include the following:

"I have made a personal inspection of the appraised property which is the subject of this report and all comparable sales used in developing the opinion of value. The date(s) of inspection was _____, and the method of inspection was _____. (If more than one person signs the report, this certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)

"The landowner and/or permit holder or the landowner's and/or permit holder's representative jointly inspected the property with the appraiser on (date)." or "The landowner and permit holder were invited to jointly inspect the property and declined."

"In my opinion, the market value (or other value as required) is $ as of (date)_____."

By (Appraiser's signature)_____
Printed Name
*State Certification #*

5. Summary of Salient Facts and Conclusions. The Summary of Salient Facts and Conclusions is a brief recital of the principal facts and conclusions contained in the appraisal report. The purpose is to offer convenient reference to the reader. In addition to the reporting requirements found in UASFLA, items which must be included in the summary are:

a. Name of recreation residence tract.

b. Size range of lots.

c. Authorized use, which is the highest and best use.

d. Improvements furnished by the Forest Service (or any other entity who is or was not a cabin owner) included in the appraised value.

e. Estimated value of each typical lot.

f. Other pertinent facts and conclusions to provide ease of use of the report by the reader, including any hypothetical conditions, extraordinary assumptions, limiting conditions, or special instructions.

g. Effective date of appraisal.

**66 - Exhibit 03—Continued**

6. Photographs of Subject. Provide original color photographs or high quality color copies of photographs of the appraised property. Photographs may be a separate exhibit in the addenda or included with the narrative description of the appraised property and comparable sales. Show the following information with each photograph:

a. Identify the photographed scene. Indicate direction of view, vantage point, and other pertinent information. A map may be used to show some of this information.

b. The name of the photographer.

c. The date the photograph was taken.

7. Statement of Assumptions and Limiting Conditions. Note the following:

All appraisal reports submitted to the Forest Service for review become the property of the United States and may be used for any legal and proper purpose. Therefore, a condition that limits distribution of the report is not permitted.

If the appraisal has been made subject to any encumbrances against the property, such as easements, that shall be stated. It is unacceptable to state that the property has been appraised as if free and clear of all encumbrances, except as stated in the body of the report; the encumbrances must be identified in this section of the report.

The adoption of an uninstructed assumption or hypothetical condition that results in other than "as is" market value will invalidate the appraisal. Include only factors relating to the appraisal problem. Assumptions and limiting conditions that are speculative in nature are inappropriate. Do not include limiting conditions that significantly restrict the application of the appraisal.

In this section of the specifications, or in separate written instructions, the contractor must be instructed as to necessary hypothetical conditions or extraordinary assumptions. The Contractor shall recognize that the typical lot will not usually be equivalent to a legally subdivided lot. The Contractor shall not select sales of land within developed urban areas and, in most circumstances, should not select a sale of comparable land that includes land that is encumbered by a conservation easement or recreational easement held by a government or institution. Sales of land encumbered by an easement may be used in situations in which the comparable sale is a single home site and is sufficiently comparable to the lot or lots being appraised.

> "An appraiser cannot make an assumption or accept an instruction that is unreasonable or misleading. Agency instructions and/or legal instructions must have a sound foundation, must be in writing, and must be included in the appraisal report." (UASFLA D-3)

**66 - Exhibit 03--Continued**

All cabin-owner-provided improvements on and to the lot are excluded from consideration in the value conclusion.

All utilities, access, or facilities that, in accordance with the inventory of those improvements, are identified as having been provided by the cabin owner, or a predecessor of the cabin owner, are to be excluded from consideration in the value conclusion.

The lot is appraised as if held in private ownership.

The highest and best use of the lot is its authorized use, a recreation residence lot.

Lot size shall conform with all local zoning requirements in effect on the date of the original authorization and all applicable "grandfathering" provisions in effect on the date of value.

8. Scope of the Appraisal. This section shall fully describe the extent of investigation and analysis. The scope of work should be consistent with the intended use of the appraisal.

9. Purpose of the Appraisal. Note the following:

A description of the property rights appraised is to be included under factual data rather than in the Purpose section.

Use the following definition: "Market value is the amount in cash, or terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal." (UASFLA A-9)

This definition makes no linkage between the estimated market value and exposure time. A specific exposure time shall not be cited in an appraisal report prepared under UASFLA standards. Invoke the Jurisdictional Exception Rule to avoid a violation of USPAP standards, which require a specific exposure time.

The purpose of the appraisal is to determine market value of the fee simple estate of a typical lot or lots. The appraisal will be used by the Forest Service to determine the base cabin user fee required by the "Cabin User Fee Fairness Act of 2000." Intended users of the appraisal are the Forest Service and affected cabin owners.

**66 - Exhibit 03--Continued**

10. Summary of Appraisal Problem

C-2.2(b)(2) - Part II - FACTUAL DATA

1. Legal Description. Note the following: The legal description is provided to the appraiser in the appraisal assignment. If a lengthy description would disrupt the narrative flow, it may be placed in the addenda and referenced in the text.

2. Property Rights. The estate appraised is fee simple title to the typical lot considered to be in a natural, native state. Utilities, access, or facilities serving the lot that are provided by the agency shall be included as features of the lot being appraised. Utilities, access, or facilities serving the lot that are provided by the cabin owner (or predecessor of the cabin owner) shall not be included as a feature of the lot being appraised. Utilities, access, or facilities serving the lot that are provided by a third party shall not be included as a feature of the lot being appraised, unless the Forest Service determines that the capital costs have not been paid by the cabin owner (or predecessor of the cabin owner). Discuss the effect on value of identified reservations, outstanding rights, and other encumbrances.

3. Area, City and Market Area Data. The use of boilerplate demographic and economic data is unnecessary and undesirable. Report only those data that directly impact the market analysis.

a. Area Map. Include a small-scale map showing the general location of the appraised property. It can be placed here or in the addenda.

b. Market Area Map. Show the appraised property and its immediate market area. The map may be placed here or in the addenda.

4. Property Data. Include a narrative description of the significant land features of the property being appraised. Briefly describe the typical recreation residence lot and group within the tract including the following:

a. Lot Description. Dimensions, size, shape, vegetative cover, soil types, topography, elevations, wetlands, flood plains, view, timber, water rights, effect of encumbrances, livestock forage, access, road frontage, utilities, location, or other characteristics that may affect value. A statement must be made concerning the existence or absence of mineral deposits having a commercial value. Evidence, if any, of hazardous substances shall be described by the appraiser. The typical lot is to be appraised as though in a natural, native state, defined by CUFFA as being free of any improvements at the time the lot was first authorized for recreation residence use by the agency.

b. Improvements. Note that the recreation residence is owned by the permit holder and that only the underlying National Forest System land is being appraised. The Contractor shall be provided applicable information contained in the inventory of improvements relating to the lot being appraised.

c. Fixtures.

d. Use History. 10-year history required.

e. Sales History. Include a 10-year record of all sales of the appraised property and, if the information is available, offers to buy or sell. If no sale has occurred in the past ten years, the appraiser shall report the last sale of the appraised property, irrespective of date.

f. Zoning and Other Land-Use Restrictions. Federal lands must be appraised under the hypothetical condition that they are already in non-Federal ownership and zoned consistent with similar non-Federal properties in the market area. The appraiser shall identify, in addition to zoning, all other land-use and environmental regulations, outstanding rights, and reservations that have an impact on the highest and best use and value of the property.

g. Appraised Property Map or Plat. Show the dimensions and topography of the appraised property in detail on a large-scale topographic map, at least 2 inches to the mile. The map may be placed here or in the addenda.

C-2.2(b)(3) - Part III – DATA ANALYSES AND CONCLUSIONS

1. Analysis of Highest and Best Use. The identified highest and best use shall be the authorized use; a lot suitable for use as a recreation residence lot. No other potential highest and best use shall be considered or discussed in the appraisal report. Most recreation residence lots were authorized prior to all forms of local zoning in their respective market areas. "Grandfathering" requirements recognized by local zoning authorities shall represent the capacity of the lot to meet current State and local government zoning and land use requirements.

2. Value Estimate by the Sales Comparison Approach. Nearby arm's length transactions, comparable to the land under appraisement, reasonably current, are the best evidence of market value. The Federal courts recognize the sales comparison approach as being normally the best evidence of market value.

Analyze the last sale of the subject property, if relevant. If not used, explain why. An unsupported claim that a sale of the subject property was a forced sale, or is not indicative of its current value, is unacceptable. (UASFLA B-5)

When supportable by market evidence, the use of quantified adjustments is

**66 - Exhibit 03--Continued**

preferred. Percentage and dollar adjustments may, and often should, be combined. Resort to qualitative adjustments only when there is inadequate market data to support quantitative adjustments. Factors that cannot be quantified are dealt with in qualitative analysis. When quantitative and qualitative adjustments are both used in the adjustment process, all quantitative adjustments should be made first.

Include a sales adjustment chart summarizing the adjustments and showing the final adjusted sale prices and how the sales compare with the subject property. Utilities, access, or facilities serving a lot that are provided by the agency shall be included as features of the lot being appraised. Utilities, access, or facilities serving a lot that are provided by the cabin owner (recreation residence permit holder) shall not be included as a feature of the lot being appraised. Utilities, access, or facilities serving a lot that are provided by a third party shall not be included as a feature of the lot being appraised unless the agency determines that the capital costs have not been or are not being paid by the cabin owner (or a predecessor of the cabin owner).

In a case where any comparable sale includes utilities, access, or facilities that are to be excluded in the appraisal of the subject lot, the price of the comparable sale shall be adjusted, as appropriate.

In selecting comparable sales, the appraiser shall recognize that the typical lot will not usually be equivalent to a legally subdivided lot. The appraiser shall not select sales of comparable land that are within developed urban areas and should not, in most circumstances, select a sale of comparable land that includes land that is encumbered by a conservation or recreational easement that is held by a government or institution, except land that is limited to use as a site for one home.

The Contractor shall use the following adjustment process outlined in Section 606(b)(4)(C) of CUFFA:

The appraiser shall consider, and adjust as appropriate, the price comparable sales for typical lot value differences which include, but are not limited to:

a. Differences in the locations of the parcels.

b. Accessibility. Include limitations on access attributable to weather, the conditions of roads and trails, restrictions imposed by the agency, or other factors.

c. The presence of marketable timber.

d. Limitations on, or the absence of, services. Consider the availability of law enforcement, fire control, road maintenance, or snow plowing.

e. The condition and regulatory compliance of any site improvements.

**66 - Exhibit 03--Continued**

f. Any other typical value influences described in standard appraisal literature.

The documentation of each comparable sale shall include:

a. Parties to the transaction.
b. Date of transaction.
c. Confirmation of the transaction. Confirm the transaction with the buyer, seller, broker, or other person having knowledge of the price, terms, and conditions of sale (all transactions must be verified with a party to the sale)
d. Market exposure.
e. Buyer motivation.
f. Location.
g. Size.
h. Legal description.
i. Property rights conveyed.
j. Consideration.
k. Financing terms.
l. Sale conditions. Conditions such as arm's length or distressed sale.
m. Improvements. Include the condition and regulatory compliance of all improvements.
n. Physical description. Consider accessibility, including limitations on access attributable to weather, road or trail condition, and restrictions on use; topography; vegetative cover and the presence of marketable timber; water influence; and other characteristics.
o. Limitation on, or the absence of, services. Consider the availability of law enforcement, fire control, road maintenance, or snow plowing
p. Non-realty items.
q. Economic characteristics.
r. Zoning Include any setback requirements
s. Subdivision covenants.
t. Current use.
u. Intended use.
v. Photographs.

Include a list of the sales considered, but not actually used, in the addenda. Cite pertinent facts such as date, size, buyer and seller, price, terms, location, and explain why each sale was not used.

The appraiser shall adhere to UASFLA direction pertaining to comparable sales requiring extraordinary verification and weighting considerations. These include sales to governmental agencies, sales to environmental organizations, sales to parties desiring to exchange the land to the government, distressed sales, and other atypical or non-arm's length sales. (UASFLA Sections B-4, D-9)

**66 - Exhibit 03--Continued**

The appraiser must interpret the foregoing data, analyses, and estimates and state the reasons why the conclusion is the best indication of the market value for the typical lot. The indications given by the various sales cited and compared shall be analyzed individually to reach the final opinion of value showing which sale or sales were considered most comparable and provided the most reliable estimate of value for the typical lot.

C-2.2(b)(4) - Part IV – EXHIBITS AND ADDENDA

Include the following items as applicable to the appraisal problem if not included in the body of the report:

1. Maps. Maps shall clearly identify the properties and be of sufficient quality to enable the reviewer to locate the properties on the ground. Maps shall be dated, include a legend, scale, and north arrow. The original copy of the report MUST contain original maps or vivid color copies.

a. Area Map. Small scale map showing the general location of the subject market area.

b. Market Area Map. This map shall show the appraised property and its immediate market area.

c. Tract Map or Plat. This shall be a large-scale (2-inch/mile) USGS or similar quality map that clearly shows the appraised property and pertinent physical features such as roads, streams, and improvements.

d. Recreation Residence Tract Plat. This map will be furnished by the Forest Service, if available. The map generally depicts tract groupings and typical lot or lots within a grouping.

e. Comparable Sales Location Map. This map shall show the location of the appraised property and the sales. Delineate the boundaries of the appraised properties and comparable sales when the map is of sufficient scale to be meaningful. If all pertinent comparable sales cannot be shown on the same map as the appraised property, a smaller-scale map (such as a state road map) may be included in addition to the larger scale map.

2. Sale Transaction Forms. Include a completed form showing all information for each comparable transaction used in the appraisal. Include a plat (if available), a USGS topographic map (if appropriate), and color photo(s) of each sale. The transaction number must match the number of the transaction listed in the report.

**66 - Exhibit 03--Continued**

3. Legal Description. Include a full legal description of the property appraised if not shown in the narrative section of the report.

4. Title Information. Include a copy of the statement of interest (status report) for the Federal land, if provided.

5. Photographs. Provide quality color photographs of the appraised property and all comparables in the original and all copies of the final report. Photographs may be a separate exhibit in the addenda or included with the narrative description of the appraised property and comparable sales. Show the following information with each photograph:

a. Identify the photographed scene. Indicate direction of view, vantage point, and other pertinent information. A map may be used to show some of this information.

b. The name of the photographer.

c. The date the photograph was taken.

6. A copy of the recreation residence permit for each typical lot. Include a copy of each permit in the appraisal report. In the case of multiple permits, the face page only may be included so long as at least one set of standard clauses is included.

7. A record of communications with the Forest Service and with cabin owners. Meeting notices, receipt of meeting notification, record of attendance at meetings with the appraiser, notes regarding participation by cabin owners at lot inspections, and other correspondence from/to cabin owners or the Forest Service must be included.

8. References. List sources of data, including documents and individuals.

9. Qualifications of the appraiser. Include the qualifications of all appraisers or technicians who made significant contributions to the completion of the appraisal assignment. The appraiser(s) must provide evidence of compliance with the certification requirements of the state(s) where the properties are located.

10. Assignment Agreement. Include a copy of the Assignment Agreement provided by the Forest Service and executed by the appraiser. (ex. 04)

SECTION E - INSPECTION AND ACCEPTANCE

E-1. Agriculture Acquisition Regulation (48 CFR Chapter 1), Clause 52.246-4, Inspection of Services - Fixed Price (Apr. 1984) (FSH 6309.32-AGAR 52.246-4) shall be the basis of inspection and acceptance.

**66 - Exhibit 03--Continued**

SECTION F - DELIVERIES OR PERFORMANCE

F-1. Time for Contract Performance.

The Contractor shall submit to the assigned Forest Service staff review appraiser, ___ original and ____ copy(ies) of the original appraisal report for approval within ____ days of the Notice to Proceed. The review appraiser will then review the final appraisal report for acceptance or to recommend revisions to the appraisal report. If revisions are necessary, the revised report shall be submitted within ___ days of notification.

F-2. Contract time will proceed according to the following phases. Upon the completion of one phase remaining contract time shall not be carried forward.

PHASE 1 - _____ Calendar days - The Contractor shall submit to the Government copy(ies) of the appraisal report. The appraisal report shall be submitted to the Contracting Officer (CO) within 30 calendar days after the date of value, unless otherwise specified in writing by the CO or Contracting Officer's Representative (COR), who is usually the assigned Forest Service review appraiser.

PHASE 2 - _____ Calendar days - The Government shall review the original appraisal report for acceptance.

PHASE 3 - _____ Calendar days - The Contractor shall correct any deficiencies, (if any) and submit the revised appraisal report to the Government.

PHASE 4 - _____ Calendar days - The Government shall review the revised appraisal report for acceptance.

F-3. Pre-work Conference. A pre-work meeting between the assigned Forest Service review appraiser and the Contractor is required, preferably during the lot examination with the permit holder present.

SECTION G - CONTRACT ADMINISTRATION DATA

G-1. Method of Measurement. The unit of measurement is designated in the Schedule of Items, Section B of the Contract.

G-2. Measurement shall be made for each item or unit of work as shown in the Schedule of Items, completed as described in the Specifications and Supplements thereto.

G-3. Payment for contract work shall be made only for items listed in the Schedule of Items. All other work shall be considered incidental and included in the payment of the items listed in the Schedule of Items.

**66 - Exhibit 03--Continued**

G-4. Payment shall be made upon receipt and approval of the final appraisal report. Typically, no progress payments shall be made. However, partial payments in an amount not less than 50 percent of the total price may be authorized if the technical review period shall be extensive due to the complexity of the appraisal problem.

G-5. Payment for updating shall be at a fixed fee that may be agreed upon at the time the updating is requested.

G-6. Payment for testimony shall be at a fixed fee to be negotiated at the time the testimony is requested. Travel expenses shall be paid at a rate not to exceed Federal Government travel allowances.

G-7. At the Contractor's request, the COR and the Contractor shall jointly prepare Form 6300-30, Contract Payment Estimate and Invoice, for the signature of the Contracting Officer for payment. It is not necessary for the Contractor to submit any other Invoice or Statement.

G-8. Basis of Payment. The accepted quantities shall be paid for at the contract unit price for the items shown in the Schedule of Items.

G-9. All submitted appraisal reports become the property of the United States and may be used for any legal and proper purpose.

SECTION I – CONTRACT CLAUSES

The Government shall furnish the following at the Supervisor's Office in (city), (state), at the Contractor's request after the award:

I-1. Use of aerial photographs of the appraised property and of such other aerial photographs as is available. (To be returned to the COR upon completion of the appraisal, if not included as an exhibit to the report).

I-2. Copies of pertinent Forest Service administrative maps as available for use in the appraisal report.

I-3. Current Forest Service Land Status Reports covering the Federal lands, if not previously furnished.

I-4. Copies of pertinent documents relevant to the assignment from the special-use folder not previously provided.

**66 – Exhibit 04**

**ASSIGNMENT AGREEMENT FOR THE APPRAISAL OF RECREATION RESIDENCE LOTS**

**Typical Lot __**
**__*(Name)*_____ Summer Home Group or Tract**

I, ***( Name of contract appraiser )***, of ***( Address )***, have received a written copy of the recreation residence lot appraisal instructions for the ***__(Name)____*** National Forest. These instructions were prepared by assigned Forest Service staff review appraiser ***( Name and accreditation )***. My work in compliance with those instructions will be reviewed by her/him for compliance with the appraisal standards cited below. She/he will apply the same review requirements to my appraisal that were applied to the original appraisal of the typical lot. (Last sentence applicable only with second appraisals.)

I agree to abide by the written instructions, including the format in which my appraisal must be documented.

I understand that the date of value for this assignment is ***__(Date)___.***

I understand the full, complete, and accurate definition of the appraisal problem.

I shall abide by the *Uniform Standards of Professional Appraisal Practice*, the *Uniform Appraisal Standards for Federal Land Acquisitions*, the applicable sections of the *Cabin User Fee Fairness Act of 2000*, the laws of the State of ***(State where typical lot is located)***, under which I am certified as a general appraiser, and the code of professional ethics and standards of professional practice of those appraisal organizations to which I belong.

I accept the requirements of this appraisal assignment that are imposed by Federal statutes and regulations, Forest Service policies and procedures, and instructions unique to this assignment.

_____ _____
(Signature of Contractor) (date)

(typed name and accreditation of Contractor)
(State appraiser certification information)

**Note:** The following table will not appear in the Forest Service Manual or Forest Service Handbook.

TABLE I.—SECTION-BY-SECTION COMPARISON BETWEEN THE PROPOSED AND FINAL RECREATION RESIDENCE DIRECTIVES

| CUFFA reference | Forest Service manual or handbook directive | Proposed direction | Final direction |
|---|---|---|---|
| Section 604 | FSM 2340.5—Definitions | Added definition for ''caretaker cabin.'' A caretaker cabin is a residence occupying a lot within a recreation residence tract that is being used to provide caretaker services and security to the recreation residences within that tract. | Revises the definition of ''caretaker cabin'' to more closely reflect the description in CUFFA. |
| Section 602 and 603 | FSM 2347.1—Recreation Residences. | Maintained existing language of old directive, but added direction that the Forest Service shall, to the maximum extent practicable, manage the recreation residence program to preserve the opportunity for individual and family-oriented recreation. | No changes except to add direction that community owned improvements are to be authorized under separate permit and authority. |
| Sections 604 and 607(b) | FSM 2347.12—Caretaker Cabin | Changed section caption to ''Caretaker Cabins,'' and retained direction for authorizing a caretaker cabin. FSM 2347.12b provided that a fee for a caretaker cabin is the same as a fee for use of the same lot as a recreation residence. | Revised to clarity and for purposes of using the terminology in the corresponding provisions in CUFFA. |
| Section 606 | FSM 2721.23d—Fee Determination. | Established a 10-year appraisal cycle. | No changes in final directive. |
| | FSH 2709.11, Section 33—Recreation Residence Lot Fees. | Changed caption to ''Recreation Residence Lot Fees.'' | No changes in final directive. |
| Section 604 | FSH 2709.11, Section 33.05—Definitions. | Added a section that defines ''cabin,'' ''recreation residence lot,'' ''market value,'' ''tract,'' ''typical lot,'' ''recreation residence,'' and ''natural, native state.'' | Revises definitions for ''cabin,'' ''recreation residence,'' and ''simple majority.'' Adds definition of ''urban'' used in section 33.4. |
| Sections 606 through 608 | FSH 2709.11, Section 33.1—Base Fees and Annual Adjustments. | Changed the caption to ''Base Fees and Annual Adjustments,'' and referenced appraisal procedures addressed in proposed sections 33.11 through 33.13. | No changes in final directive. |
| Sections 606(b)(4)(D) and 607(a) | FSH 2709.11, Section 33.11—Establishing New Base Fee. | This section replaced the now obsolete direction concerning fee credit, and instead provides that the base fee for a recreation residence lot shall be 5 percent of the market value of the lot as determined by appraisal. It eliminated direction (currently found in sec. 33.1, para. 5) directing that a premium of 25 percent of the base fee or $100 whichever is greater, be added to the base fee for each sleeping structure on a recreation residence (in addition to the recreation residence). This section also provided that the base fee shall be recalculated once every 10 years. | No changes in final directive, except for numbering and titling of paragraphs. |

TABLE I.—SECTION-BY-SECTION COMPARISON BETWEEN THE PROPOSED AND FINAL RECREATION RESIDENCE DIRECTIVES—Continued

| CUFFA reference | Forest Service manual or handbook directive | Proposed direction | Final direction |
|---|---|---|---|
| Section 609 | FSH 2709.11, Section 33.12—Phase-in of Base Fee. | This new section provided direction for implementing the phase-in provision of CUFFA, and directed a phase-in of fees whenever the establishment of a new base fee results in an increase of more than 100 percent to a holder's most recent annual fee. The section included an example to demonstrate how the phase-in would be applied when a base fee results in more than a 100 percent increase of an annual fee. | No changes in final directive, except to make the phase-in example an exhibit. |
| | FSH 2709.11, Section 33.13—Annual Adjustments of Recreation Residence Fees. | Stated that the Forest Service would continue to use existing direction for annually indexing recreation residence rental fees, using the 2nd quarter to 2nd quarter change in the IPD–GNP. However, this section directed the implementation of a maximum adjustment of 5 percent in those years in which the annual change in the IPD–GNP index exceeds 5 percent, as provided in section 608(d) of CUFFA. Whenever the annualized change in the IPD–GNP exceeds 5 percent, then the maximum annual adjustment in the rental fee for such years will be 5 percent, and that part of the adjustment in excess of 5 percent would be applied in the next annual rental fee payment when the index change is less than 5 percent. This section included two examples to demonstrate how rental fee increases in excess of 5 percent would be applied when the annualized change in the IPD–GNP exceeds 5 percent.<br>(**Note:** Approximately 2 years after adopting the proposed rule and proposed directives in this notice, the Forest Service will develop direction to annually adjust recreation residence rental fees using the rolling 5-year average of the "Index of Agriculture Land Prices" published by the Department of Agriculture, as directed in section of 608(a) and (b) of CUFFA). | No changes in final directive, except to make the phase-in examples exhibits. |

TABLE I.—SECTION-BY-SECTION COMPARISON BETWEEN THE PROPOSED AND FINAL RECREATION RESIDENCE DIRECTIVES—Continued

| CUFFA reference | Forest Service manual or handbook directive | Proposed direction | Final direction |
|---|---|---|---|
| Section 607(c) and (d) | FSH 2709.11, Section 33.2—Fees When Determination is Made To Place Recreation Residence on Tenure. | This section clarified direction on fees when a decision is made to discontinue the recreation residence use by providing specific instructions for the assessment of land use fees after a holder has been provided with a minimum 10 years of advance notice of the agency's decision to discontinue the holder's recreation residence use. The proposed directive included a table that demonstrated how the fee is reduced by 10 percent each year during the last 10 years of the permit term. This section also provided a process for recapturing fees that were forgone, should a subsequent decision be made by the agency not to discontinue the recreation use, but allow it to continue. | No changes in final directive, except to make the phase-in chart for fees when a recreation residence is placed on tenure an exhibit. |
| Section 607(e) | FSH 2709.11, Section 33.3—Fee When Recreation Residence Use Is Terminated or Revoked as Result of Acts of God or other Catastrophic Events. | This section provided agency direction concerning fee obligations of the holder in the event of a catastrophe or an ''act of God'' that precluded the recreation residence from being safely used and occupied for recreation residence purposes. It directed that in such an event, the fee obligations of the holder shall terminate as of the date of the event or occurrence, and provided for a refund of a prorated portion of the fee that has already been paid for the billing year in which the catastrophic event occurred. | No changes in final directive. |
| Section 606 | FSH 2709.11, Section 33.4—Establishing Market Value of Recreation Residence Lot. | This section provided technical considerations and the procedures to be followed when appraising a recreation residence lot. | Changes the numeric coding of the section and exhibits from a single digit scheme to a two digit scheme (sec. 66) to conform with other sections in FSH 5409.12, chapter 60. The exhibits for recreation residences are now enumerated as ex. 03 (previously ex. 06) and ex. 04 (previously ex. 07) respectively. |
| | | Paragraph 1 directed that appraisals be conducted by either a staff or contract appraiser who is licensed to practice in the State in which the recreation residence(s) to be appraised are located. It directed that the selection of a staff or contract appraiser be based on the individual's having had adequate training and demonstrated competence to conduct the appraisal assignment. It also directed that the appraiser sign an ''Assignment Agreement'' as provided in FSH 5409.12, section 6.9, exhibit 07 (see below). | Clarifies in paragraph 1 that the authorized offer, based on the advice of the assigned Forest Service review appraiser, is the only person authorized to make adjustments to fees where there may be a measurable difference among recreation residence lots within a grouping of lots. |

TABLE I.—SECTION-BY-SECTION COMPARISON BETWEEN THE PROPOSED AND FINAL RECREATION RESIDENCE DIRECTIVES—Continued

| CUFFA reference | Forest Service manual or handbook directive | Proposed direction | Final direction |
|---|---|---|---|
| | | Paragraph 2 directed that the appraiser evaluate the market value of the fee simple estate of the lot, and that the access, utilities, and facilities that service the lot to be appraised that had been paid for by either the Forest Service or a third party, be included as features of the lot.<br>Paragraph 3 directed that only previously selected typical lots be appraised pursuant to section 33.41.<br>Paragraph 4 directed that the authorized officer provide the appraiser with an inventory of utilities, access, and facilities servicing each typical lot to be appraised as provided in section 33.42.<br>Paragraph 5 included an itemized listing of the standards and provisions for which compliance is required in conducting and preparing the appraisal.<br>Paragraphs 6 and 7 provided direction for identifying and selecting sales of comparable land in appraising the value of a typical lot.<br>Paragraph 8 included a listing of typical value influences that the appraiser must consider in adjusting the prices of comparable sales in the appraisal of a typical lot.<br>Paragraph 9 directed that the authorized officer and the appraiser initiate a meeting with all affected permit holders prior to conducting an appraisal, specified how to notify the holders of such a meeting, and what to advise the holders at the meeting. This paragraph also directed the appraiser to give affected holders advance of notice of the appraiser's field visit to the recreation residence (or lots) being appraised, and that the holders be given the opportunity to be present during that lot visit. | There are no other changes in paragraphs 2 through 9 in this section. |
| Section 606 | FSH 2709.11, Section 33.41—Selection and Appraisal of Typical Lot. | This section proposed a more detailed process than previous direction for identifying and selecting typical lots, with strong emphasis on working with the affected holders in the selection of a typical lot or lots. Authorized officers were directed to seek the concurrence of affected permit holders in identifying recreation residence groupings and in selecting the typical lot or lots to be appraised. | No major revisions except to add provisions allowing the authorized officer to consider three options when lots within a grouping of lots are not comparable to the typical lot representing that group with respect to facilities, utilities, and access serving the typical lot |

TABLE I.—SECTION-BY-SECTION COMPARISON BETWEEN THE PROPOSED AND FINAL RECREATION RESIDENCE DIRECTIVES—Continued

| CUFFA reference | Forest Service manual or handbook directive | Proposed direction | Final direction |
|---|---|---|---|
| Section 606(a)(1) | FSH 2709.11, Section 33.42—Inventorying of Utilities, Access and Facilities. | This section directed the authorized officer to identify and inventory utilities, access, and facilities that provide service to each typical lot within a recreation residence tract. It also provided criteria or guidelines for the authorized officer to use in making a determination as to who paid for the capital costs to construct those utilities, access, and other facilities servicing each typical lot. | The caption for section 33.42a is changed from ''Utilities Provided by Holder'' to ''Types of Utilities, Access, and Facilities to Include in Inventories'' and provides examples of the types of utilities that should be considered in the inventory of a typical lot. The direction previously found in section 33.42a is revised and moved to section 33.42b, para. 1.<br>The caption for section 33.42b has been changed from ''Utilities Provided by the Forest Service or Third Party'' to ''Criteria To Be Considered in Determining Who Paid for Capital Cost of Inventoried Utilities, Access, and Facilities.'' The direction in section 33.42b is revised to clarify through examples, criteria for determining who paid for the capital costs of inventoried utilities, access and facilities; and that the Forest Service is responsible for obtaining that evidence. |
| Section 606 | FSH 2709.11, Section 33.5—Appraisal Specifications. | This section made reference to FSH 5409.12, section 6.5; section 6.9, exhibit 06, Specifications for Conducting an Appraisal for Recreation Residences; and section 6.9 exhibit 07, Assignment Agreement for the Appraisal of Recreation Residence Lots. | No changes in final directive. |
| Section 606 | FSH 2709.11, Section 33.6—Review and Acceptance of Appraisal Report. | This section provided direction concerning the manner in which a Forest Service Review Appraiser shall review an appraisal report and approve it for the authorized officer's acceptance and use in establishing a new base fee. | No changes in final directive. |
| Section 610(a) | FSH 2709.11, Section 33.7—Holder Notification of Accepted Appraisal Report and Right of Second Appraisal. | This section provided more detailed direction concerning the authorized officer's obligation to notify the affected holder or holders of the agency's acceptance of an appraisal report for the purpose of establishing a new base fee. It directed that if the holder intends to secure a second appraisal, the holder must formally notify the Forest Service of that intent within 60 days. This direction also provided that if the holder chooses to exercise the option to secure a second appraisal, the holder must provide the authorized officer with a second appraisal report within one year of the date of the holder's receipt of the notice from the authorized officer. | Section 33.7 was revised to clarify that the holder shall be provided a copy of the appraisal report and supporting documentation associated with the typical lot upon which the holder's fee is based. |

TABLE I.—SECTION-BY-SECTION COMPARISON BETWEEN THE PROPOSED AND FINAL RECREATION RESIDENCE DIRECTIVES—Continued

| CUFFA reference | Forest Service manual or handbook directive | Proposed direction | Final direction |
|---|---|---|---|
| Section 610(b) | FSH 2709.11, Section 33.71—Standards for Second Appraisal. | This section proposed more detailed direction concerning the qualifications of an appraiser selected by the holder to conduct a second appraisal, and the standards that must be followed for conducting a second appraisal. The direction proposed that the second appraiser also sign an Assignment Agreement, pursuant to FSH 5409.12, section 6.9, exhibit 07. | Section 33.71b, Appraisal guidelines, has been rewritten to more clearly articulate its purpose and explain how the procedures provided for in this section are in conformance with USPAP. |
| Section 610(c) and (d) | FSH 2709.11, Section 33.72—Reconsideration of Recreation Residence Base Fee. | This section provided detailed, time certain procedures, for the reconsideration of a new base fee pursuant to a second appraisal. It directed that the holder shall be provided with no more than 60 days following the authorized officer's receipt of a second appraisal report, within which to formally request a reconsideration of the new base fee, based on the findings of the second appraisal. It also directed that the authorized officer, within 60 days following receipt of that request from the holder, review the agency's initial appraisal and the holder's second appraisal, and established a new base fee pursuant to the results of either appraisal, or somewhere within the range of values established by both appraisals. | This section was revised to clarify that the authorized officer may only consider the second appraisal report if it is reviewed and approved by the assigned Forest Service review appraiser and to add the requirement that the authorized officer shall review the material differences in fact or opinion in establishing a new base fee. |
| Section 614 | FSH 2709.11, Section 33.8—Establishing Recreation Residence Lot Value During Transition Period of Cabin User Fee Fairness Act. | This section required the authorized officer to notify recreation residence permit holders that when the agency adopts final regulations, policies, and appraisal guidelines pursuant to CUFFA they may request either: (1) A new appraisal; (2) a peer review of an exiting appraisal completed after September 30, 1995; or (3) a base fee using the value established by an appraisal completed after September 30, 1995. | Clarifies that the options described in paragraphs 1 through 3, and explained in further detail in section 33.81 through 33.83, are the only means by which a new base cabin user fee is established during transition period for those lots which were appraised between September 30, 1995 and October 11, 2000. Also clarifies that holders who request a new appraisal or the commissioning of a peer review will not have the right to request a second appraisal as provided for in section 33.7. |
| Section 614 | FSH 2709.11, Section 33.81—Use of Appraisal Completed After September 30, 1995. | This section provided direction for situations in which an appraisal completed after September 30, 1995, would be used to establish a new base fee. | No changes in final directive. |
| Section 614 | FSH 2709.11, Section 33.82—Request for New Appraisal conducted under Regulations, Policies, and Appraisal Guidelines Established Pursuant to CUFFA. | This section provided guidance and procedures for requesting a new appraisal conducted under regulations, policies, and appraisal guidelines established pursuant to CUFFA. | No changes in final directive, except to make the form for holders requesting a new appraisal when the previous appraisal indicated a base fee increase of more than $3,000 from annual fee assessed on October 1, 1996, and exhibit. |

TABLE I.—SECTION-BY-SECTION COMPARISON BETWEEN THE PROPOSED AND FINAL RECREATION RESIDENCE DIRECTIVES—Continued

| CUFFA reference | Forest Service manual or handbook directive | Proposed direction | Final direction |
|---|---|---|---|
| Section 614 | FSH 2709.11 Section 33.83—Request for Peer Review Conducted under Regulations, Policies, and Appraisal Guidelines Established Pursuant to CUFFA. | This section provided guidance and procedures for requesting a peer review conducted under regulations, policies, and appraisal guidelines established pursuant to CUFFA. | No changes in final directive, except to make the form for holders requesting a new appraisal when a previous appraisal indicated a fee increase of more than $3,000 from annual fee assessed on October 1, 1996, an exhibit. |
| Section 606 | FSH 5409.12, Section 6.53—Recreation Residence Lots. | This section revised appraisal contracting direction by replacing use of the current terminology for appraising ''Recreation Residence Sites'' to ''Recreation Residence Lots,'' to be consistent with the terminology used in CUFFA. This section also directed that the appraisal guidelines for recreation residence lots, included in FSH 5409.12, section 6.9, exhibit 06, Required Specifications for Appraisal of Recreation Residence Lots, be used agency-wide, and that they can not be modified without the approval of the Director of lands. The section required that the appraiser execute an Assignment Agreement, as provided in FSH 5409.12, section 6.9, exhibit 07. | This section containing exhibits 06 and 07 was recorded to a two digit coding scheme (sec. 66) to conform it to the other sections in FSH 5409.12, chapter 60. The exhibits for recreation residences are now enumerated as ex. 03 (previously ex. 06) and ex. 04 (previously ex. 07) respectively. |
| Section 606 | FSH 5409.12, Section 6.9—Exhibit 06. | This section revised exhibit 06, which contains all the technical appraisal provisions and appraisal guidelines enumerated in section 606 of CUFFA. These technical specifications must be included in an appraisal contract for an appraisal conducted by a contract appraiser, and Forest Service staff appraisers must adhere to these provisions and procedures when conducting an appraisal of a recreation residence lot. | As appropriate, replaces the term ''site'' with ''lot'' and makes other minor technical and format edits throughout the exhibit.<br>Section C–2.1(g) is revised to include CUFFA as a source for definitions for recreation residences.<br>The examples of related improvements in Section C–2.2 is revised to be consistent to the definition of related improvements in FSH 2709.11, section 33.05.<br>Section C–2.2(b)(2)(3)(b) is revised by using the term ''market area'' instead of the word ''neighborhood.'' |

TABLE I.—SECTION-BY-SECTION COMPARISON BETWEEN THE PROPOSED AND FINAL RECREATION RESIDENCE DIRECTIVES—Continued

| CUFFA reference | Forest Service manual or handbook directive | Proposed direction | Final direction |
|---|---|---|---|
| | FSH 5409.12, Section 6.9—Exhibit 07. | Exhibit 07, Assignment Agreement, required both Forest Service staff appraisers and contract appraisers to document their intention to comply with the appraisal instructions (ex. 06), the provisions of CUFFA, the Uniform Standards of Professional Appraisal Practice, and the Uniform Appraisal Standards for Federal Land Acquisitions, prior to conducting an appraisal or second appraisal of recreation residence lot. | No changes in final directive. |

[FR Doc. 06–2889 Filed 3–28–06; 8:45 am]
BILLING CODE 3410–11–P

Federal Register

Monday,
April 3, 2006

# Part III

# Department of Housing and Urban Development

## Disaster Voucher Program; Notice of Statutory and Regulatory Waivers for Public Housing Agencies Assisting With Recovery and Relief in Hurricanes Katrina and Rita Disaster Areas; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5061–N–01]**

## Disaster Voucher Program; Notice of Statutory and Regulatory Waivers for Public Housing Agencies Assisting With Recovery and Relief in Hurricanes Katrina and Rita Disaster Areas

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public of the implementation of certain statutory and regulatory waivers pursuant to the Department of Defense Appropriations Act, 2006, enacted into law on December 30, 2005. This act provides $390 million for rental voucher assistance under section 8(o) of the United States Housing Act of 1937 to families that, prior to Hurricanes Katrina or Rita, were receiving housing assistance under certain HUD housing programs or were homeless or in emergency shelters in the declared disaster areas. The $390 million rental voucher assistance program is referred to as the Disaster Voucher Program (DVP).

More detailed information about DVP and the operating requirements that govern its administration by public housing agencies (PHAs) are contained in PIH Notice 2006–12, which can be accessed from the HUD Web site at *http://www.hud.gov/pih.* The operating requirements explain in full detail the design features of DVP. The operating requirements also address the DVP funding process and administrative fees; PHA administrative responsibilities; and recordkeeping requirements. Any supplemental guidance for the DVP will be posted on HUD's Web site in order to ensure the effective administration and implementation of the program and its goals.

**DATES:** Effective Date: DVP became effective on January 27, 2006.

**FOR FURTHER INFORMATION CONTACT:** David Vargas, Director, Office of Voucher Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4226, Washington, DC 20410; telephone (202) 708–2815 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background Information

In late August 2005, Hurricane Katrina struck the Gulf Coast area of the United States causing unprecedented and catastrophic damage to property, significant loss of life, and the displacement of tens of thousands of individuals from their homes and communities. In September 2005, Hurricane Rita closely followed Hurricane Katrina and once again hit the Gulf Coast area of the United States, adding to the damage to property and displacement of individuals and families from their homes and communities.

Recognizing that moving displaced families out of temporary shelters into more permanent housing is a key element in helping families return to some degree of normalcy, the Federal Emergency Management Agency (FEMA), through a Mission Assignment, tasked HUD to assume a major role in the initial relief effort through the administration of the Katrina Disaster Housing Assistance Program (KDHAP). Under the KDHAP, HUD provided rent subsidy assistance, including security deposit assistance, utility deposit assistance, and housing search assistance, through local Public Housing Agencies (PHAs) currently administering the Housing Choice Voucher program to both HUD assisted families displaced from their homes by Hurricane Katrina and pre-disaster homeless families.

The Department of Defense Appropriations Act, 2006, (Public Law 109–148, enacted December 30, 2005) (DoD Appropriations Act) appropriated $390 million to HUD for rental voucher assistance under section 8(o) of the United States Housing Act of 1937 (the 1937 Act) to families that, prior to Hurricanes Katrina or Rita, were receiving housing assistance under certain HUD housing programs or were homeless or in emergency shelters in the declared disaster areas. The funding is rental voucher assistance designed to help families displaced by the disaster on a temporary basis, while repairs or rebuilding is completed on their former housing. The DVP replaces the KDHAP. Families that participated in KDHAP who were eligible for the DVP had their KDHAP assistance converted to DVP assistance.

In addition to appropriating funding, the DoD Appropriations Act authorized statutory waivers for the DVP. In administering DVP assistance, the Secretary of Housing and Urban Development is authorized to waive requirements for income eligibility and tenant contribution for families receiving DVP assistance for up to 18 months. The 18-months timeframe shall commence from the date that a family initially receives assistance under the DVP.

### II. Waiver Authority

To further assist families in sustaining and obtaining housing during the recovery efforts, the DoD Appropriations Act provides the Secretary of Housing and Urban Development with the discretion to waive statutory requirements for income eligibility and tenant contribution under section 8 of the 1937 Act with respect to administration of the DVP. HUD implemented this waiver authority on January 27, 2006, which marked the commencement of DVP. The implementation of HUD's waiver authority provides eligible families additional time to recover from the economic impact of Hurricanes Katrina and Rita. In addition, the implementation of HUD's waiver authority assists in reducing impediments that may otherwise delay the speedy transition to and implementation of the DVP for families affected by Hurricanes Katrina and Rita.

*Waivers of Statutory Provisions.* For PHAs assisting Hurricanes Katrina and Rita disaster victims who are eligible for DVP, and consistent with the waiver authority provided by the DoD Appropriations Act, HUD has waived the following statutory provisions of the 1937 Act:

1. Section 8(o)(2): Amount of Monthly Assistance Payment
2. Section 8(o)(3): 40 Percent Limit
3. Section 8(o)(4): Eligible Families
4. Section 8(o)(5): Annual Review of Family Income

In addition, any duplicative or clearly interrelated statutory provisions are also waived.[1] For instance, section 3(a)(1) of the 1937 Act provides, in part, that only low-income families may be assisted under the 1937 Act, a requirement that is also contained, in far more detail, in section 8(o)(4) of the 1937 Act. Similarly, section 3(a)(3) of the 1937 Act establishes a minimum tenant rent requirement that is referenced in section 8(o)(2) of the 1937 Act.[2]

[1] A number of statutory definitions, e.g., the definition of adjusted income in section 3(b)(5) of the 1937 Act, do not apply to the DVP due to the waivers covering income eligibility and family contribution.

[2] In addition section 16(b) of the 1937 Act generally provides that of the families initially provided tenant-based assistance by a PHA under section 8 in a fiscal year, not less than 75 percent shall be extremely low income. Since income eligibility requirements do not apply to the DVP, any families assisted under this program are not

Under § 5.110 of HUD's regulations in title 24 of the Code of Federal Regulations (CFR), HUD's regulations in 24 CFR may be waived upon a determination of good cause, subject to statutory limitations. Waiver of several regulations in 24 CFR part 5, subpart F, were determined necessary to give effect to the waiver of statutory income eligibility and tenant contribution requirements described above.

In order to simplify the administration of the DVP, HUD made a finding of good cause to waive certain regulations in 24 CFR part 982 that govern the Housing Choice Voucher (HCV) program. Waiver of several of the HCV program regulations provide flexibility in administration of the DVP; assist in reducing impediments that may otherwise delay the speedy transition to and implementation of DVP for families affected by Hurricanes Katrina and Rita; and help provide eligible families with additional time to recover from the economic impact of the hurricanes. There are other regulatory provisions in 24 CFR part 982 that are either obsolete (*e.g.,* 24 CFR 982.518, Regular Tenancy: How to Calculate the Housing Assistance Payment) or clearly inapplicable to DVP (e.g., 24 CFR 982.104, HUD Review of Application). Such provisions were therefore waived to provide clarity with respect to DVP administration.

Further, this notice advises that because DVP provides rental voucher assistance that is designed to help families displaced by the disaster on a temporary basis, DVP rental assistance may not be used for homeownership as provided in HUD's regulations in 24 CFR part 982, specifically in §§ 982.625 through 982.643, nor may DVP assistance be used for project-based voucher assistance as provided in 24 CFR part 983.

Therefore, consistent with the authority in 24 CFR 5.110, the following regulatory provisions were waived on January 27, 2006:

*A. Housing Choice Voucher Program*

1. 24 CFR 982.101: Allocation of Funding
2. 24 CFR 982.102: Allocation of Budget Authority for Renewal of Expiring Consolidated CACC Funding Increments
3. 24 CFR 982.103: PHA Application for Funding
4. 24 CFR 982.104: HUD Review of Application
5. 24 CFR 982.201: Eligibility and Targeting
6. 24 CFR 982.202: How Applicants are Selected: General Requirements
7. 24 CFR 982.203: Special Admission (Non-Waiting List): Assistance Targeted by HUD
8. 24 CFR 982.204: Waiting list: Administration of Waiting List
9. 24 CFR 982.205: Waiting List: Different Program
10. 24 CFR 982.206: Waiting List: Opening and Closing; Public Notice
11. 24 CFR 982.207: Waiting List: Local Preferences in Admission to Program
12. 24 CFR 982.317: Lease-Purchase Agreements
13. 24 CFR 982.352(a)(2): Ineligible Housing
14. 24 CFR 982.355: Portability: Administration by Receiving PHA
15. 24 CFR 982.401(d): Housing Quality Standards; Space and Security
16. 24 CFR 982.504 Voucher Tenancy: Payment Standard for Family in Restructured Subsidized Multifamily Project
17. 24 CFR 982.505 Voucher Tenancy: How to Calculate Housing Assistance Payment
18. 24 CFR 982.508: Maximum Family Share at Initial Occupancy
19. 24 CFR 982.515: Family Share: Family Responsibility
20. 24 CFR 982.516: Family Income and Composition: Regular and Interim Examinations
21. 24 CFR 982.518: Regular Tenancy: How to Calculate Housing Assistance Payment
22. 24 CFR 982.519: Regular Tenancy: Annual Adjustment of Rent to Owner
23. 24 CFR 982.520: Regular Tenancy: Special Adjustment of Rent to Owner
24. 24 CFR 982.619: Cooperative Housing
25. 24 CFR 982.622: Manufactured Home Space Rental: Rent to Owner
26. 24 CFR 982.623: Manufactured Home Space Rental: Housing Assistance Payment
27. 24 CFR 982.624: Manufactured Home Space Rental: Utility Allowance Schedule

*B. Part 5, Subpart F: Section 8 and Public Housing and Other HUD Assisted Housing Serving Persons with Disabilities: Family Income and Family Payment; Occupancy Requirements for Section 8 Project-Based Assistance*

1. 24 CFR 5.601: Purpose and Applicability
2. 24 CFR 5.603: Definitions
3. 24 CFR 5.609: Annual Income
4. 24 CFR 5.611: Adjusted Income
5. 24 CFR 5.613: Public Housing Program and Section 8: PHA Cooperation with Welfare Agency
6. 24 CFR 5.615: How Welfare Benefit Reduction affects Family Income
7. 24 CFR 5.617: Self-Sufficiency Incentives for Persons with Disabilities-Disallowance of Increase in Annual Income
8. 24 CFR 5.628: Total Tenant Payment
9. 24 CFR 5.630: Minimum Rent [3]

In addition, 24 CFR 5.512(d), Verification of Eligible Immigration Status: Secondary Verification, was waived for the limited purpose of expanding the time under which a secondary verification must be requested of Immigration and Customs Enforcement by the responsible entity when the primary verification (the automated verification system) is not conclusive of immigration status. Specifically, under the DVP, the time under which a secondary verification must be requested was expanded from 10 days of the date of the results of the primary verification to 90 days from such date.

All waivers pertaining to income eligibility and tenant contribution in the voucher program (*e.g.*, 24 CFR 982.505, 982.508, 982.515, 982.516, 5.609 and 5.611) are applicable for an 18-month period for each family assisted under the DVP. All other waivers are effective for the duration of the DVP.

Dated: March 27, 2006.

**Orlando J. Cabrera,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 06–3168 Filed 3–31–06; 8:45 am]

BILLING CODE 4210–67–P

included in determining a PHA's compliance with the targeting requirement in section 16(b).

[3] Two regulatory provisions in 24 CFR part 5, subpart F (24 CFR 5.632 (Utility Reimbursement) and 24 CFR 5.634 (Tenant Rent)) explicitly provide that they do not apply to the voucher program and thus need not be waived.

Federal Register

Monday,
April 3, 2006

# Part IV

# Department of Labor

**Office of the Secretary**
**29 CFR Part 11**

**Wage and Hour Division**
**29 CFR Parts 500, 501, et al.**

**Mine Safety and Health Administration**
**30 CFR Parts 28, 48, 50, et al.**

**Occupational Safety and Health Administration**
**29 CFR Parts 1910, 1913, et al.**

**Department of Labor Regulatory Review and Update; Technical Amendments; Final Rules**

**DEPARTMENT OF LABOR**

**Office of the Secretary**

**29 CFR Part 11**

**Wage and Hour Division**

**29 CFR Parts 500, 501, 516, 519, 531, 536, 547, 548, 549, 550, 552, and 570**

**Mine Safety and Health Administration**

**30 CFR Parts 28, 48, 50, 56, 57, 70, 71, 72, 75, 77, and 90**

## Department of Labor Regulatory Review and Update

**AGENCY:** Office of the Secretary, Wage and Hour Division, Mine Safety and Health Administration, Labor.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Department of Labor (DOL) is amending existing regulations to update obsolete non-substantive or nomenclature references in the Code of Federal Regulations (CFR). This action is intended to improve the accuracy of the agency's regulations and does not impose any new regulatory or technical requirements. DOL is also publishing concurrently a separate rule amending existing Occupational Safety and Health Administration regulations to update obsolete non-substantive references.

**EFFECTIVE DATE:** April 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** Sheila McConnell, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue, NW., Washington DC 20210, Telephone (202) 693–5959.

**SUPPLEMENTARY INFORMATION:** DOL's strategic outcome goal 4.2 measures the agency's success in creating a regulatory structure that promotes compliance flexibility and reduces regulatory burden. As part of this strategic goal, DOL is conducting an ongoing review of its regulations governing labor standards, pensions, health care, and worker safety to ensure that these references in the CFR are accurate, current and reflect recent statutory amendments.

Updates to the CFR that relate to statutory amendments include the Wage and Hour Division's Fair Labor Standards Act regulations for the exemptions for agricultural employees employed within the ''area of production'' and by ''country elevators,'' 29 CFR Part 536. Enacted originally as complete exemptions from both minimum wage and overtime, sections of the law were later amended to repeal and replace the original exemptions with an exemption from overtime only. Revisions are therefore being made to delete the regulatory sections that implemented the provisions of law that have since been repealed and to correct citations to current provisions of law.

In addition, several sections of regulations of the Wage and Hour Division, entitled ''Petition for amendment of regulations,'' were originally adopted as initial implementing regulations in 1938 and provided for interested persons to petition the Wage and Hour Administrator for desired changes in the regulations. The substance of these sections has been superseded and supplanted by enactment of the Administrative Procedure Act, 5 U.S.C. 553(e), and the sections are therefore deleted as unnecessary.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice of Proposed Rulemaking is unnecessary since the agency is merely updating non-substantive and nomenclature references.

### Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulations. The agency has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, there is no requirement for an assessment of potential costs and benefits under section 6(a)(3) of that order.

### Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the Administrative Procedure Act (APA), the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility do not apply to this rule. See 5 U.S.C. 601(2).

### Paperwork Reduction Act

This final rule is not subject to section 350(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new collection of information requirements.

### Publication in Final

The Department has determined that these amendments need not be published as a proposed rule, pursuant to 5 U.S.C. 553(b)(A), since several of these changes are interpretive, procedural in nature, or relate to agency organization. Because this final rule does not make substantive amendments, the Department of Labor has determined that delaying the effective date of the rule is unnecessary, and good cause exists under 5 U.S.C. 553(b)(B) to make this rule effective immediately upon publication in the **Federal Register**.

### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not classified as a ''rule'' under Chapter 8 of the Small Business Regulatory Enforcement Fairness Act of 1996, because it is a rule pertaining to agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. See 5 U.S.C. 804(3)(C).

### List of Subjects

*29 CFR Part 11*

Environmental impact statements.

*29 CFR Part 500*

Administrative practice and procedure, Aliens, Housing, Insurance, Intergovernmental relations, Investigations, Migrant labor, Motor vehicle safety, Occupational safety and health, Reporting and recordkeeping Requirements, Wages, Whistleblowing.

*29 CFR Part 501*

Administrative practice and procedure, Aliens, Employment, Health professions, Penalties, Reporting and recordkeeping requirements, Wages.

*29 CFR Part 516*

Minimum wages, Reporting and recordkeeping requirements, Wages.

*29 CFR Part 519*

Agriculture, Colleges and universities, Minimum wages, Reporting and recordkeeping requirements, Students.

*29 CFR Part 531*

Wages.

*29 CFR Part 536*

Agriculture, Wages.

*29 CFR Part 547*

Employee benefit plans, Reporting and recordkeeping requirements.

*29 CFR Part 548*

Wages.

*29 CFR Part 549*

Employee benefit plans, Reporting and recordkeeping requirements, Trusts and trustees.

*29 CFR Part 550*

Radio, Television, Wages.

*29 CFR Part 552*

Minimum wages, Reporting and recordkeeping requirements.

*29 CFR Part 570*

Administrative practice and procedures, Agriculture, Child labor, Intergovernmental relations, Occupational safety and health, Reporting and recordkeeping.

*30 CFR Part 28*

Mine safety and health, Research.

*30 CFR Part 48*

Education, Mine safety and health, Reporting and recordkeeping requirements.

*30 CFR Part 50*

Investigations, Mine safety and health, Reporting and recordkeeping requirements.

*30 CFR Part 56*

Chemicals, Electric power, Explosives, Fire prevention, Hazardous substances, Metals, Mine safety and health, Noise control, Reporting and recordkeeping requirements.

*30 CFR Part 57*

Chemicals, Electric power, Explosives, Fire prevention, Gases, Hazardous substances, Metals, Mine safety and health, Noise control, Radiation protection, Reporting and recordkeeping requirements.

*30 CFR Part 70*

Mine safety and health, Noise control, Reporting and recordkeeping requirements.

*30 CFR Part 71*

Hazardous substances, Mine safety and health, Noise control, Reporting and recordkeeping requirements, Water supply.

*30 CFR Part 72*

Coal, Mine safety and health.

*30 CFR Part 75*

Communications equipment, Electric power, Emergency medical services, Explosives, Fire prevention, Mine safety and health, Reporting and recordkeeping requirements.

*30 CFR Part 77*

Communications equipment, Electric power, Emergency medical services, Explosives, Fire prevention, Mine safety and health, Reporting and recordkeeping requirements.

*30 CFR Part 90*

Black lung benefits, Mine safety and health, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, DOL amends parts 11, 500, 501, 516, 519, 531, 536, 547, 548, 549, 550, 552, and 570, of title 29, and parts 28, 48, 50, 56, 57, 70, 71, 72, 75, 77 and 90 of title 30, Code of Federal Regulations, as follows:

## Title 29

## PART 11—DEPARTMENT OF LABOR NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE PROCEDURES

■ 1. The authority citation for 29 CFR Part 11 continues to read as follows:

**Authority:** NEPA, 42 U.S.C. 4321; Executive Order 11514, as amended by Executive Order 11991.

### § 11.3 [Amended]

■ 2. Section 11.3 is amended in paragraph (a) introductory text by removing the words ''Assistant Secretary of Labor for Policy, Evaluation and Research (ASPER)'' and adding, in their place, the words ''Assistant Secretary for Policy''.

## PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT

■ 3. The authority citation for 29 CFR Part 500 continues to read as follows:

**Authority:** Pub. L. 97–470, 96 Stat. 2583 (29 U.S.C. 1801–1872); Secretary's Order No. 4–2001, 66 FR 29656.

### § 500.212 [Amended]

■ 4. Section 500.212 is amended in paragraph (a) by removing ''§ 500.212'' and adding, in its place, ''§ 500.210''.

## PART 501—ENFORCEMENT OF CONTRACTUAL OBLIGATIONS FOR TEMPORARY ALIEN AGRICULTURAL WORKERS ADMITTED UNDER SECTION 216 OF THE IMMIGRATION AND NATIONALITY ACT

■ 5. The authority citation for 29 CFR Part 501 continues to read as follows:

**Authority:** 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1186.

### § 501.33 [Amended]

■ 6. Section 501.33 is amended as follows:

■ A. In paragraph (a) remove the words ''Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210'' and add, in its place, ''official who issued the determination, at the Wage and Hour Division address appearing on the determination notice''; and,

■ B. In paragraph (c) remove the words ''Administrator at the above address,'' and add, in their place, ''official who issued the determination, at the Wage and Hour Division address appearing on the determination notice''.

## PART 516—RECORDS TO BE KEPT BY EMPLOYERS

■ 7–8. The authority citation for 29 CFR Part 516 continues to read as follows:

**Authority:** Sec. 11, 52 Stat. 1066, as amended, 29 U.S.C. 211. Section 516.33 also issued under 52 Stat. 1060, as amended; 29 U.S.C. 201, *et seq.* Section 516.34 also issued under Sec. 7, 103 Stat. 944, 29 U.S.C. 207(q).

■ 9. Section 516.0 is amended by adding the following OMB control number entry in numerical order to read as follows:

### § 516.0 Display of OMB control numbers.

| Subpart or section where information collection requirement is located | Currently assigned OMB control No. |
|---|---|
| * * * * * | |
| 516.34 | 1215.0175 |

## PART 519—EMPLOYMENT OF FULL-TIME STUDENTS AT SUBMINIMUM WAGES

■ 10. The authority citation for 29 CFR Part 519 continues to read as follows:

**Authority:** Secs. 11 and 14, 52 Stat. 1068; sec. 11, 75 Stat. 74; secs. 501 and 602, 80 Stat. 843, 844 (29 U.S.C. 211, 214).

### § 519.10 [Removed]

■ 11. Section 519.10 is removed.

### § 519.20 [Removed]

■ 12. Section 519.20 is removed.

## PART 531—WAGE PAYMENTS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

■ 13. The authority citation for 29 CFR Part 531 continues to read as follows:

**Authority:** Sec. 3(m), 52 Stat. 1060; sec. 2, 75 Stat. 65; sec. 101, 80 Stat. 830; 29 U.S.C. 203 (m) and (t).

### § 531.8 [Removed]

■ 14. Section 531.8 is removed.

## PART 536—AREA OF PRODUCTION

■ 15. The amended authority citation for 29 CFR Part 536 reads as follows:

**Authority:** Sec. 13(a)(17), 52 Stat. 1067, as amended, sec. 9, 75 Stat. 71, as amended, sec. 204(b), 80 Stat. 835; 29 U.S.C. 213(b)(14).

**§ 536.1 [Removed and reserved]**

■ 16. Section 536.1 is removed and reserved.

**§ 536.2 [Removed and reserved]**

■ 17. Section 536.2 is removed and reserved.

**§ 536.3 [Amended]**

■ 18. Section 536.3 is amended in the section heading and paragraph (a) introductory text by removing ''13(a)(17)'' and adding in its place ''13(b)(14)''.

**§ 536.4 [Removed]**

■ 19. Section 536.4 is removed.

## PART 547—REQUIREMENTS OF A BONA FIDE THRIFT OR SAVINGS PLAN

■ 20. The authority citation for 29 CFR Part 547 continues to read as follows:

**Authority:** Sec. 7, 52 Stat. 1063, as amended; 29 U.S.C. 207.

■ 21. Section 547.1 is amended by revising the OMB information collection approval at the end of the section to read as follows:

**§ 547.1 Essential requirements for qualifications.**

* * * * *

(Approved by the Office of Management and Budget under control number 1215–0119)

**§ 547.3 [Removed]**

■ 22. Section 547.3 is removed.

## PART 548—AUTHORIZATION OF ESTABLISHED BASIC RATES FOR COMPUTING OVERTIME PAY

■ 23. The authority citation for 29 CFR Part 548 continues to read as follows:

**Authority:** Sec. 7, 52 Stat. 1063, as amended; 29 U.S.C. 207, unless otherwise noted.

**§ 548.5 [Removed]**

■ 24. Section 548.5 is removed.

## PART 549—REQUIREMENTS OF A ''BONA FIDE PROFIT-SHARING PLAN OR TRUST''

■ 25. The authority citation for 29 CFR Part 549 continues to read as follows:

**Authority:** Sec. 7, 52 Stat. 1063, as amended; 29 U.S.C. 207.

■ 26. Section 549.1 is amended by revising the OMB information collection approval at the end of the section to read as follows:

**§ 549.1 Essential requirements for qualifications.**

* * * * *

(Approved by the Office of Management and Budget under control number 1215–0119)

**§ 549.4 [Removed]**

■ 27. Section 594.4 is removed.

## PART 550—DEFINING AND DELIMITING THE TERM ''TALENT FEES''

■ 28. The authority citation for 29 CFR Part 550 continues to read as follows:

**Authority:** Sec. 7, 52 Stat. 1063, as amended; 29 U.S.C. 207.

**§ 550.3 [Removed]**

■ 29. Section 550.3 is removed.

## PART 552—APPLICATION OF THE FAIR LABOR STANDARDS ACT TO DOMESTIC SERVICE

■ 30. The authority citation for 29 CFR Part 552 continues to read as follows:

**Authority:** Secs. 13(a)(15) and 13(b)(21) of the Fair Labor Standards Act, as amended (29 U.S.C. 213(a)(15), (b)(21)), 88 Stat. 62; Sec. 29(b) of the Fair Labor Standards Amendments of 1974 (Pub. L. 93–259, 88 Stat. 76), unless otherwise noted.

**§ 552.7 [Removed]**

■ 31. Section 552.7 is removed.

## PART 570—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION

■ 32. The authority citation for 29 CFR Part 552 continues to read as follows:

**Authority:** Secs. 3, 11, 12, 52 Stat. 1060, as amended, 1066, as amended, 1067, as amended; 29 U.S.C. 203, 211, 212.

**§ 570.27 [Removed]**

■ 33. Section 570.27 is removed.

**§ 570.38 [Removed]**

■ 34. Section 570.38 is removed.

**Title 30**

## PART 28—FUSES FOR USE WITH DIRECT CURRENT IN PROVIDING SHORT-CIRCUIT PROTECTION FOR TRAINING CABLES IN COAL MINES

■ 35. The authority citation for 30 CFR Part 28 continues to read as follows:

**Authority:** 30 U.S.C. 957, 956.

**§ 28.31 [Amended]**

■ 36. Section 28.31 is amended in paragraph (b) by removing the words ''the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402'' and adding, in their place, the words ''Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250–7954; Telephone: 866–512–1800, *http://bookstore.gpo.gov*''.

**§ 28.40 [Amended]**

■ 37. Section 28.40 is amended in paragraph (d) by removing the words ''Underwriter's Laboratories, Inc., 161 Sixth Avenue, New York, NY 10013'' and adding, in their place, the words ''COMM 2000, 1414 Brook Drive, Downers Grove, IL 60515; Telephone: 888–853–3512 (toll free); *http://ulstandardsinfonet.ul.com.''*.

## PART 48—TRAINING AND RETRAINING OF MINERS

■ 38. The authority citation for 30 CFR Part 48 continues to read as follows:

**Authority:** 30 U.S.C. 811, 825.

**§ 48.12 [Amended]**

■ 39. Section 48.12 is amended in paragraph (a) by removing the words ''Metal and Non-metal Safety and Health'' and adding, in their place, the words ''Metal and Nonmetal Mine Safety and Health''; and by removing the words ''4015 Wilson Boulevard, Arlington, Va. 22203'' and adding, in their place, the words ''1100 Wilson Boulevard, Arlington, VA 22209–3939''.

## PART 50—NOTIFICATION, INVESTIGATION, REPORTS AND RECORDS OF ACCIDENTS, INJURIES, ILLNESSES, EMPLOYMENT, AND COAL PRODUCTION IN MINES

■ 40. The authority citation for 30 CFR Part 50 continues to read as follows:

**Authority:** 29 U.S.C. 577a; 30 U.S.C. 951, 957, 961.

■ 41. Section 50.1 is amended by revising the formulas to read as follows:

**§ 50.1 Purpose and scope.**

* * * * *

IR = (number of cases × 200,000) divided by hours of employee exposure.

* * * * *

SM = (sum of days × 200,000) divided by hours of employee exposure.

**§ 50.20–1 [Amended]**

■ 42. Section 50.20–1 is amended by removing the words ''Mine Health and Safety District or Subdistrict'' and adding, in their place, the words ''MSHA district''; and by removing the words ''Denver Safety and Health Technology Center'' and adding, in their place, the words ''the MSHA Office of Injury and Employment Information at the above address.''.

## PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

■ 43. The authority citation for 30 CFR Part 56 continues to read as follows:

**Authority:** 30 U.S.C. 811.

### § 56.1000 [Amended]

■ 44. Section 56.1000 is amended by removing the words ''Mine Safety and Health Administration and Metal and Nonmetal Mine Safety and Health District Office'' and adding, in their place, the words ''MSHA Metal and Nonmetal Mine Safety and Health district office''; and by removing the word ''subdistrict'' and adding, in its place, the word ''district''.

### § 56.5001 [Amended]

■ 45. Section 56.5001 is amended by removing the words ''the Secretary-Treasurer, P.O. Box 1937, Cincinnati, OH 45201'' and adding, in their place, the words ''1330 Kemper Meadow Drive, Attn: Customer Service, Cincinnati, OH 45240; *http://www.acgih.org''*.

### § 56.5005 [Amended]

■ 46. Section 56.5005 is amended in paragraph (b) by removing the words ''1430 Broadway New York, NY 10018'' and adding, in their place, the words ''25 W. 43rd Street, 4th Floor, New York, NY 10036; *http://www.ansi.org''*.

### § 56.12047 [Amended]

■ 47. Section 56.12047 is amended by removing the words ''Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402'' and adding, in their place, the words ''National Institute of Science and Technology, 100 Bureau Drive, Stop 3460, Gaithersburg, MD 20899–3460. Telephone: 301–975–6478 (not a toll free number); *http://ts.nist.gov/nvl;* or from the Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250–7954; Telephone: 866–512–1800 (toll free) or 202–512–1800, *http://bookstore.gpo.gov.''*.

### § 56.13030 [Amended]

■ 48. Section 56.13030 is amended in paragraph (d) by removing the words ''345 East Forty-seventh Street, New York, NY 10017'' and adding, in their place, the words ''22 Law Drive, P.O. Box 2900, Fairfield, New Jersey 07007, Phone: 800–843–2763 (toll free); *http://www.asme.org''*.

## PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

■ 49. The authority citation for 30 CFR Part 57 continues to read as follows:

**Authority:** 30 U.S.C. 811.

### § 57.1000 [Amended]

■ 50. Section 57.1000 is amended by removing the words ''Mine Safety and Health Administration Metal and Nonmental Mine Safety and Health District Office'' and adding, in their place, the words ''MSHA Metal and Nonmetal Mine Safety and Health district office''; and by removing the word ''subdistrict'' and adding, in its place, the word ''district''.

### § 57.5001 [Amended]

■ 51. Section 57.5001 is amended in paragraph (a) by removing the words ''the Secretary-Treasurer, P.O. Box 1937, Cincinnati, OH 45201'' and adding, in their place, the words ''1330 Kemper Meadow Drive, Attn: Customer Service, Cincinnati, OH 45240, *http://www.acgih.org''*.

### § 57.5005 [Amended]

■ 52. Section 57.5005(b) is amended by removing the words ''1430 Broadway New York, NY 10018'' and adding, in their place, the words ''25 W. 43rd Street, 4th Floor, New York, NY 10036; *http://www.ansi.org*''.

### § 57.5037 [Amended]

■ 53. Section 57.5037 is amended in paragraphs (a) introductory text by removing the words ''Metal and Nonmetal Mine Safety and Health Subdistrict Office of the Mine Safety and Health Administration'' and adding, in their place, the words ''MSHA Metal and Nonmetal Mine Safety and Health district office''; and by removing the words ''1430 Broadway New York, NY 10018.'' and adding, in their place, the words ''25 W. 43rd Street, 4th Floor, New York, NY 10036; *http://www.ansi.org.''*.

### § 57.5040 [Amended]

■ 54. Section 57.5040 is amended in paragraph (b)(4) by removing the words ''1430 Broadway New York, NY 10018.'' and adding, in their place, the words ''25 W. 43rd Street, 4th Floor, New York, NY 10036; *http://www.ansi.org.''* and in paragraph (b)(6) by removing the words ''Metal and Nonmetal Mine Safety and Health Subdistrict Office of the Mine Safety and Health Administration.'' and adding, in their place, the words ''MSHA Metal and Nonmetal Mine Safety and Health district office.''.

### § 57.5047 [Amended]

■ 55. Section 57.5047 is amended in paragraph (b) by removing ''1430 Broadway New York, NY 10018.'' and adding, in their place, the words ''25 W. 43rd Street, 4th Floor, New York, NY 10036; *http://www.ansi.org.''*.

### § 57.12047 [Amended]

■ 56. Section 57.12047 is amended by removing the words ''Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402'' and adding, in their place, the words ''National Institute of Science and Technology, 100 Bureau Drive, Stop 3460, Gaithersburg, MD 20899–3460. Telephone: 301–975–6478 (not a toll free number); *http://ts.nist.gov/nvl;* or from the Government Printing Office, Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250–7954; Telephone: 866–512–1800 (toll free) or 202–512–1800; *http://bookstore.gpo.gov''*.

### § 57.13030 [Amended]

■ 57. Section 57.13030 is amended in paragraph (d) by removing the words ''345 East Forty-seventh Street, New York, NY, 10017'' and adding, in their place, the words ''22 Law Drive, P.O. Box 2900, Fairfield, New Jersey 07007, Phone: 800–843–2763 (toll free); *http://www.asme.org''*.

### § 57.18028 [Amended]

■ 58. Section 57.18028 is amended in paragraph (e) by removing the word ''Subdistrict'' and adding, in its place, the word ''district''.

## PART 70—MANDATORY HEALTH STANDARDS—UNDERGROUND COAL MINES

■ 59. The authority citation for 30 CFR Part 70 continues to read as follows:

**Authority:** 30 U.S.C. 811 and 813(h).

### § 70.204 [Amended]

■ 60. Section 70.204 is amended in paragraph (e) by removing the words ''and subdistrict''.

### § 70.1900 [Amended]

■ 61. Section 70.1900 is amended in paragraph (c) by removing the words ''Coal Mine Health and Safety District and Subdistrict Office'' and adding, in their place, the words ''MSHA Coal Mine Safety and Health district office''; and by removing the words ''the Secretary-Treasurer, American Conference of Governmental Industrial Hygienists, Post Office Box 1937, Cincinnati, OH 45202.'' and adding, in

their place, the words ''American Conference of Governmental Industrial Hygienists, 330 Kemper Meadow Drive, Attn: Customer Service, Cincinnati, OH 45240; *http://www.acgih.org.''*.

## PART 71—MANDATORY HEALTH STANDARDS—SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

■ 62. The authority citation for 30 CFR Part 71 continues to read as follows:

**Authority:** 30 U.S.C. 811, 951 and 957.

### § 71.204 [Amended]

■ 63. Section 71.204 is amended in paragraph (e) by removing the words ''Coal Mine Health and Safety District and Subdistrict Office.'' and adding, in their place, the words ''MSHA Coal Mine Safety and Health district office.''.

### § 71. 402 [Amended]

■ 64–65. Section 71.402 is amended as follows:

■ A. In paragraph (b) remove the words ''Coal Mine Health and Safety District and Subdistrict Office'' and add, in their place, the words ''MSHA Coal Mine Safety and Health district office''; remove the words ''for $2.50 per copy''; and remove the words ''1430 Broadway, New York, NY 10018, for $6 per copy.'' and add, in their place, the words ''25 W. 43rd Street, 4th Floor, New York, NY 10036; *http://www.ansi.org.*''; and

■ B. In paragraph (c) remove the words ''of this § 71.402'' and add, in their place, the words ''of this section''.

### § 71.700 [Amended]

■ 66. Section 71.700 is amended in paragraph (a) by removing the words ''Coal Mine Health and Safety District and Subdistrict Office'' and adding, in their place, the words ''MSHA Coal Mine Safety and Health district office''; and by removing the words ''the Secretary-Treasurer, American Conference of Governmental Industrial Hygienists, Post Office Box 1937, Cincinnati, OH 45202.'' and adding, in their place, the words ''American Conference of Governmental Industrial Hygienists, 1330 Kemper Meadow Drive, Attn: Customer Service, Cincinnati, OH 45240; *http://www.acgih.org.*''.

## PART 72—HEALTH STANDARDS FOR COAL MINES

■ 67. The authority citation for 30 CFR Part 72 continues to read as follows:

**Authority:** 30 U.S.C. 811, 813(h), 957, 961.

### § 72.710 [Amended]

■ 68. Section 72.710 is amended by removing the words ''1430 Broadway, New York, NY 10018'' and adding, in their place, the words ''25 W. 43rd Street, 4th Floor, New York, NY 10036; *http://www.ansi.org*''; by removing the words ''Coal Mine Health and Safety district and subdistrict office'' and adding, in their place, the words ''MSHA Coal Mine Safety and Health district office''; and by removing the words ''Office of Standards'' and adding, in their place, the words ''Office of Standards, Regulations, and Variances''.

## PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

■ 69. The authority citation for 30 CFR Part 75 continues to read as follows:

**Authority:** 30 U.S.C. 811.

### § 75.220 [Amended]

■ 70. Section 75.220 is amended by removing paragraph (f).

### § 75.301 [Amended]

■ 71. Section 75.301 is amended as follows:

■ A. In the definition of *Noncombustible structure or area*, by removing the words ''Coal Mine Health and Safety District and Subdistrict Office'' and adding, in their place, the words ''MSHA Coal Mine Safety and Health district office''.

■ B. In the definition of *Noncombustible material*, by removing the words ''Office of Standards'' and adding, in their place, the words ''Office of Standards, Regulations, and Variances''; and by removing the words ''1916 Race Street, Philadelphia, Pennsylvania 19103.'' and adding, in their place, the words ''100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959; *http://www.astm.org.*''.

### § 75.322 [Amended]

■ 72. Section 75.322 is amended by removing the words ''Coal Mine Health and Safety District and Subdistrict Office'' and adding, in their place, the words ''MSHA Coal Mine Safety and Health district office''.

### § 75.333 [Amended]

■ 73. Section 75.333 is amended by removing the words ''Coal Mine Health and Safety District and Subdistrict Office'' and adding, in their place, the words ''MSHA Coal Mine Safety and Health district office''; removing the words ''Office of Standards'' and adding, in their place, the words ''Office of Standards, Regulations, and Variances''; and by removing the words ''1916 Race Street, Philadelphia, Pennsylvania 19103.'' and adding, in their place, the words ''100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959; *http://www.astm.org.*'' in the following places:

■ 1. Paragraph (d)(1);
■ 2. Paragraph (e)(1)(i);
■ 3. Paragraph (e)(3); and,
■ 4. Paragraph (f).

### § 75.335 [Amended]

■ 74. Section 75.335 is amended by removing the words ''Coal Mine Health and Safety District and Subdistrict Office'' and adding, in their place, the words ''MSHA Coal Mine Safety and Health district office''; removing the words ''Office of Standards'' and adding, in their place, the words ''Office of Standards, Regulations, and Variances''; and by removing the words ''1916 Race Street, Philadelphia, Pennsylvania 19103.'' and adding, in their place, the words ''100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA, 19428–2959; *http://www.astm.org.*'' in the following places:

■ a. Paragraph (a)(1)(iv); and,
■ b. Paragraph (a)(2).

### § 75.503–1 [Amended]

■ 75. Section 75.504–1 is amended by removing the words ''Coal Mine Safety District Office or Subdistrict Office of the Mine Safety and Health Administration.'' and adding, in their place, the words ''MSHA Coal Mine Safety and Health district office.''; and by removing the words ''or Subdistrict''.

### § 75.506 [Amended]

■ 76. Section 75.506 is amended in paragraph (b) by removing the words ''Coal Mine Safety District and Subdistrict Offices of the Bureau of Mines.'' and adding, in their place the words ''MSHA Coal Mine Safety and Health district offices.''.

### § 75.818 [Amended]

■ 77. Section 75.818 is amended in paragraph (b)(4) by removing the words ''Coal Mine Health and Safety District and Subdistrict Office'' and adding, in their place, the words ''MSHA Coal Mine Safety and Health district office''; and by removing the words ''Office of Standards'' and adding, in their place, the words ''Office of Standards, Regulations, and Variances''.

### § 75.1103–2 [Amended]

■ 78. Section 75.1103–2 is amended in paragraph (b) by removing the words ''Coal Mine Health and Safety District or Subdistrict Office of the Mine Safety

and Health Administration'' and adding, in their place, the words ''MSHA Coal Mine Safety and Health district office''; and by removing the words ''60 Batterymarch Street, Boston, MA 02110.'' and adding, in their place, the words ''11 Tracy Drive, Avon, MA 02322; Telephone: 800–344–3555 (toll free); *http://www.nfpa.org.*''.

**§ 75.1107–17 [Amended]**

■ 79. Section 75.1107–17 is amended by removing the words ''Coal Mine Health and Safety District or Subdistrict Office of the Mine Safety and Health Administration'' and adding, in their place, the words ''MSHA Coal Mine Safety and Health district office''; and by removing the words ''60 Batterymarch Street, Boston, MA 02110.'' and add, in their place, the words ''11 Tracy Drive, Avon, MA 02322; Telephone: 800–344–3555 (toll free); *http://www.nfpa.org.*''.

**§ 75.1204–1 [Amended]**

■ 80. Section 75.1204–1 is amended by removing the words ''Coal Mine Safety'' and adding, in their place, the words ''Coal Mine Safety and Health''.

**§ 75.1719–2 [Amended]**

■ 81. Section 75.1719 is amended in paragraph (c)(2) by removing the words ''Coal Mine Health and Safety District and Subdistrict Office of MSHA'' and add, in their place, the words ''MSHA Coal Mine Safety and Health district office''; and by removing the words ''345 East Forty-seventh Street, New York, N.Y. 10017.'' and adding, in their place, the words ''Publications Office, 10662 Los Vaqueros Circle, P.O. Box 3014 Los Alamitos, CA 90720–1264 Telephone: 800–272–6657 (toll free); *http://www.ieee.org.*''.

**§ 75.1719–3 [Amended]**

■ 82. Section 75.1719–3 is amended in paragraph (d) by removing the words ''National Bureau of Standards'' and adding, in their place, the words ''National Institute of Standards and Technology (Formerly the National Bureau of Standards)''.

**§ 75.1730 [Amended]**

■ 83. Section 75.1730 is amended in paragraph (a) by removing the words ''for $25''; removing the words ''345 East Forty-seventh Street, New York, NY 10017'' and adding, in their place, the words ''22 Law Drive, P.O. Box 2900, Fairfield, New Jersey 07007, Phone: 800–843–2763 (toll free); *http://www.asme.org*''; and by removing the words ''Coal Mine Health and Safety District and Subdistrict Office'' and adding, in their place, the words ''MSHA Coal Mine Safety and Health district office''.

**§ 75.1900 [Amended]**

■ 84. Section 75.1900 is amended in the definition of *Noncombustible material* by removing the words ''Coal Mine Health and Safety District and Subdistrict Office'' and adding, in their place, the words ''MSHA Coal Mine Safety and Health district office''; and by removing the words ''1916 Race Street Philadelphia, PA 19103'' and adding, in their place, the words ''100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA, 19428–2959, *http://www.astm.org*''.

## PART 77—MANDATORY SAFETY STANDARDS, SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

■ 85. The authority citation for 30 CFR Part 77 continues to read as follows:

**Authority:** 30 U.S.C. 811.

**§ 77.403a [Redesignated and amended]**

■ 86. Section 77.403a is redesignated as § 77.403–1 and amended as follows:

■ A. In paragraph (c)(5) by removing the words ''Nothing in this § 77.403a'' and adding, in their place, the words ''Nothing in this section 77.403–1'';

■ B. In paragraph (d)(2)(ii) footnote, by removing the words ''Paragraph (d) or § 77.403a'' and adding, in their place, the words ''Paragraph (d) of § 77.403–1''; and,

■ C. In paragraph (g) by removing ''§ 77.403a'' and adding, in its place ''§ 77.403–1''.

**§ 77.403b [Redesignated and amended]**

■ 87. Section § 77.403b is redesignated as § 77.403–2 and amended by removing the words ''§ 77.403a'' and adding, in their place, the words ''§ 77.403–1''; by removing the words ''Coal Mine Health and Safety District and Subdistrict Office'' and adding, in their place, the words ''Coal Mine Safety and Health district office''; and by removing the words ''U.S. Government Printing Office, Washington, DC 20402'' and adding, in their place, ''Information Dissemination (Superintendent of Documents), P.O. Box 371954, Pittsburgh, PA 15250–7954; Telephone: 866–512–1800 (toll free) or 202–512–1800; *http://bookstore.gpo.gov*''.

**§ 77.1000–1 [Amended]**

■ 88. Section 77.1000–1 is amended by removing the words ''Coal Mine Health and Safety District of Subdistrict office for the District or Subdistrict'' and adding, in their place the words ''MSHA Coal Mine Safety and Health district office for the district''.

**§ 77.1502 [Amended]**

■ 89. Section 77.1502 is amended by removing the words ''Coal Mine Health and Safety District Manager or Subdistrict Manager'' and adding, in their place, the words ''MSHA Coal Mine Safety and Health District Manager''.

## PART 90—MANDATORY HEALTH STANDARDS—COAL MINERS WHO HAVE EVIDENCE OF THE DEVELOPMENT OF PNEUMOCONIOSIS

■ 90. The authority citation for 30 CFR Part 90 continues to read as follows:

**Authority:** 30 U.S.C. 811, 813(h).

**§ 90.204 [Amended]**

■ 91. Section 90.204 is amended in paragraph (e) by removing the words ''and subdistrict''.

Dated: March 14, 2006.

**Veronica Vargas Stidvent,**

*Assistant Secretary for Policy, Department of Labor.*

[FR Doc. 06–3041 Filed 3–31–06; 8:45 am]

BILLING CODE 4510–23–P

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Parts 1910, 1913, 1915, and 1926

### Technical Amendments

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Final rule; corrections and technical amendments.

**SUMMARY:** The Department of Labor is conducting an ongoing review of its regulations to update non-substantive or nomenclature references in the Code of Federal Regulations (CFR). As part of this review, OSHA has identified safety and health rules needing correction or technical amendment. The revisions do not affect the substantive requirements or coverage of the standards involved, modify or revoke existing rights and obligations, or establish new rights and obligations. The revisions include updating references and removing obsolete effective dates and startup dates from existing Agency standards.

**DATES:** April 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** Press inquiries: Kevin Ropp, OSHA

Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999. General and technical information: Michael Seymour, OSHA Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1950. For additional copies of this **Federal Register** notice, contact the Office of Publications, OSHA, U.S. Department of Labor, Room N–3101, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1888. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Web site on the Internet at *http://www.osha.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor's strategic outcome goal 4.2 measures the Department's success in creating a regulatory structure that promotes compliance flexibility and reduces regulatory burdens. As part of this strategic goal, the Department of Labor is conducting an on-going review of its regulations to update non-substantive or nomenclature references in the Code of Federal Regulations (CFR). The Department is also publishing in the **Federal Register** a notice amending references in Employment Standards Administration and Mine Safety and Health Administration standards.

As part of this effort, OSHA, in reviewing its regulations, has found some errors, some incorrect references and some obsolete provisions. In this corrections and technical amendments document, OSHA is addressing those items. OSHA has made similar technical revisions in the past to correct errors. OSHA believes that this action will increase employee protection and facilitate employer compliance by improving employer and employee understanding of the affected provisions.

The revisions do not affect the substantive requirements or coverage of the standards involved, modify or revoke existing rights and obligations, or establish new rights and obligations. Therefore, the Agency has determined that these revisions do not require notice-and-comment rulemaking. The rule does not change employers' compliance costs. Employers, for example, are not required to purchase new equipment or acquire additional skills or expertise. Accordingly, OSHA concludes that no economic or regulatory flexibility analysis of this rule is necessary and certifies that the rule will not have a significant impact on a substantial number of small entities. Because this final rule does not affect the substantive requirements of the standards, the Department of Labor has determined that delaying the effective date of the rule is unnecessary and good cause exists under 5 U.S.C. 553 (b)(3) to make this rule effective immediately upon publication in the **Federal Register**.

## II. Summary and Explanation

With this rulemaking, OSHA is revising the following standards and regulations:

### *A. Effective Dates and Startup Dates*

In the safety standards for general industry (29 CFR part 1910), paragraph (a)(2) of § 1910.178 (''Powered industrial trucks'') refers to effective dates specified in paragraph (b) of former § 1910.182 (''Effective dates''). OSHA removed § 1910.182 during an earlier rulemaking, making this reference obsolete. (See 61 FR 9227.) Therefore, the Agency is removing the reference to § 1910.182(b) from § 1910.178(a)(2).

Several additional safety standards for general industry have provisions that contain references to expired effective dates, including: § 1910.266 (''Logging operations''), the entry entitled ''j. Effective date'' in the table of contents listed in paragraph (a), as well as paragraph (j) (''Effective date''); and the single-sentence standard, § 1910.441 (''Effective date''), that specifies the effective date for the general-industry diving standards in subpart T (''Commercial Diving Operations''). Accordingly, OSHA is removing: the entry ''j. Effective date'' in paragraph (a), as well as paragraph (j), from § 1910.266; and the one-sentence standard, § 1910.441, from subpart T.

The Agency notes that a number of provisions among OSHA's substance-specific standards for general industry (part 1910) contain expired effective dates and/or startup dates, including: Paragraph (p) of § 1910.95 (''Occupational noise exposure''); paragraph (n) of § 1910.134 (''Respiratory protection''); paragraph (f) of § 1910.1000 (''Air contaminants''); paragraph (o) of § 1910.1001 (''Asbestos''); paragraph (o) of § 1910.1017 (''Vinyl chloride''); paragraphs (s) and (u) of § 1910.1018 (''Inorganic arsenic''); paragraphs (p) and (r), and Section XIV (''Effective Date—Paragraph (P)'') of Appendix B (''Employee Standard Summary'') of § 1910.1025 (''Lead''); paragraph (m) of § 1910.1028 (''Benzene''); paragraph (o) of § 1910.1029 (''Coke oven emissions''); paragraphs (g)(2)(ii)(B) and (g)(2)(iii) of § 1910.1030 (''Bloodborne pathogens''); paragraph (m) of § 1910.1043 (''Cotton dust''); paragraph (s) of § 1910.1045 (''Acrylonitrile''); paragraph (m) of § 1910.1047 (''Ethylene oxide''); paragraph (p) of § 1910.1048 (''Formaldehyde''); paragraphs (p) and (r) of § 1910.1050 (''Methylenedianiline''); paragraph (n) of § 1910.1051 (''1,3-Butadiene''); paragraph (n) of § 1910.1052 (''Methylene chloride''); and paragraph (k) of § 1910.1450 (''Occupational exposure to hazardous chemicals in laboratories''). The Agency is removing these provisions from the respective standards because the effective and/or startup dates they contain in the standards are now fully effective and are no longer relevant for pending enforcement cases.

In part 1913 (''Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records''), paragraph (n) of § 1913.10 (''Rules of agency practice and procedure concerning OSHA access to employee medical records'') specifies an effective date that expired over 20 years ago. Accordingly, the Agency is removing paragraph (n) from § 1913.10.

Among the standards for shipyard employment (part 1915), paragraph (q) of § 1915.1001 (''Asbestos'') specifies an effective date and startup dates. These provisions of this standard are now fully effective, so OSHA is removing paragraph (q) from § 1915.1001.

The Agency also finds that the following provisions of part 1926 (''Safety and Health Regulations for Construction'') contain expired effective dates and/or startup dates: paragraphs (q) and (s) of § 1926.60 (''Methylenedianiline''), paragraphs (p) and (r), and Section XIV (''Effective Date—Paragraph (P)'') of Appendix B (''Employee Standard Summary'') of § 1926.62 (''Lead''); paragraph (q) of § 1926.1101 (''Asbestos''); and paragraph (p) of § 1926.1127 (''Cadmium''). With this rulemaking, OSHA is removing these paragraphs from the respective standards.

Subpart Y (''Diving'') of part 1926 contains a standard, § 1926.1092 (''Effective date''), that refers to an obsolete general industry standard (§ 1910.441; ''Effective date''). Accordingly, the Agency is removing § 1926.1092 from the diving standards for the construction industry.

A number of provisions in parts 1910, 1915, and 1926 refer to the effective date of a standard as a number of days after the date of publication in the **Federal Register** and not to a specific month,

day, and year. In this rulemaking, OSHA is also removing expired effective dates in this form.

*B. References to Former § 1910.20 (''Access to Employee Exposure and Medical Records'')*

In an earlier rulemaking (see 61 FR 9227), OSHA revised the designation of former § 1910.20 to § 1910.1020. However, this previous rulemaking did not revise references to § 1910.20 contained in various (usually recordkeeping) provisions of a number its standards and regulations.

For each of the following paragraphs in parts 1910 (''Occupational Safety and Health Standards'') and 1913 (''Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records''), OSHA is removing the reference to § 1910.20 and replacing it with a reference to the new designation, § 1910.1020: § 1910.95 (''Occupational noise exposure''), paragraph (m)(4); § 1910.120 (''Hazardous waste operations and emergency response''), paragraph (f)(8)(i); § 1910.440 (''Recordkeeping requirements''), paragraph (b)(2); § 1910.1001 (''Asbestos''), paragraphs (m)(3)(i), (m)(3)(iii), (m)(5)(ii), (m)(5)(iii), and (m)(6)(i); § 1910.1003 (''13 Carcinogens (4-nitrobiphenyl, etc.''), paragraph (g)(2)(ii); § 1910.1017 (''Vinyl chloride''), paragraphs (m)(2) and (m)(3); § 1910.1018 (''Inorganic arsenic''), paragraphs (q)(3)(ii) and (q)(4)(iv); § 1910.1025 (''Lead''), paragraphs (n)(4)(ii) and (n)(5)(iv); § 1910.1027 (''Cadmium''), paragraphs (m)(4)(iii)(H), (n)(1)(iii), (n)(3)(iii), (n)(5)(i), and (n)(6); § 1910.1029 (''Coke oven emissions''), paragraphs (m)(3)(ii) and (m)(4)(iv); § 1910.1030 (''Bloodborne pathogens''), paragraphs (h)(1)(i), (h)(1)(iv), (h)(3)(iii), and (h)(4)(i); § 1910.1043 (''Cotton dust''), paragraphs (k)(3)(ii) and (k)(4)(iv); § 1910.1044 (''1,2-Dibromo-3-chloropropane''), paragraphs (p)(3)(ii) and (p)(4)(iv); § 1910.1045 (''Acrylonitrile''), paragraphs (q)(4)(ii) and (q)(5)(iv); § 1910.1047 (''Ethylene oxide''), paragraphs (k)(2)(iii), (k)(3)(i), (k)(3)(iii), (k)(4)(ii), (k)(4)(iii), and (k)(5)(i); § 1910.1048 (''Formaldehyde''), paragraphs (o)(6)(ii) and (o)(6)(iii); § 1910.1050 (''Methylenedianiline''), paragraphs (n)(3)(i), (n)(3)(iii), (n)(4)(i), (n)(4)(iv), (n)(6)(ii), (n)(6)(iii), and (n)(7)(i); § 1910.1051 (''1,3-Butadiene''), paragraphs (m)(2)(iii), (m)(4)(iii), (m)(5)(ii), and (m)(6)(ii); and § 1913.10 (''Rules of agency practice and procedure concerning OSHA access to employee medical records''), paragraphs (b)(1), (b)(3), (b)(4), (d)(4)(i), and (e)(3).

OSHA is also revising the reference to § 1910.20 in several paragraphs of part 1915 (''Occupational Safety and Health Standards for Shipyard Employment''). These paragraphs are: § 1915.1001 (Asbestos), paragraphs (n)(2)(iii), (n)(3)(i), (n)(3)(iii), (n)(7)(ii), (n)(7)(iii), and (n)(8)(i).

A number of paragraphs in part 1926 (''Safety and Health Regulations for Construction'') also refer incorrectly to § 1910.20. Therefore, the Agency is revising these paragraphs to refer instead to § 1926.33, the construction standard that regulates access to employee exposure and medical records: § 1926.60 (''Methylenedianiline''), paragraphs (o)(4)(iii), (o)(5)(i), (o)(5)(iii), (o)(7)(ii), (o)(7)(iii), and (o)(8)(i); § 1926.62 (''Lead''), paragraphs (n)(1)(iii), (n)(2)(iv), and (n)(6)(iv); § 1926.800 (''Underground construction''), paragraph (j)(3); and § 1926.1101 (''asbestos''), paragraphs (n)(2)(iii), (n)(3)(i), (n)(3)(iii), (n)(7)(ii), (n)(7)(iii), and (n)(8)(i).

*C. Removal or Correction of Other Outdated Provisions and References*

1. Access to Employee Exposure and Medical Records (§ 1910.1020)

One of the trade-secret provisions of this standard, paragraph (f)(4)(v), specifies that health professionals, employees, or designated representatives who request access to trade-secret information from an employer must ''agree not to release the information * * * other than to OSHA, as provided in paragraph (f)(9) of this section * * *.'' However, paragraph (f)(9) addresses how the requesting party can obtain redress from OSHA if an employer denies access to trade-secret information, while paragraph (f)(7) of the standard discusses releasing trade-secret information to the Agency if the requesting party decides that a need to do so exists. Therefore, paragraph (f)(4)(v) of the standard should refer to paragraph (f)(7), not paragraph (f)(9), when addressing the release of trade-secret information to OSHA. By this rulemaking, the Agency is correcting this reference.

2. Cadmium (§ 1910.1027 and § 1926.1127)

Paragraph (q)(1) in each of OSHA's cadmium standards contains a reference to Appendix C. The Agency deleted Appendix C during an earlier rulemaking (see 63 FR 1152); therefore, it is removing existing paragraph (q)(1) from these standards.

3. Benzene (§ 1910.1028)

The last sentence in paragraph (n) of this standard states, ''The protocols for respiratory fit testing in Appendix E of this section are mandatory.'' However, the Agency removed Appendix E from this standard in a previous rulemaking (see 63 FR 1152). Therefore, OSHA is deleting this entire sentence from paragraph (n) of the standard.

4. Formaldehyde (§ 1910.1048)

Appendix A of the formaldehyde standard refers to Appendix E in the last sentence of the paragraph designated ''Respiratory Protection'' in the section titled ''Protective Equipment and Clothing.'' However, the Agency removed Appendix E from this standard in a previous rulemaking (see 63 FR 1152). Therefore, OSHA is deleting the reference to Appendix E from this paragraph and section of Appendix A.

5. Methylenedianiline (§ 1910.1050 and § 1926.60)

Paragraph (f)(8)(iii) of § 1926.60 reads, ''Maintain records of the corrective actions in accordance with paragraph (n) of this section.'' The reference paragraph in this provision should be paragraph (o) (''Recordkeeping''), not paragraph (n) (''Medical surveillance''). The Agency is revising the provision accordingly.

The last sentence in paragraph (q) of § 1910.1050 and paragraph (r) of § 1926.60 states, ''The protocols for respiratory fit testing in appendix E of this section are mandatory.'' However, the Agency removed Appendix E from both these standards in a previous rulemaking (see 63 FR 1296). Therefore, OSHA is deleting this entire sentence from paragraphs (q) and (r), respectively, of these standards.

6. 1,3–Butadiene (§ 1910.1051)

Paragraph (n) contains effective and start-up dates. The Agency is removing paragraph (n) from this standard because the start-up dates have expired. However, one start-up date is still current, paragraph (n)(2)(i), which requires employers to conduct initial monitoring within 60 days of introducing 1,3-Butadiene (BD) into the workplace. OSHA is preserving this requirement by adding a sentence to paragraph (d)(2)(i) that reads: ''The initial monitoring required under this paragraph shall be completed within 60 days of the introduction of BD into the workplace.''

7. Lead (§ 1926.62)

Paragraph (d)(2)(v)(F) of this standard specifies that, until employers perform exposure assessments according to

paragraph (d) of the standard, they must provide designated employees with interim protection, including ''training as required by paragraph (l)(2)(ii)(C) of this section, regarding the use of respirators[.]'' However, paragraph (l)(2)(iii) of this standard regulates training for the proper selection, fitting, use, and limitations of respirator use and there is no paragraph (l)(2)(ii)(C). Accordingly, the Agency is removing the reference to paragraph (l)(2)(ii)(C) in paragraph (d)(2)(v)(F) of the standard and replacing it with a reference to the correct reference, paragraph (l)(2)(iii) of the standard.

8. Structural Steel Assembly (§ 1926.754)

Section 1926.754 (c)(2), Slip resistance of metal decking, is a reserved section that has no text and therefore is being removed.

## III. Authority

**Authority:** Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651, 655, and 657); Section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704); Secretary of Labor's Order 5–2002 (67 FR 65008); 29 CFR part 1911; and the Administrative Procedures Act (5 U.S.C 553).

Jonathan L. Snare, Acting Assistant Secretary of Labor, U.S. Department of Labor, 200 Constitution Ave, NW., Washington, DC 20210 directed the preparation of this notice.

Signed at Washington, DC, this 3rd day of March, 2006.

**Jonathan L. Snare,**

*Acting Assistant Secretary of Labor.*

## List of Subjects

*29 CFR Part 1910*

Airborne lead; Blood lead; Blood-lead analysis; Coke-oven emissions; Construction; Effective date; Employee information; Exposure record; Fit-testing record; Formaldehyde; Initial exposure monitoring; Medical record; Methylenedianiline; Part 1910, Index; Recordkeeping; Respirators; Respiratory protection; Respirator training; Respirator selection; Startup date; Trade-secret information; 1,3–Butadiene; 13 Carcinogens.

*29 CFR Part 1913*

Record access; Effective date; Exposure record; Medical record; Startup date; Privacy.

*29 CFR Part 1915*

Asbestos; Effective date; Exposure record; Medical record; Respirators; Respiratory protection; Shipyards; Startup date.

*29 CFR Part 1926*

Airborne lead; Blood lead; Coke oven emissions; Construction; Effective date; Exposure record; Lead exposure; Medical record; Methylenedianiline; Recordkeeping; Respirator training; Startup date.

## Amendments to Standards

■ In accordance with Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657), Section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704), the Administrative Procedures Act (5 U.S.C. 553(b)(3)(B)), Secretary of Labor's Order No. 5–2002 (67 FR 65008), and 29 CFR 1911 as applicable, the Agency corrects 29 CFR parts 1908, 1910, 1913, 1915, 1917, 1918, and 1926 by making the following corrections and technical amendments:

## PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

### Part 1910 [Nomenclature change]

■ 1. In 29 CFR part 1910, remove the reference ''§ 1910.20'' and add, in its place, the reference ''§ 1910.1020'' in the following paragraphs:

■ a. § 1910.95(m)(4)
■ b. § 1910.120(f)(8)(i)
■ c. § 1910.440(b)(2)
■ d. § 1910.1001(m)(3)(i), (m)(3)(iii), (m)(5)(ii), (m)(5)(iii), and (m)(6)(i)
■ e. § 1910.1003(g)(2)(ii)
■ f. § 1910.1017(m)(2) introductory text and (m)(3)
■ g. § 1910.1018(q)(3)(ii) and (q)(4)(iv)
■ h. § 1910.1025(n)(4)(ii) and (n)(5)(iv)
■ i. § 1910.1027(m)(4)(iii)(H), (n)(1)(iii), (n)(3)(iii), (n)(5)(i), and (n)(6)
■ j. § 1910.1029(m)(3)(ii) and (m)(4)(iv)
■ k. § 1910.1030(h)(1)(i), (h)(1)(iv), (h)(3)(iii), and (h)(4)(i)
■ l. § 1910.1043(k)(3)(ii) and (k)(4)(iv)
■ m. § 1910.1044(p)(3)(ii) and (p)(4)(iv)
■ n. § 1910.1045(q)(4)(ii) and (q)(5)(iv)
■ o. § 1910.1047(k)(2)(iii), (k)(3)(i), (k)(3)(iii), (k)(4)(ii), (k)(4)(iii), and (k)(5)(i)
■ p. § 1910.1048(o)(6)(ii) and (o)(6)(iii)
■ q. § 1910.1050(n)(3)(i), (n)(3)(iii), (n)(4)(i), (n)(4)(iv), (n)(6)(ii), (n)(6)(iii), and (n)(7)(i)
■ r. § 1910.1051(m)(2)(iii), (m)(4)(iii), (m)(5)(ii), and (m)(6)(ii)

### Subpart G—Occupational Health and Environmental Control

■ 2. The authority citation for 29 CFR part 1910 subpart G is revised to read as follows:

**Authority:** Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 50017) as applicable; and 29 CFR part 1911.

#### § 1910.95 [Amended]

■ 3. In § 1910.95, paragraph (p) is removed.

### Subpart I—Personal Protective Equipment

■ 4. In 29 CFR part 1910, the authority citation for subpart I is revised to read as follows:

**Authority:** Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008) as applicable; and 29 CFR part 1911.

§§ 1910.132, 1910.134, and 1910.136 also issued under 29 CFR part 1911.

§§ 1910.133, 1910.135, and 1910.136 also issued under 29 CFR part 1911 and 5 U.S.C. 553.

#### § 1910.134 [Amended]

■ 5. In § 1910.134, paragraph (n) is removed and reserved.

### Subpart N—Materials Handling and Storage

■ 6. In 29 CFR part 1910, the authority citation for subpart N is revised to read as follows:

**Authority:** Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008) as applicable; and 29 CFR part 1911.

§§ 1910.176, 1910.177, 1910.178, 1910.179, 1910.180, 1910.181, and 1910.184 also issued under 29 CFR part 1911.

■ 7. In § 1910.178, paragraph (a)(2) is revised to read as follows:

#### § 1910.178 Powered industrial trucks.

(a) * * *

(2) All new powered industrial trucks acquired and used by an employer shall meet the design and construction requirements for powered industrial trucks established in the ''American National Standard for Powered Industrial Trucks, Part II, ANSI B56.1–1969'', which is incorporated by reference as specified in § 1910.6, except for vehicles intended primarily for earth moving or over-the-road hauling.

* * * * *

## Subpart R—Special Industries

■ 8. The authority citation for 29 CFR Part 1910 subpart R is revised to read as follows:

**Authority:** Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008) as applicable; and 29 CFR part 1911.

### § 1910.266 [Amended]

■ 9. In § 1910.266, paragraph (a), Table of Contents, the entry ''j. Effective date'' is removed, the entry ''k. Appendices'' is redesignated ''j. Appendices'', and the text of paragraph (j) is removed and paragraph (k) is redesignated as paragraph (j).

* * * * *

## Subpart T—Commercial Diving Operations

■ 10. The authority citation for 29 CFR part 1910 subpart T is revised to read as follows:

**Authority:** Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Sec. 107, Contract Work Hours and Safety Standards Act (the Construction Safety Act) (40 U.S.C. 333); Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008) as applicable; 29 CFR part 1911.

### § 1910.441 [Removed]

■ 11. Remove § 1910.441.

## Subpart Z—Toxic and Hazardous Substances

■ 12. The authority citation for 29 CFR part 1910 subpart Z is revised to read as follows:

**Authority:** Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 Fr 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008) as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, except those substances that have exposure limits listed in Tables Z–1, Z–2, and Z–3 of 29 CFR 1910.1000. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

§ 1910.1000, Tables Z–1, Z–2 and Z–3 also issued under 5 U.S.C. 553, § 1910.1000 Tables Z–1, Z–2, and Z–3 not issued under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, and cotton dust listings.

§ 1910.1001 also issued under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and 5 U.S.C. 553.

§ 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

§ 1910.1018, 1910.1029, and 1910.1200 are also issued under 29 U.S.C. 653.

### § 1910.1000 [Amended]

■ 13. In § 1910.1000, paragraph (f) is removed.

### § 1910.1001 [Amended]

■ 14. In § 1910.1001, paragraph (o) is removed, and paragraph (p) is redesignated paragraph (o).

### § 1910.1017 [Amended]

■ 15. In § 1910.1017, paragraph (o) is removed.

### § 1910.1018 [Amended]

■ 16. In § 1910.1018, paragraph (s) is removed, and paragraph (t) is redesignated paragraph (s) and paragraph (u) is removed.

### § 1910.1020 [Amended]

■ 17. In § 1910.1020, paragraph (f)(4)(v), remove the reference ''paragraph (f)(9)'' and add in its place, the reference ''paragraph (f)(7)''.

### § 1910.1025 [Amended]

■ 18. In § 1910.1025, paragraphs (p) and (r) are removed, and paragraph (q) is redesignated as paragraph (p).

■ 19. In § 1910.1025, Appendix B, section XIV. EFFECTIVE DATE—PARAGRAPH (p) is removed and section XV is redesignated section XIV.

### § 1910.1027 [Amended]

■ 20. In § 1910.1027, paragraph (q) is revised to read as follows:

### § 1910.1027 Cadmium.

* * * * *

(q) *Appendices.* Except where portions of appendices A, B, D, E, and F to this section are expressly incorporated in requirements of this section, these appendices are purely informational and are not intended to create any additional obligations not otherwise imposed or to detract from any existing obligations.

* * * * *

### § 1910.1028 [Amended]

■ 21. In § 1910.1028, paragraph (m) is removed and reserved, and paragraph (n) is revised to read as follows:

### § 1910.1028 Benzene.

* * * * *

(n) *Appendices.* The information contained in Appendices A, B, C, and D is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligations.

* * * * *

### § 1910.1029 [Amended]

■ 22. In § 1910.1029, paragraph (o) is removed and reserved.

### § 1910.1030 [Amended]

■ 23. In § 1910.1030, paragraph (g)(2)(ii)(B) is removed, and paragraph (g)(2)(ii)(C) is redesignated paragraph (g)(2)(ii)(B), and paragraph (g)(2)(iii) is removed and reserved.

### § 1910.1043 [Amended]

■ 24. In § 1910.1043, paragraph (m) is removed, and paragraphs (n) and (o) are redesignated paragraphs (m) and (n), respectively.

### § 1910.1045 [Amended]

■ 25. In § 1910.1045, paragraph (s) is removed and reserved.

### § 1910.1047 [Amended]

■ 26. In § 1910.1047, paragraph (m) is removed and reserved.

### § 1910.1048 [Amended]

■ 27. In § 1910.1048, paragraph (p) is removed.

■ 28. In § 1910.1048, Appendix A, the section entitled ''Protective Equipment and Clothing'', second paragraph entitled ''Respiratory Protection:'' is revised to read as follows:

### § 1910.1048 Formaldehyde.

* * * * *

## Appendix A to § 1910.1048—Substance Technical Guidelines for Formalin

* * * * *

*Respiratory Protection:* Use NIOSH-approved full facepiece negative pressure respirators equipped with approved cartridges or canisters within the use limitations of these devices. (Present restrictions on cartridges and canisters do not permit them to be used for a full workshift.) In all other situations, use positive pressure respirators such as the positive-pressure air purifying respirator or the self-contained breathing apparatus (SCBA). If you use a negative pressure respirator, your employer must provide you with fit testing of the respirator at least once a year.

* * * * *

### § 1910.1050 [Amended]

■ 29. In § 1910.1050, paragraph (p) is removed and reserved, paragraph (q) is revised to read as set forth below, and paragraph (r) is removed.

### § 1910.1050 Methylenedianiline.

* * * * *

(q) *Appendices.* The information contained in Appendices A, B, C, and D of this section is not intended, by itself, to create any additional obligations not otherwise imposed by this standard nor detract from any existing obligation.

* * * * *

**§ 1910.1051 [Amended]**

■ 30. In § 1910.1051, paragraph (d)(2)(i) is revised to read as set forth below, and paragraph (n) is removed and reserved.

**§ 1910.1051 1,3-Butadiene.**

* * * * *

(d) * * *

(2) Initial monitoring. (i) Each employer who has a workplace or work operation covered by this section, shall perform initial monitoring to determine accurately the airborne concentrations of BD to which employees may be exposed, or shall rely on objective data pursuant to paragraph (a)(2)(i) of this section to fulfill this requirement. The initial monitoring required under this paragraph shall be completed within 60 days of the introduction of BD into the workplace.

* * * * *

**§ 1910.1052 [Amended]**

■ 31. In § 1910.1052, paragraph (n) is removed and reserved.

**§ 1910.1450 [Amended]**

■ 32. In § 1910.1450, paragraph (k) is removed and reserved.

## PART 1913—RULES OF AGENCY PRACTICE AND PROCEDURE CONCERNING OSHA ACCESS TO EMPLOYEE MEDICAL RECORDS

■ 33. The authority citation for part 1913 is revised to read as follows:

**Authority:** Sec. 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 657); Sec. e, Privacy Act (5 U.S.C. 552a(e); 5 U.S.C. 301); Secretary of Labor's Order No. 8–76 (41 FR 25059), or 5–2002 (67 FR 65008) as applicable.

**§ 1913.10 [Amended]**

■ 34. Amend § 1913.10 in (b)(1), (b)(3), (b)(4), (d)(4)(i), and (e)(3) by removing the reference ''§ 1910.20'' and adding, in its place, the reference ''§ 1910.1020'', and by removing paragraph (n).

## PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

■ 35.The authority citation for part 1915 is revised to read as follows:

**Authority:** Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653,655,657), Secretary of Labor's Order No. 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017) or 5–2002 (67 FR 65008) as applicable; and 29 CFR part 1911.

**§ 1915.1001 [Amended]**

■ 36. Amend § 1915.1001 by removing the reference ''§ 1910.20'' and adding, in its place, the reference ''§ 1910.1020'' in paragraphs (n)(2)(iii), (n)(3)(i), (n)(3)(iii), (n)(7)(ii), (n)(7)(iii), and (n)(8)(i), and by removing paragraph (q).

## PART 1926—SAFETY AND HEALTH STANDARDS FOR CONSTRUCTION

### Part 1926 [Nomenclature change]

■ 37. In 29 CFR part 1926, remove the reference ''§ 1910.20'' and add, in its place, the reference ''§ 1926.33'' in the following places:

■ a. § 1926.60 (o)(4)(iii), (o)(5)(i), (o)(5)(iii), (o)(7)(ii), (o)(7)(iii), and (o)(8)(i).

■ b. § 1926.62 (n)(1)(iii), (n)(2)(iv), and (n)(6)(iv).

■ c. § 1926.800 (j)(3).

■ d. § 1926.1101 (n)(2)(iii), (n)(3)(i), (n)(3)(iii), (n)(7)(ii), (n)(7)(iii), and (n)(8)(i).

### Subpart D—Occupational Health and Environmental Controls

■ 38.The authority citation for 29 CFR part 1926 Subpart D is revised to read as follows:

**Authority:** Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008) as applicable; and 29 CFR part 1911.

**§ 1926.60 [Amended]**

■ 39. In § 1926.60 paragraph (f)(8)(iii) is revised, paragraphs (q) and (s) are removed, and paragraph (r) is redesignated as (q) and revised to read as follows:

**§ 1926.60 Methyenedianiline.**

* * * * *

(f) * * *

(8) * * *

(iii) Maintain records of the corrective actions in accordance with paragraph (o) of this section.

* * * * *

(q) *Appendices.* The information contained in appendices A, B, C, and D of this section is not intended, by itself, to create any additional obligations not otherwise imposed by this standard nor detract from any existing obligation.

* * * * *

**§ 1926.62 [Amended]**

■ 40. In § 1926.62, paragraph (d)(2)(v)(F) is revised, paragraphs (p) and (r) are removed, and paragraph (q) is redesignated as paragraph (p).:

**§ 1926.62 Lead.**

* * * * *

(d) * * *

(2) * * *

(v) * * *

(F) Training as required under paragraph (l)(1)(i) of this section regarding 29 CFR 1926.59, Hazard Communication; training as required under paragraph (1)(2)(iii) of this section, regarding use of respirators; and training in accordance with 29 CFR 1926.21, Safety training and education.

* * * * *

■ 41. In § 1926.62, Appendix B, paragraph XIV. EFFECTIVE DATE—Paragraph (P) is removed, and paragraph XV is redesignated paragraph XIV.

### Subpart R—Steel Erection

■ 42. The authority citation for 29 CFR part 1926 Subpart R is revised to read as follows:

**Authority:** Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Sec. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 3–2000 (65 FR 50017), No. 5–2002 (67 FR 65008), and 29 CFR part 1911.

**§ 1926.754 [Amended]**

■ 43. In § 1926.754, paragraph (c) is revised to read as follows:

**§ 1926.754 Structural steel assembly.**

* * * * *

(c) *Walking/working surfaces—shear connectors and other similar devices.* (1) *Tripping hazards.* Shear connectors (such as headed steel studs, steel bars or steel lugs), reinforcing bars, deformed anchors or threaded studs shall not be attached to the top flanges of beams, joists or beam attachments so that they project vertically from or horizontally across the top flange of the member until after the metal decking, or other walking/working surface, has been installed.

(2) *Installation of shear connectors on composite floors, roofs and bridge decks.* When shear connectors are used in construction of composite floors, roofs and bridge decks, employees shall lay out and install the shear connectors after the metal decking has been installed, using the metal decking as a

working platform. Shear connectors shall not be installed from within a controlled decking zone (CDZ), as specified in § 1926.760(c)(8).

* * * * *

## Subpart Y — Diving

■ 44. The authority citation for 29 CFR part 1926, Subpart Y, is revised to read as follows:

**Authority:** Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Sec. 107, Contract Work Hours and Safety Standards Act (the Construction Safety Standards Act) (40 U.S.C. 333); Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 3–2000 (65 FR 50017) or 5–2002 (67 FR 65008) as applicable; and 29 CFR part 1911.

### § 1926.1092 [Removed]

■ 45. Section 1926.1092 is removed.

## Subpart Z—Toxic and Hazardous Substances

■ 46. The authority citation for 29 CFR part 1926 subpart Z is revised to read as follows:

**Authority:** Sec. 107, Contract Work Hours and Safety Standards Act (the Construction Safety Standards Act) (40 U.S.C. 333); Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 11), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008) as applicable; and 29 CFR part 1911.

§ 1926.1102 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

### § 1926.1101 [Amended]

■ 47. In § 1926.1101, paragraph (q) is removed.

### § 1926.1127 [Amended]

■ 48. In § 1926.1127, paragraph (p) is removed and reserved, paragraph (q)(1) is removed, and paragraph (q)(2) is redesignated paragraph (q) and revised to read as follows:

### § 1926.1127 Cadmium.

* * * * *

(q) *Appendices*. Except where portions of appendices A, B, D, E, and F to this section are expressly incorporated in requirements of this section, these appendices are purely informational and are not intended to create any additional obligations not otherwise imposed or to detract from any existing obligations.

* * * * *

[FR Doc. 06–3042 Filed 3–31–06; 8:45 am]

BILLING CODE 4510–26–P

Federal Register

Monday,
April 3, 2006

# Part V

# Department of Transportation

## Federal Aviation Administration

## 14 CFR Part 121

## Fire Penetration Resistance of Thermal Acoustic Insulation Installed on Transport Category Airplanes; Proposed Rule

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 121**

**[Docket No.: FAA–2006–24277; Amendment No. 121–323]**

**RIN 2120–AI75**

## Fire Penetration Resistance of Thermal Acoustic Insulation Installed on Transport Category Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to extend, by 12 months, the date for operators to comply with the fire penetration resistance requirements of thermal/acoustic insulation used in transport category airplanes manufactured after September 2, 2007. This extension is from September 2, 2007 to September 2, 2008. This action is necessary to allow airframe manufacturers enough time, after getting an acceptable certification test facility, to select and certificate appropriate installations.

**DATES:** Send your comments by June 2, 2006.

**ADDRESSES:** You may send comments to Docket No. FAA–2006–24277 using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail*: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax*: 1–202–493–2251.
- *Hand Delivery*: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

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

**FOR FURTHER INFORMATION CONTACT:** Jeff Gardlin, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2136, facsimile (425) 227–1149, e-mail: *jeff.gardlin@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

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

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

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

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

### Proprietary or Confidential Business Information

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

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

### Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

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

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

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

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

### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs,

describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft. This regulation is within the scope of that authority, because it prescribes new safety standards for the design of transport category airplanes.

**Background**

We issued Amendment 121–301 on July 31, 2003, to mandate new flammability requirements for thermal/acoustic insulation installed in the fuselage of transport category airplanes. This amendment contained requirements applicable to newly manufactured airplanes, as well as airplanes already in service. The requirements established new standards for flame propagation and flame penetration resistance. We are proposing to extend the compliance date for the flame penetration requirements of the rule applicable to newly manufactured airplanes. The compliance date would be extended by 12 months from September 2, 2007, to September 2, 2008.

**Previous Rulemaking**

On September 20, 2000, we published an NPRM to upgrade the flammability and fire protection standards for thermal/acoustic insulation installed in transport category airplanes. The NPRM contained a provision for newly manufactured airplanes entering 14 CFR part 121 service to require thermal/acoustic insulation installed in the lower half of the fuselage to provide flame penetration resistance as required in § 25.856(b). The new test method required by § 25.856(b) involves the use of an oil burner similar to those used in other test methods already required in part 25. The requirement raises the level of safety by providing additional time for evacuation in the event of a post-crash fire.

There were many comments on the proposal. Some commenters believed it was too stringent, and some commenters stated it was not stringent enough. Commenters also discussed the compliance date for newly manufactured airplanes, with a similar mixture of those favoring a longer compliance date and those suggesting a shorter compliance date. Several commenters addressed the cost of this provision and felt it was underestimated. Two commenters proposed the objective of the requirement, *i.e.*, increasing the time for evacuation, be the basis of the requirement rather than the fire safety performance of thermal/acoustic insulation. We carefully considered all comments received and the requirement was adopted in the final rule, published on July 31, 2003 (68 FR 45046), in new §§ 25.856(b) and 121.312(e)(3). Section 121.312(e)(3) applies to airplanes manufactured after September 2, 2007. The goal of the part 121 provision was to raise the level of safety of airplanes entering commercial service faster than a new airworthiness standard alone would provide.

**Basis of This Proposal**

Following publication of the final rule, and the development of the associated Advisory Circular (AC) 25.856–2, we continued to conduct comparative testing with industry to refine the test method. During this testing, we found that certain elements of the test equipment (specifically a fuel nozzle used in the oil burner) were not standardized. Although the parts were ostensibly the same, and so marked, there were design differences that led to different test results at different facilities. The fuel nozzle is used commercially in home heating applications where the design differences are not significant. However, for the FAA certification test, the differences are significant.

To ensure a standardized configuration, the FAA William J. Hughes Technical Center developed a detailed test method and equipment configuration. These were based on the procedures and equipment used at the Technical Center and were intended to ensure the test method was reproducible and repeatable. We recognized the fuel nozzle was an important element of the test setup and procured and distributed multiple, apparently identical nozzles to other test facilities for their use. We conducted comparative tests with multiple test facilities through the International Aircraft Materials Fire Test Working Group. Based on this work, the test method and equipment was finalized.

During the development of the test method, materials under consideration tended either to provide flame penetration resistance that significantly exceeded the requirement, or provide little penetration resistance. The materials we evaluated were not just barely passing the standard. In retrospect, the lack of such materials tended to mask any differences in test facility performance. On deeper investigation of the effect of the nozzle on the test results, we realized there were potential differences in the flow of air through the test burner that could also lead to disparate results from one test facility to another. These differences in airflow were likely obscured by the material performance and the effects of the fuel nozzle originally used. As airframe manufacturers began to develop design solutions to comply with the requirement, they developed insulation materials and installation methods that were optimized for weight and thermal/acoustic performance, while meeting the burnthrough standard. The effect of this optimization was to bring the burnthrough performance very close to the pass/fail limit of the standard and the impact of the nozzle became much greater. Thus, the same insulation material could pass the test at the Technical Center but fail at the manufacturers' test facilities. This was an unacceptable situation for both the FAA and the manufacturers and led to a significant program to identify why this was occurring.

In order to substantiate an installation for approval in accordance with § 25.856(b), there are essentially 3 steps required. First, a suitable material system needs to be identified and qualified (shown to pass the required test). Second, appropriate installation methods must be developed and qualified (the materials, when installed using these methods, must be shown to pass the test). Finally, the actual design data must be generated, once the materials and installation methods have been proven. The first two steps are often sequential, since the appropriate installation methods may be dictated by the type of materials used. However, in some cases, the first two steps could take place simultaneously, or essentially so. This is because the FAA has identified numerous acceptable installation methods in Advisory Circular 25.856–2, and these can be used without further qualification. In addition, some installation approaches are not specific to particular material types.

When we issued the final rule, we considered four years sufficient, but not generous, to design and implement into production installations that meet the fire penetration requirements. Unfortunately, identification of the equipment issues consumed a significant portion of the 4 year compliance time. While this primarily affected the selection of insulation materials, it also had the effect of delaying identification of suitable installation methods, and consequently, developing specific designs. As

discussed in the NPRM and final rule implementing the new requirements, the installation methodology for thermal/acoustic insulation is critical in assuring the flame resistance of the materials actually provides a benefit. If the installation does not enable the insulation to stay in place in a post-crash fire, the material cannot provide a barrier to prevent fire entry into occupied areas.

Although the rule applies to operators, the practical effect is that airframe manufacturers must develop suitable designs. We do not expect operators to demonstrate compliance with the fire penetration requirements of the final rule independently. Sometimes, the existing installation methods are adequate, but for many applications, the airframe manufacturer must change the installation approach to accommodate the specific materials chosen. Since the thermal/acoustic insulation is typically installed in the lower half of the airplane very early in the airplane production process, the airframe manufacturer must anticipate well in advance which serial production airplane must be the first to comply with the requirement. Because the test apparatuses have not been fully qualified up to now, the date by which changes to designs needed to be incorporated in production has passed without the necessary testing completed. This means the current compliance date of September 2, 2007, is not achievable unless manufacturers use materials that are heavier than we anticipated would be necessary, and disrupt production schedules and plans to incorporate these materials into current production. The adverse economic impact of this effort was not considered during the initial rulemaking.

While problems with the test equipment have resulted in delays to certification and qualification of improved materials and installations, the acceptable installation methods identified in AC 25.856–2 will greatly reduce the need to qualify installations separately. Thus, we do not consider the full 4-year compliance time cycle should be restarted. While optimized materials are not qualified as yet, the FAA is actively working with airframe manufacturers to minimize the time required for this step. In most cases, airframe manufacturers have identified the primary materials they intend to use, assuming certification tests are successful. We have considered the ramifications of the delays because of the test equipment and have determined that the principal impact is on the detailed design changes. Ideally these would have already started. However, considering the effect on the schedule of the burner issues, we understand that manufacturers are approximately 12 months behind on making design changes. Therefore, a 12-month extension from September 2, 2007, would enable airframe manufacturers to implement the necessary changes into production. By identifying this extension now, the manufacturers can plan the necessary design and certification actions and avoid taking extraordinary and costly measures to attempt to satisfy the existing compliance date.

This amendment delays an improvement in safety because of unforeseen circumstances. This delay in the compliance date means that a certain number of additional airplanes will enter the fleet that do not meet the flame penetration resistance requirements of § 25.856(b) later than originally anticipated. There are four airframe manufacturers delivering affected airplanes to the United States. We expect these manufacturers to implement compliant installations at the earliest opportunity, which will likely be before the new compliance date. Since the benefits of this provision accumulate as complying airplanes enter the fleet, the benefits will be delayed, but will ultimately be realized. However, there is no reduction to the current safety standard because of this amendment.

**Paperwork Reduction Act**

There are no new requirements for information collection associated with this amendment.

**International Compatibility**

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

**Executive Order 12866 and DOT Regulatory Policies and Procedures**

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. Our assessment of this proposal indicates that its economic impact is minimal. Since its costs and benefits do not make it a ''significant regulatory action'' as defined in the Order, we have not prepared a ''regulatory impact analysis.'' Similarly, we have not prepared a ''regulatory evaluation,'' which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory and Policies and Procedures. We do not need to do the latter analysis where the economic impact of a proposal is minimal.

**Economic Assessment, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only on a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this NPRM.

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposal does not warrant a full evaluation, this order permits a statement to that effect. This statement now follows.

A one-year postponement of the new thermal acoustic insulation standards would spare manufacturers from an additional setup cost of slightly more than $50 million at an expected societal loss of $14 million in benefits. This substantial difference between the cost of compliance and expected benefits may run counter to expectations. The improved flammability standards for thermal/acoustic insulation regulatory

evaluation (July, 2002) estimated the new insulation requirements will produce present value benefits of $222.6 million with present value costs of $108.4 million. The benefit/cost delay dichotomy is because of substantial setup costs and a relatively short postponement of benefits.

Nearly half of the regulatory evaluation estimated $108 million present value costs are the setup costs ($51.1 million in present value), which are incurred in the two years before installing the improved insulation on new production airplanes. These set-up costs are because of configuration management, or the cost resulting from engineering time to fully effect changes in airplane configuration—such as fully accounting for all parts, tools, and shop manual changes. To be in compliance with the new requirements the industry would have to install different insulation for one year, before lighter weight insulation becomes fully available. Two different insulation materials require configuration management costs to double.

With the codification of this proposed rule, society would lose one year of additional safety benefits. For that year new production airplanes would be produced at today's existing level of fire protection, rather than to the improved level of protection. Based on the 2002 regulatory evaluation, the one-year loss of benefit equals $14 million in present value. We estimate the one-year loss in benefit based on the 2002 final thermal acoustic regulatory evaluation. In that evaluation, the present-value benefits equals $222.6 million. The loss of one year of these benefits equals the first year of airplane deliveries divided by the total deliveries (476/7702) multiplied by $222.6 million, or approximately $14 million.

The FAA has, therefore, determined this rulemaking action is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures. In addition, the FAA has determined that this rulemaking action: (1) Would not have a significant economic impact on a substantial number of small entities; (2) would not affect international trade; and (3) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

**Regulatory Flexibility Determination**

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

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing additional configuration management cost. While these manufacturers are not small entities, the small entity operators are expected to save fuel burn expense, as the one-year interim fix insulation is heavier. Thus, this rule is cost relieving and does not impose a significant economic impact on a substantial number of small entities.

Consequently, the FAA certifies the rulemaking action would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

**International Trade Impact Assessment**

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that these international standards be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking action and has determined that it provides the same cost relief to domestic and international entities and thus has a neutral trade impact.

**Unfunded Mandate Assessment**

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

This action does not contain such a mandate. The requirements of Title II do not apply.

**Executive Order 13132, Federalism**

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government and therefore would not have federalism implications

**Regulations Affecting Intrastate Aviation in Alaska**

Section 1205 of the FAA Reauthorization Act of 1996 (119 Sat. 3213) requires the Administrator, when modifying regulations in title 14 of the CFR in manner affecting intrastate aviation in Alaska, to consider the extend to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of newly manufactured transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification of applying the proposed rule differently in intrastate operations in Alaska.

**Environmental Analysis**

Federal Aviation Administration Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act without extraordinary circumstances. The FAA has determined this proposed

rulemaking action qualifies for the categorical exclusion identified in paragraph 3f and involves no extraordinary circumstances.

**Regulations That Significantly Affect Energy Supply, Distribution, or Use**

The FAA has analyzed this proposed rulemaking under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

**Lists of Subjects**

*14 CFR Part 121*

Aircraft, Aviation safety.

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 121 of Title 14, Code of Federal Regulations, as follows:

## PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. Amend § 121.312 by revising paragraph (e)(3) to read as follows:

**§ 121.312 Materials for compartment interiors.**

* * * * *

(e) Thermal/acoustic insulation materials. For transport category airplanes type certificated after January 1, 1958:

* * * * *

(3) For airplanes with a passenger capacity of 20 or greater, manufactured after September 2, 2008, thermal/acoustic insulation materials installed in the lower half of the fuselage must meet the flame penetration resistance requirements of § 25.856 of this chapter, effective September 2, 2003.

Issued in Washington, DC, on March 27, 2006.

**Dorenda D. Baker,**

*Acting Director, Aircraft Certification Service.*

[FR Doc. E6–4791 Filed 3–31–06; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Monday,
April 3, 2006

# Part VI

# The President

**Proclamation 7992—Cancer Control Month, 2006**

**Proclamation 7993—National Child Abuse Prevention Month, 2006**

**Proclamation 7994—National Donate Life Month, 2006**

Federal Register
Vol. 71, No. 63
Monday, April 3, 2006

# Presidential Documents

**Title 3—**

## The President

**Proclamation 7992 of March 29, 2006**

## Cancer Control Month, 2006

**By the President of the United States of America**

**A Proclamation**

During National Cancer Control Month, we continue the fight against cancer and work to reduce the risk of this deadly disease among our citizens.

Cancer survival rates are increasing, with approximately 10 million survivors in the United States. New understanding of diseases, better diagnostic tools, and innovative treatments help provide hope and healing to those who have been diagnosed with cancer. Across our country, cancer patients are living longer and fuller lives.

Despite these advances, cancer is still the second leading cause of death in our country, and some cancers, such as breast, prostate, lung, leukemia, and melanoma, continue to be too prevalent. By increasing public awareness and encouraging people to take appropriate steps to protect themselves, we can help prevent certain types of cancer. Individuals can reduce the risk of developing the disease by avoiding tobacco and excessive alcohol and by making healthy lifestyle choices. These include eating well, exercising regularly, and avoiding significant weight gain. I also encourage all Americans to get regular preventive screenings and speak with a health care provider about additional ways to reduce the risk of developing cancer.

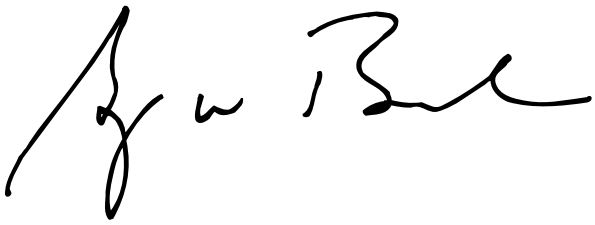
My Administration is dedicated to furthering our progress in the fight against cancer. We lead the world in cutting-edge medical research, and I have requested $5.9 billion in my fiscal year 2007 Budget for cancer-related activities within the Department of Health and Human Services. America will continue to aggressively fight cancer, encourage innovative research, and spread hope to those affected.

As we observe Cancer Control Month, I commend the strength and courage of cancer survivors, whose perseverance is an inspiration to all Americans. Our Nation is grateful for the generosity and skill of our medical professionals. These healers, along with the loving family members and friends of cancer patients, reflect the compassionate spirit of our people and help build a healthier future for our citizens. Cancer can be prevented, treated, and defeated, and we will continue to strive to reach the day when the battle to beat cancer has been won.

In 1938, the Congress of the United States passed a joint resolution (52 Stat. 148; 36 U.S.C. 103) as amended, requesting the President to issue an annual proclamation declaring April as ''Cancer Control Month.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim April 2006 as Cancer Control Month. I encourage citizens, government agencies, private businesses, nonprofit organizations, and other interested groups to join in activities that will increase awareness of how to prevent and control cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of March, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 06–3234
Filed 3–31–06; 8:45 am]
Billing code 3195–01–P

# Presidential Documents

**Proclamation 7993 of March 29, 2006**

## National Child Abuse Prevention Month, 2006

**By the President of the United States of America**

**A Proclamation**

Our society has a responsibility to protect our children and help them thrive. During National Child Abuse Prevention Month, we underscore our strong commitment to preventing child abuse and neglect and to ensuring that all children have the opportunity to grow up in safe and nurturing environments.

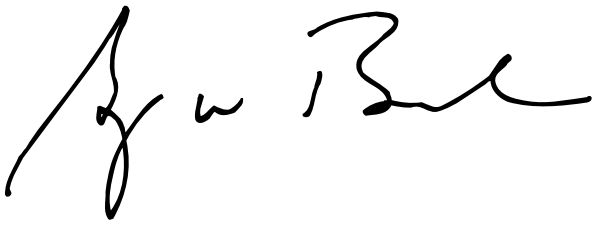
Parents hold the primary responsibility for a child's health and well-being and provide a foundation of love and support for their children. Parents are not alone as they work to keep their children safe. Helping children requires a commitment from other family members, as well as individuals and organizations in every community. Educators, concerned citizens, faith-based and community organizations, and public officials all have vital roles in protecting our children and supporting families. When children are surrounded by positive relationships and experiences, they are more likely to grow into confident and caring adults.

My Administration remains dedicated to protecting our youth from child abuse and neglect. The Federal Interagency Workgroup on Child Abuse and Neglect, led by the Department of Health and Human Services, provides a forum for Federal agencies to share information and make policy and program recommendations regarding the prevention, intervention, and treatment of child abuse and neglect. Through the National Child Abuse Prevention Initiative, my Administration is partnering with organizations across our country to promote the well-being of children and families and to assist efforts to eradicate abuse.

The Department of Health and Human Services' Administration for Children and Families hosts the National Clearinghouse on Child Abuse and Neglect Information website at www.nccanch.acf.hhs.gov, which offers more information on how to prevent, recognize, and report signs of child abuse. By working together to provide America's young people the love, guidance, and protection they need, we can help protect our youth from abuse and give them the opportunity to achieve their dreams.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2006 as National Child Abuse Prevention Month. I encourage all citizens to protect our children and help build strong communities where individuals, families, and children are valued and supported.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of March, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 06–3235
Filed 3–31–06; 8:45 am]
Billing code 3195–01–P

# Presidential Documents

**Proclamation 7994 of March 29, 2006**

## National Donate Life Month, 2006

**By the President of the United States of America**

**A Proclamation**

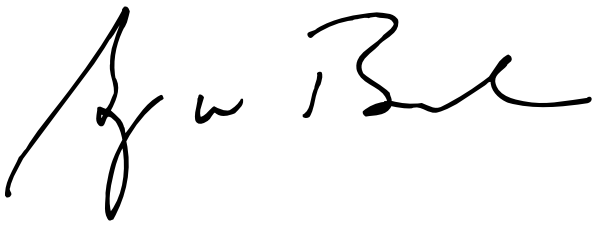
National Donate Life Month is an opportunity to celebrate the tremendous generosity of those who have saved lives by becoming organ, tissue, marrow, and blood donors and to encourage more Americans to follow their fine example.

Last year, more than 28,000 organ transplants took place in the United States—more than at any other time in history. Despite this progress, more than 90,000 of our fellow citizens remain on a waiting list for a donation, and many lives are lost each year while waiting for organ transplants. Through programs like the Workplace Partnership for Life, sponsored by the Department of Health and Human Services, my Administration remains committed to supporting organ, marrow, tissue, and blood donations. As public and private organizations work together, we will educate more Americans about the importance of giving life.

During National Donate Life Month, I urge more Americans to make the decision to donate the gift of life. Individuals can learn more about becoming an organ and tissue donor at www.organdonor.gov. By saying yes to organ and tissue donation on their driver's licenses, adding their name to donor registries, or talking about their decision with family and friends, citizens help save lives and contribute to a more compassionate and hopeful society.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2006 as National Donate Life Month. I call upon health care professionals, volunteers, educators, government agencies, faith-based and community groups, and private organizations to help raise awareness about the urgent need for organ and tissue donors throughout our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of March, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 06–3236

Filed 3–31–06; 8:45 am]

Billing code 3195–01–P

# Reader Aids

**Federal Register**

Vol. 71, No. 63

Monday, April 3, 2006

## CUSTOMER SERVICE AND INFORMATION

| | |
|---|---|
| **Federal Register/Code of Federal Regulations** | |
| General Information, indexes and other finding aids | **202–741–6000** |
| **Laws** | **741–6000** |
| **Presidential Documents** | |
| Executive orders and proclamations | **741–6000** |
| **The United States Government Manual** | **741–6000** |
| **Other Services** | |
| Electronic and on-line services (voice) | **741–6020** |
| Privacy Act Compilation | **741–6064** |
| Public Laws Update Service (numbers, dates, etc.) | **741–6043** |
| TTY for the deaf-and-hard-of-hearing | **741–6086** |

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## FEDERAL REGISTER PAGES AND DATE, APRIL

16477–16690 ..... 3

## CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT APRIL 3, 2006

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Northeastern United States fisheries—

Atlantic herring; published 3-3-06

Atlantic mackerel, squid, and butterfish; published 3-2-06

West Coast States and Western Pacific fisheries—

Guam longline fishing; prohibited area; published 3-3-06

Sablefish; published 3-2-06

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

Virginia; published 3-3-06

Air quality planning purposes; designation of areas:

California; published 2-1-06

**FEDERAL COMMUNICATIONS COMMISSION**

Digital television stations; table of assignments:

Pennsylvania; published 2-22-06

Radio stations; table of assignments:

Florida; published 3-15-06

Illinois; published 3-15-06

Indiana and Illinois; published 3-15-06

Ohio; published 3-15-06

Texas; published 3-15-06

Virginia and West Virginia; published 3-15-06

Washington; published 3-15-06

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Animal drugs, feeds, and related products:

Gentamicin sulfate, betamethasone valerate, clotrimazole ointment; technical amendment; published 4-3-06

**LABOR DEPARTMENT**

Technical amendments; published 4-3-06

**LABOR DEPARTMENT**

**Mine Safety and Health Administration**

Technical amendments; published 4-3-06

**LABOR DEPARTMENT**

**Occupational Safety and Health Administration**

Technical amendments; published 4-3-06

**LABOR DEPARTMENT**

**Wage and Hour Division**

Technical amendments; published 4-3-06

**PRESIDIO TRUST**

Management of Presidio; general provisions, etc.; published 3-2-06

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Boeing; published 2-27-06

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Plant-related quarantine, domestic:

Mediterranean fruit fly; comments due by 4-14-06; published 2-13-06 [FR 06-01302]

**AGRICULTURE DEPARTMENT**

**Commodity Credit Corporation**

United States Warehouse Act:

Cotton loans; comments due by 4-14-06; published 2-13-06 [FR 06-01284]

**AGRICULTURE DEPARTMENT**

**Forest Service**

Oil and gas operations:

Onshore Federal and Indian oil and gas leases; approval of operations (Order No.1); comments due by 4-12-06; published 3-13-06 [FR 06-02371]

**AGRICULTURE DEPARTMENT**

**Farm Service Agency**

United States Warehouse Act:

Cotton loans; comments due by 4-14-06; published 2-13-06 [FR 06-01284]

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Atlantic highly migratory species—

Atlantic bluefin tuna; comments due by 4-11-06; published 2-24-06 [FR 06-01715]

Northeastern United States fisheries—

Atlantic sea scallop; comments due by 4-14-06; published 3-30-06 [FR 06-03039]

Northeast multispecies; comments due by 4-12-06; published 3-13-06 [FR 06-02387]

Summer flounder, scup and black sea bass; comments due by 4-11-06; published 3-27-06 [FR E6-04403]

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs:

Ambient air quality standards, national—

Particulate matter; comments due by 4-10-06; published 2-9-06 [FR E6-01798]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Arizona; comments due by 4-13-06; published 3-14-06 [FR 06-02429]

Air quality implementation plans; approval and promulgation; various States:

Alabama; comments due by 4-10-06; published 3-9-06 [FR 06-02183]

Texas; comments due by 4-10-06; published 3-10-06 [FR 06-02316]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Boscalid; comments due by 4-10-06; published 2-8-06 [FR 06-01170]

Imazethapyr; comments due by 4-10-06; published 2-8-06 [FR 06-01036]

Solid waste:

State underground storage tank program approvals—

Indiana; comments due by 4-11-06; published 3-22-06 [FR E6-04145]

Toxic substances:

Chemical imports and exports; export notification reporting requirements; comments due by 4-10-06; published 2-9-06 [FR E6-01797]

Lead; renovation, repair, and painting program; hazard exposure reduction; comments due by 4-10-06; published 1-10-06 [FR 06-00071]

Economic analysis; comments due by 4-10-06; published 3-2-06 [FR E6-02940]

**FEDERAL COMMUNICATIONS COMMISSION**

Common carrier services:

Customer proprietary network information; comments due by 4-14-06; published 3-15-06 [FR 06-02423]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Food additives:

Direct food additives—-

Glycerides and polyglycides; comments due by 4-12-06; published 3-13-06 [FR 06-02354]

Medical devices:

Immunology and microbiology devices—

Herpes simplex virus (Types 1and 2) serological assays; reclassification; comments due by 4-10-06; published 1-9-06 [FR 06-00173]

**HOMELAND SECURITY DEPARTMENT**

**Coast Guard**

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Commencement Bay, Tacoma, WA; Middle Waterway EPA superfund cleanup site; comments due by 4-12-06; published 3-13-06 [FR E6-03534]

Regattas and marine parades:

Maryland Swim for Life; comments due by 4-10-06; published 2-9-06 [FR E6-01740]

**INTERIOR DEPARTMENT**

**Land Management Bureau**

Oil and gas operations:

Onshore Federal and Indian oil and gas leases; approval of operations (Order No.1); comments due by 4-12-06; published 3-13-06 [FR 06-02371]

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Endangered and threatened species

Critical habitat designations—

White sturgeon; Kootenai River population; comments due by 4-10-06; published 2-8-06 [FR 06-01091]

Endangered and threatened species:

Findings on petitions, etc.—

Island marble butterfly; comments due by 4-14-06; published 2-13-06 [FR E6-01930]

Polar bear; comments due by 4-10-06; published 2-9-06 [FR 06-01226]

Gray wolf; Northern Rocky Mountain population; comments due by 4-10-06; published 2-8-06 [FR 06-01102]

**INTERIOR DEPARTMENT**

**Minerals Management Service**

Royalty management:

Indian oil valuation; comments due by 4-14-06; published 2-13-06 [FR 06-01285]

**LABOR DEPARTMENT**

**Employment and Training Administration**

Aliens; permanent employment in U.S.; labor certification:

Fraud and abuse incentives and opportunities reduction; program integrity enhancement; comments due by 4-14-06; published 2-13-06 [FR 06-01248]

**SECURITIES AND EXCHANGE COMMISSION**

Investment companies:

Redeemable securities; mutual fund redemption fees; comments due by 4-10-06; published 3-7-06 [FR E6-03164]

Securities, etc:

Executive and director compensation, etc.; disclosure requirements; comments due by 4-10-06; published 2-8-06 [FR 06-00946]

**TRANSPORTATION DEPARTMENT**

Workplace drug and alcohol testing programs:

Substance abuse professional; credential requirement; comments due by 4-10-06; published 3-10-06 [FR E6-03334]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Airbus; comments due by 4-10-06; published 3-9-06 [FR E6-03345]

Boeing; Open for comments until further notice; published 8-16-04 [FR 04-18641]

Bombardier; comments due by 4-13-06; published 3-14-06 [FR E6-03567]

British Aerospace; comments due by 4-10-06; published 2-9-06 [FR 06-01149]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 4-13-06; published 3-14-06 [FR E6-03563]

McDonnell Douglas; comments due by 4-10-06; published 3-14-06 [FR E6-03565]

Pacific Aerospace Corp. Ltd.; comments due by 4-12-06; published 3-10-06 [FR E6-03442]

Raytheon; comments due by 4-10-06; published 2-6-06 [FR E6-01562]

RECARO Aircraft Seating GmbH & Co.; comments due by 4-10-06; published 2-8-06 [FR E6-01688]

Rolls-Royce plc; comments due by 4-10-06; published 2-9-06 [FR 06-01145]

Turbomeca S.A.; comments due by 4-10-06; published 3-9-06 [FR E6-03352]

Airworthiness standards:

Special conditions—

Cessna Aircraft Co. Model 208B airplanes; comments due by 4-14-06; published 3-15-06 [FR 06-02491]

Class E airspace; comments due by 4-13-06; published 2-27-06 [FR 06-01761]

**TRANSPORTATION DEPARTMENT**

**Maritime Administration**

Maritime Security Program:

Maintenance and Repair Reimbursement Pilot Program; comments due by 4-10-06; published 2-8-06 [FR E6-01691]

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

Civil monetary penalties; inflation adjustment; comments due by 4-10-06; published 3-9-06 [FR E6-03307]

Motor vehicle safety standards:

Air brake systems; comments due by 4-14-06; published 12-15-05 [FR 05-24070]

**TREASURY DEPARTMENT**

Practice and procedure:

Practice before Internal Revenue Service; public hearing; comments due by 4-10-06; published 2-8-06 [FR 06-01106]

## 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/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

**H.R. 1287/P.L. 109–184**

To designate the facility of the United States Postal Service located at 312 East North Avenue in Flora, Illinois, as the "Robert T. Ferguson Post Office Building". (Mar. 20, 2006; 120 Stat. 292)

**H.R. 2113/P.L. 109–185**

To designate the facility of the United States Postal Service located at 2000 McDonough Street in Joliet, Illinois, as the "John F. Whiteside Joliet Post Office Building". (Mar. 20, 2006; 120 Stat. 293)

**H.R. 2346/P.L. 109–186**

To designate the facility of the United States Postal Service located at 105 NW Railroad Avenue in Hammond, Louisiana, as the "John J. Hainkel, Jr. Post Office Building". (Mar. 20, 2006; 120 Stat. 294)

**H.R. 2413/P.L. 109–187**

To designate the facility of the United States Postal Service located at 1202 1st Street in Humble, Texas, as the "Lillian McKay Post Office Building". (Mar. 20, 2006; 120 Stat. 295)

**H.R. 2630/P.L. 109–188**

To redesignate the facility of the United States Postal Service located at 1927 Sangamon Avenue in Springfield, Illinois, as the "J.M. Dietrich Northeast Annex". (Mar. 20, 2006; 120 Stat. 296)

**H.R. 2894/P.L. 109–189**

To designate the facility of the United States Postal Service located at 102 South Walters Avenue in Hodgenville, Kentucky, as the "Abraham Lincoln Birthplace Post Office Building". (Mar. 20, 2006; 120 Stat. 297)

**H.R. 3256/P.L. 109–190**

To designate the facility of the United States Postal Service located at 3038 West Liberty Avenue in Pittsburgh, Pennsylvania, as the "Congressman James Grove Fulton Memorial Post Office Building". (Mar. 20, 2006; 120 Stat. 298)

**H.R. 3368/P.L. 109–191**

To designate the facility of the United States Postal Service located at 6483 Lincoln Street in Gagetown, Michigan, as the "Gagetown Veterans Memorial Post Office". (Mar. 20, 2006; 120 Stat. 299)

**H.R. 3439/P.L. 109–192**

To designate the facility of the United States Postal Service located at 201 North 3rd Street in Smithfield, North Carolina, as the "Ava Gardner Post Office". (Mar. 20, 2006; 120 Stat. 300)

**H.R. 3548/P.L. 109–193**

To designate the facility of the United States Postal Service located on Franklin Avenue in Pearl River, New York, as the "Heinz Ahlmeyer, Jr. Post Office Building". (Mar. 20, 2006; 120 Stat. 301)

**H.R. 3703/P.L. 109–194**

To designate the facility of the United States Postal Service located at 8501 Philatelic Drive in Spring Hill, Florida, as the "Staff Sergeant Michael Schafer Post Office Building". (Mar. 20, 2006; 120 Stat. 302)

**H.R. 3770/P.L. 109–195**

To designate the facility of the United States Postal Service located at 205 West Washington Street in Knox, Indiana, as the "Grant W. Green Post Office Building". (Mar. 20, 2006; 120 Stat. 303)

**H.R. 3825/P.L. 109–196**

To designate the facility of the United States Postal Service located at 770 Trumbull Drive in Pittsburgh, Pennsylvania, as the ''Clayton J. Smith Memorial Post Office Building''. (Mar. 20, 2006; 120 Stat. 304)

**H.R. 3830/P.L. 109–197**

To designate the facility of the United States Postal Service located at 130 East Marion Avenue in Punta Gorda, Florida, as the ''U.S. Cleveland Post Office Building''. (Mar. 20, 2006; 120 Stat. 305)

**H.R. 3989/P.L. 109–198**

To designate the facility of the United States Postal Service located at 37598 Goodhue Avenue in Dennison, Minnesota, as the ''Albert H. Quie Post Office''. (Mar. 20, 2006; 120 Stat. 306)

**H.R. 4053/P.L. 109–199**

To designate the facility of the United States Postal Service located at 545 North Rimsdale Avenue in Covina, California, as the ''Lillian Kinkella Keil Post Office''. (Mar. 20, 2006; 120 Stat. 307)

**H.R. 4107/P.L. 109–200**

To designate the facility of the United States Postal Service located at 1826 Pennsylvania Avenue in Baltimore, Maryland, as the ''Maryland State Delegate Lena K. Lee Post Office Building''. (Mar. 20, 2006; 120 Stat. 308)

**H.R. 4152/P.L. 109–201**

To designate the facility of the United States Postal Service located at 320 High Street in Clinton, Massachusetts, as the ''Raymond J. Salmon Post Office''. (Mar. 20, 2006; 120 Stat. 309)

**H.R. 4295/P.L. 109–202**

To designate the facility of the United States Postal Service located at 12760 South Park Avenue in Riverton, Utah, as the ''Mont and Mark Stephensen Veterans Memorial Post Office Building''. (Mar. 20, 2006; 120 Stat. 310)

**S. 2089/P.L. 109–203**

To designate the facility of the United States Postal Service located at 1271 North King Street in Honolulu, Oahu, Hawaii, as the ''Hiram L. Fong Post Office Building''. (Mar. 20, 2006; 120 Stat. 311)

**S. 2320/P.L. 109–204**

To make available funds included in the Deficit Reduction Act of 2005 for the Low-Income Home Energy Assistance Program for fiscal year 2006, and for other purposes. (Mar. 20, 2006; 120 Stat. 312)

**H.R. 1053/P.L. 109–205**

To authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Ukraine. (Mar. 23, 2006; 120 Stat. 313)

**H.R. 1691/P.L. 109–206**

To designate the Department of Veterans Affairs outpatient clinic in Appleton, Wisconsin, as the ''John H. Bradley Department of Veterans Affairs Outpatient Clinic''. (Mar. 23, 2006; 120 Stat. 315)

**S. 2064/P.L. 109–207**

To designate the facility of the United States Postal Service located at 122 South Bill Street in Francesville, Indiana, as the Malcolm Melville ''Mac'' Lawrence Post Office. (Mar. 23, 2006; 120 Stat. 316)

**S. 2275/P.L. 109–208**

National Flood Insurance Program Enhanced Borrowing Authority Act of 2006 (Mar. 23, 2006; 120 Stat. 317)

**H.R. 4826/P.L. 109–209**

To extend through December 31, 2006, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits. (Mar. 24, 2006; 120 Stat. 318)

**S. 1184/P.L. 109–210**

To waive the passport fees for a relative of a deceased member of the Armed Forces proceeding abroad to visit the grave of such member or to attend a funeral or memorial service for such member. (Mar. 24, 2006; 120 Stat. 319)

**S. 2363/P.L. 109–211**

To extend the educational flexibility program under section 4 of the Education Flexibility Partnership Act of 1999. (Mar. 24, 2006; 120 Stat. 320)

**Last List March 23, 2006**

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## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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|---|---|---|---|
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| **3** (2003 Compilation and Parts 100 and 101) | (869–056–00003–1) | 35.00 | [1] Jan. 1, 2005 |
| **4** | (869–060–00004–6) | 10.00 | Jan. 1, 2006 |
| **5 Parts:** | | | |
| *1–699 | (869–060–00005–4) | 60.00 | Jan. 1, 2006 |
| 700–1199 | (869–060–00006–2) | 50.00 | Jan. 1, 2006 |
| 1200–End | (869–056–00007–3) | 61.00 | Jan. 1, 2005 |
| **6** | (869–060–00008–9) | 10.50 | Jan. 1, 2006 |
| **7 Parts:** | | | |
| *1–26 | (869–060–00009–7) | 44.00 | Jan. 1, 2006 |
| 27–52 | (869–060–00010–1) | 49.00 | Jan. 1, 2006 |
| 53–209 | (869–060–00011–9) | 37.00 | Jan. 1, 2006 |
| 210–299 | (869–056–00012–0) | 62.00 | Jan. 1, 2005 |
| 300–399 | (869–060–00013–5) | 46.00 | Jan. 1, 2006 |
| 400–699 | (869–060–00014–3) | 42.00 | Jan. 1, 2006 |
| *700–899 | (869–060–00015–1) | 43.00 | Jan. 1, 2006 |
| *900–999 | (869–060–00016–0) | 60.00 | Jan. 1, 2006 |
| 1000–1199 | (869–060–00017–8) | 22.00 | Jan. 1, 2006 |
| *1200–1599 | (869–060–00018–6) | 61.00 | Jan. 1, 2006 |
| 1600–1899 | (869–060–00019–4) | 64.00 | Jan. 1, 2006 |
| 1900–1939 | (869–060–00020–8) | 31.00 | Jan. 1, 2006 |
| 1940–1949 | (869–060–00021–6) | 50.00 | Jan. 1, 2006 |
| 1950–1999 | (869–060–00022–4) | 46.00 | Jan. 1, 2006 |
| 2000–End | (869–060–00023–2) | 50.00 | Jan. 1, 2006 |
| **8** | (869–060–00024–1) | 63.00 | Jan. 1, 2006 |
| **9 Parts:** | | | |
| *1–199 | (869–060–00025–9) | 61.00 | Jan. 1, 2006 |
| 200–End | (869–060–00026–7) | 58.00 | Jan. 1, 2006 |
| **10 Parts:** | | | |
| 1–50 | (869–060–00027–5) | 61.00 | Jan. 1, 2006 |
| *51–199 | (869–060–00028–3) | 58.00 | Jan. 1, 2006 |
| 200–499 | (869–056–00029–4) | 46.00 | Jan. 1, 2005 |
| 500–End | (869–060–00030–5) | 62.00 | Jan. 1, 2006 |
| **11** | (869–060–00031–3) | 41.00 | Jan. 1, 2006 |
| **12 Parts:** | | | |
| 1–199 | (869–060–00032–1) | 34.00 | Jan. 1, 2006 |
| 200–219 | (869–060–00033–0) | 37.00 | Jan. 1, 2006 |
| 220–299 | (869–060–00034–8) | 61.00 | Jan. 1, 2006 |
| 300–499 | (869–060–00035–6) | 47.00 | Jan. 1, 2006 |
| 500–599 | (869–060–00036–4) | 39.00 | Jan. 1, 2006 |
| 600–899 | (869–056–00037–5) | 56.00 | Jan. 1, 2005 |
| 900–End | (869–060–00038–1) | 50.00 | Jan. 1, 2006 |
| ***13** | (869–060–00039–9) | 55.00 | Jan. 1, 2006 |
| **14 Parts:** | | | |
| 1–59 | (869–060–00040–2) | 63.00 | Jan. 1, 2006 |
| *60–139 | (869–060–00041–1) | 61.00 | Jan. 1, 2006 |
| 140–199 | (869–060–00042–9) | 30.00 | Jan. 1, 2006 |
| 200–1199 | (869–060–00043–7) | 50.00 | Jan. 1, 2006 |
| 1200–End | (869–060–00044–5) | 45.00 | Jan. 1, 2006 |
| **15 Parts:** | | | |
| 0–299 | (869–060–00045–3) | 40.00 | Jan. 1, 2006 |
| 300–799 | (869–060–00046–1) | 60.00 | Jan. 1, 2006 |
| 800–End | (869–060–00047–0) | 42.00 | Jan. 1, 2006 |
| **16 Parts:** | | | |
| 0–999 | (869–056–00048–1) | 50.00 | Jan. 1, 2005 |
| 1000–End | (869–060–00049–6) | 60.00 | Jan. 1, 2006 |
| **17 Parts:** | | | |
| 1–199 | (869–056–00051–1) | 50.00 | Apr. 1, 2005 |
| 200–239 | (869–056–00052–9) | 58.00 | Apr. 1, 2005 |
| 240–End | (869–056–00053–7) | 62.00 | Apr. 1, 2005 |
| **18 Parts:** | | | |
| 1–399 | (869–056–00054–5) | 62.00 | Apr. 1, 2005 |
| 400–End | (869–056–00055–3) | 26.00 | [6] Apr. 1, 2005 |
| **19 Parts:** | | | |
| 1–140 | (869–056–00056–1) | 61.00 | Apr. 1, 2005 |
| 141–199 | (869–056–00057–0) | 58.00 | Apr. 1, 2005 |
| 200–End | (869–056–00058–8) | 31.00 | Apr. 1, 2005 |
| **20 Parts:** | | | |
| 1–399 | (869–056–00059–6) | 50.00 | Apr. 1, 2005 |
| 400–499 | (869–056–00060–0) | 64.00 | Apr. 1, 2005 |
| 500–End | (869–056–00061–8) | 63.00 | Apr. 1, 2005 |
| **21 Parts:** | | | |
| 1–99 | (869–056–00062–6) | 42.00 | Apr. 1, 2005 |
| 100–169 | (869–056–00063–4) | 49.00 | Apr. 1, 2005 |
| 170–199 | (869–056–00064–2) | 50.00 | Apr. 1, 2005 |
| 200–299 | (869–056–00065–1) | 17.00 | Apr. 1, 2005 |
| 300–499 | (869–056–00066–9) | 31.00 | Apr. 1, 2005 |
| 500–599 | (869–056–00067–7) | 47.00 | Apr. 1, 2005 |
| 600–799 | (869–056–00068–5) | 15.00 | Apr. 1, 2005 |
| 800–1299 | (869–056–00069–3) | 58.00 | Apr. 1, 2005 |
| 1300–End | (869–056–00070–7) | 24.00 | Apr. 1, 2005 |
| **22 Parts:** | | | |
| 1–299 | (869–056–00071–5) | 63.00 | Apr. 1, 2005 |
| 300–End | (869–056–00072–3) | 45.00 | Apr. 1, 2005 |
| **23** | (869–056–00073–1) | 45.00 | Apr. 1, 2005 |
| **24 Parts:** | | | |
| 0–199 | (869–056–00074–0) | 60.00 | Apr. 1, 2005 |
| 200–499 | (869–056–00074–0) | 50.00 | Apr. 1, 2005 |
| 500–699 | (869–056–00076–6) | 30.00 | Apr. 1, 2005 |
| 700–1699 | (869–056–00077–4) | 61.00 | Apr. 1, 2005 |
| 1700–End | (869–056–00078–2) | 30.00 | Apr. 1, 2005 |
| **25** | (869–056–00079–1) | 63.00 | Apr. 1, 2005 |
| **26 Parts:** | | | |
| §§ 1.0–1–1.60 | (869–056–00080–4) | 49.00 | Apr. 1, 2005 |
| §§ 1.61–1.169 | (869–056–00081–2) | 63.00 | Apr. 1, 2005 |
| §§ 1.170–1.300 | (869–056–00082–1) | 60.00 | Apr. 1, 2005 |
| §§ 1.301–1.400 | (869–056–00083–9) | 46.00 | Apr. 1, 2005 |
| §§ 1.401–1.440 | (869–056–00084–7) | 62.00 | Apr. 1, 2005 |
| §§ 1.441–1.500 | (869–056–00085–5) | 57.00 | Apr. 1, 2005 |
| §§ 1.501–1.640 | (869–056–00086–3) | 49.00 | Apr. 1, 2005 |
| §§ 1.641–1.850 | (869–056–00087–1) | 60.00 | Apr. 1, 2005 |
| §§ 1.851–1.907 | (869–056–00088–0) | 61.00 | Apr. 1, 2005 |
| §§ 1.908–1.1000 | (869–056–00089–8) | 60.00 | Apr. 1, 2005 |
| §§ 1.1001–1.1400 | (869–056–00090–1) | 61.00 | Apr. 1, 2005 |
| §§ 1.1401–1.1550 | (869–056–00091–0) | 55.00 | Apr. 1, 2005 |
| §§ 1.1551–End | (869–056–00092–8) | 55.00 | Apr. 1, 2005 |
| 2–29 | (869–056–00093–6) | 60.00 | Apr. 1, 2005 |
| 30–39 | (869–056–00094–4) | 41.00 | Apr. 1, 2005 |
| 40–49 | (869–056–00095–2) | 28.00 | Apr. 1, 2005 |
| 50–299 | (869–056–00096–1) | 41.00 | Apr. 1, 2005 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 300–499 | (869–056–00097–9) | 61.00 | Apr. 1, 2005 |
| 500–599 | (869–056–00098–7) | 12.00 | [5]Apr. 1, 2005 |
| 600–End | (869–056–00099–5) | 17.00 | Apr. 1, 2005 |
| **27 Parts:** | | | |
| 1–199 | (869–056–00100–2) | 64.00 | Apr. 1, 2005 |
| 200–End | (869–056–00101–1) | 21.00 | Apr. 1, 2005 |
| **28 Parts:** | | | |
| 0–42 | (869–056–00102–9) | 61.00 | July 1, 2005 |
| 43–End | (869–056–00103–7) | 60.00 | July 1, 2005 |
| **29 Parts:** | | | |
| 0–99 | (869–056–00104–5) | 50.00 | July 1, 2005 |
| 100–499 | (869–056–00105–3) | 23.00 | July 1, 2005 |
| 500–899 | (869–056–00106–1) | 61.00 | July 1, 2005 |
| 900–1899 | (869–056–00107–0) | 36.00 | [7]July 1, 2005 |
| 1900–1910 (§§ 1900 to 1910.999) | (869–056–00108–8) | 61.00 | July 1, 2005 |
| 1910 (§§ 1910.1000 to end) | (869–056–00109–6) | 58.00 | July 1, 2005 |
| 1911–1925 | (869–056–00110–0) | 30.00 | July 1, 2005 |
| 1926 | (869–056–00111–8) | 50.00 | July 1, 2005 |
| 1927–End | (869–056–00112–6) | 62.00 | July 1, 2005 |
| **30 Parts:** | | | |
| 1–199 | (869–056–00113–4) | 57.00 | July 1, 2005 |
| 200–699 | (869–056–00114–2) | 50.00 | July 1, 2005 |
| 700–End | (869–056–00115–1) | 58.00 | July 1, 2005 |
| **31 Parts:** | | | |
| 0–199 | (869–056–00116–9) | 41.00 | July 1, 2005 |
| 200–499 | (869–056–00117–7) | 33.00 | July 1, 2005 |
| 500–End | (869–056–00118–5) | 33.00 | July 1, 2005 |
| **32 Parts:** | | | |
| 1–39, Vol. I | | 15.00 | [2] July 1, 1984 |
| 1–39, Vol. II | | 19.00 | [2] July 1, 1984 |
| 1–39, Vol. III | | 18.00 | [2] July 1, 1984 |
| 1–190 | (869–056–00119–3) | 61.00 | July 1, 2005 |
| 191–399 | (869–056–00120–7) | 63.00 | July 1, 2005 |
| 400–629 | (869–056–00121–5) | 50.00 | July 1, 2005 |
| 630–699 | (869–056–00122–3) | 37.00 | July 1, 2005 |
| 700–799 | (869–056–00123–1) | 46.00 | July 1, 2005 |
| 800–End | (869–056–00124–0) | 47.00 | July 1, 2005 |
| **33 Parts:** | | | |
| 1–124 | (869–056–00125–8) | 57.00 | July 1, 2005 |
| 125–199 | (869–056–00126–6) | 61.00 | July 1, 2005 |
| 200–End | (869–056–00127–4) | 57.00 | July 1, 2005 |
| **34 Parts:** | | | |
| 1–299 | (869–056–00128–2) | 50.00 | July 1, 2005 |
| 300–399 | (869–056–00129–1) | 40.00 | [7]July 1, 2005 |
| 400–End & 35 | (869–056–00130–4) | 61.00 | July 1, 2005 |
| **36 Parts:** | | | |
| 1–199 | (869–056–00131–2) | 37.00 | July 1, 2005 |
| 200–299 | (869–056–00132–1) | 37.00 | July 1, 2005 |
| 300–End | (869–056–00133–9) | 61.00 | July 1, 2005 |
| **37** | (869–056–00134–7) | 58.00 | July 1, 2005 |
| **38 Parts:** | | | |
| 0–17 | (869–056–00135–5) | 60.00 | July 1, 2005 |
| 18–End | (869–056–00136–3) | 62.00 | July 1, 2005 |
| **39** | (869–056–00139–1) | 42.00 | July 1, 2005 |
| **40 Parts:** | | | |
| 1–49 | (869–056–00138–0) | 60.00 | July 1, 2005 |
| 50–51 | (869–056–00139–8) | 45.00 | July 1, 2005 |
| 52 (52.01–52.1018) | (869–056–00140–1) | 60.00 | July 1, 2005 |
| 52 (52.1019–End) | (869–056–00141–0) | 61.00 | July 1, 2005 |
| 53–59 | (869–056–00142–8) | 31.00 | July 1, 2005 |
| 60 (60.1–End) | (869–056–00143–6) | 58.00 | July 1, 2005 |
| 60 (Apps) | (869–056–00144–4) | 57.00 | July 1, 2005 |
| 61–62 | (869–056–00145–2) | 45.00 | July 1, 2005 |
| 63 (63.1–63.599) | (869–056–00146–1) | 58.00 | July 1, 2005 |
| 63 (63.600–63.1199) | (869–056–00147–9) | 50.00 | July 1, 2005 |
| 63 (63.1200–63.1439) | (869–056–00148–7) | 50.00 | July 1, 2005 |
| 63 (63.1440–63.6175) | (869–056–00149–5) | 32.00 | July 1, 2005 |
| 63 (63.6580–63.8830) | (869–056–00150–9) | 32.00 | July 1, 2005 |
| 63 (63.8980–End) | (869–056–00151–7) | 35.00 | [7]July 1, 2005 |
| 64–71 | (869–056–00152–5) | 29.00 | July 1, 2005 |
| 72–80 | (869–056–00153–5) | 62.00 | July 1, 2005 |
| 81–85 | (869–056–00154–1) | 60.00 | July 1, 2005 |
| 86 (86.1–86.599–99) | (869–056–00155–0) | 58.00 | July 1, 2005 |
| 86 (86.600–1–End) | (869–056–00156–8) | 50.00 | July 1, 2005 |
| 87–99 | (869–056–00157–6) | 60.00 | July 1, 2005 |
| 100–135 | (869–056–00158–4) | 45.00 | July 1, 2005 |
| 136–149 | (869–056–00159–2) | 61.00 | July 1, 2005 |
| 150–189 | (869–056–00160–6) | 50.00 | July 1, 2005 |
| 190–259 | (869–056–00161–4) | 39.00 | July 1, 2005 |
| 260–265 | (869–056–00162–2) | 50.00 | July 1, 2005 |
| 266–299 | (869–056–00163–1) | 50.00 | July 1, 2005 |
| 300–399 | (869–056–00164–9) | 42.00 | July 1, 2005 |
| 400–424 | (869–056–00165–7) | 56.00 | [8]July 1, 2005 |
| 425–699 | (869–056–00166–5) | 61.00 | July 1, 2005 |
| 700–789 | (869–056–00167–3) | 61.00 | July 1, 2005 |
| 790–End | (869–056–00168–1) | 61.00 | July 1, 2005 |
| **41 Chapters:** | | | |
| 1, 1–1 to 1–10 | | 13.00 | [3] July 1, 1984 |
| 1, 1–11 to Appendix, 2 (2 Reserved) | | 13.00 | [3] July 1, 1984 |
| 3–6 | | 14.00 | [3] July 1, 1984 |
| 7 | | 6.00 | [3] July 1, 1984 |
| 8 | | 4.50 | [3] July 1, 1984 |
| 9 | | 13.00 | [3] July 1, 1984 |
| 10–17 | | 9.50 | [3] July 1, 1984 |
| 18, Vol. I, Parts 1–5 | | 13.00 | [3] July 1, 1984 |
| 18, Vol. II, Parts 6–19 | | 13.00 | [3] July 1, 1984 |
| 18, Vol. III, Parts 20–52 | | 13.00 | [3] July 1, 1984 |
| 19–100 | | 13.00 | [3] July 1, 1984 |
| 1–100 | (869–056–00169–0) | 24.00 | July 1, 2005 |
| 101 | (869–056–00170–3) | 21.00 | July 1, 2005 |
| 102–200 | (869–056–00171–1) | 56.00 | July 1, 2005 |
| 201–End | (869–056–00172–0) | 24.00 | July 1, 2005 |
| **42 Parts:** | | | |
| 1–399 | (869–056–00173–8) | 61.00 | Oct. 1, 2005 |
| 400–429 | (869–056–00174–6) | 63.00 | Oct. 1, 2005 |
| 430–End | (869–056–00175–4) | 64.00 | Oct. 1, 2005 |
| **43 Parts:** | | | |
| 1–999 | (869–056–00176–2) | 56.00 | Oct. 1, 2005 |
| 1000–end | (869–056–00177–1) | 62.00 | Oct. 1, 2005 |
| **44** | (869–056–00178–9) | 50.00 | Oct. 1, 2005 |
| **45 Parts:** | | | |
| 1–199 | (869–056–00179–7) | 60.00 | Oct. 1, 2005 |
| 200–499 | (869–056–00180–1) | 34.00 | Oct. 1, 2005 |
| 500–1199 | (869–056–00171–9) | 56.00 | Oct. 1, 2005 |
| 1200–End | (869–056–00182–7) | 61.00 | Oct. 1, 2005 |
| **46 Parts:** | | | |
| 1–40 | (869–056–00183–5) | 46.00 | Oct. 1, 2005 |
| 41–69 | (869–056–00184–3) | 39.00 | [9]Oct. 1, 2005 |
| 70–89 | (869–056–00185–1) | 14.00 | [9]Oct. 1, 2005 |
| 90–139 | (869–056–00186–0) | 44.00 | Oct. 1, 2005 |
| 140–155 | (869–056–00187–8) | 25.00 | Oct. 1, 2005 |
| 156–165 | (869–056–00188–6) | 34.00 | [9]Oct. 1, 2005 |
| 166–199 | (869–056–00189–4) | 46.00 | Oct. 1, 2005 |
| 200–499 | (869–056–00190–8) | 40.00 | Oct. 1, 2005 |
| 500–End | (869–056–00191–6) | 25.00 | Oct. 1, 2005 |
| **47 Parts:** | | | |
| 0–19 | (869–056–00192–4) | 61.00 | Oct. 1, 2005 |
| 20–39 | (869–056–00193–2) | 46.00 | Oct. 1, 2005 |
| 40–69 | (869–056–00194–1) | 40.00 | Oct. 1, 2005 |
| 70–79 | (869–056–00195–9) | 61.00 | Oct. 1, 2005 |
| 80–End | (869–056–00196–7) | 61.00 | Oct. 1, 2005 |
| **48 Chapters:** | | | |
| 1 (Parts 1–51) | (869–056–00197–5) | 63.00 | Oct. 1, 2005 |
| 1 (Parts 52–99) | (869–056–00198–3) | 49.00 | Oct. 1, 2005 |
| 2 (Parts 201–299) | (869–056–00199–1) | 50.00 | Oct. 1, 2005 |
| 3–6 | (869–056–00200–9) | 34.00 | Oct. 1, 2005 |
| 7–14 | (869–056–00201–7) | 56.00 | Oct. 1, 2005 |
| 15–28 | (869–056–00202–5) | 47.00 | Oct. 1, 2005 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 29–End | (869–056–00203–3) | 47.00 | Oct. 1, 2005 |
| **49 Parts:** | | | |
| 1–99 | (869–056–00204–1) | 60.00 | Oct. 1, 2005 |
| 100–185 | (869–056–00205–0) | 63.00 | Oct. 1, 2005 |
| 186–199 | (869–056–00206–8) | 23.00 | Oct. 1, 2005 |
| 200–299 | (869–056–00207–6) | 32.00 | Oct. 1, 2005 |
| 300–399 | (869–056–00208–4) | 32.00 | Oct. 1, 2005 |
| 400–599 | (869–056–00209–2) | 64.00 | Oct. 1, 2005 |
| 600–999 | (869–056–00210–6) | 19.00 | Oct. 1, 2005 |
| 1000–1199 | (869–056–00211–4) | 28.00 | Oct. 1, 2005 |
| 1200–End | (869–056–00212–2) | 34.00 | Oct. 1, 2005 |
| **50 Parts:** | | | |
| 1–16 | (869–056–00213–1) | 11.00 | Oct. 1, 2005 |
| 17.1–17.95(b) | (869–056–00214–9) | 32.00 | Oct. 1, 2005 |
| 17.95(c)–end | (869–056–00215–7) | 32.00 | Oct. 1, 2005 |
| 17.96–17.99(h) | (869–056–00215–7) | 61.00 | Oct. 1, 2005 |
| 17.99(i)–end and 17.100–end | (869–056–00217–3) | 47.00 | Oct. 1, 2005 |
| 18–199 | (869–056–00218–1) | 50.00 | Oct. 1, 2005 |
| 200–599 | (869–056–00218–1) | 45.00 | Oct. 1, 2005 |
| 600–End | (869–056–00219–0) | 62.00 | Oct. 1, 2005 |
| CFR Index and Findings Aids | (869–056–00050–2) | 62.00 | Jan. 1, 2005 |
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| Complete set (one-time mailing) | | 325.00 | 2005 |
| Complete set (one-time mailing) | | 325.00 | 2004 |

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2005. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.

## TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 2006

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

| DATE OF FR PUBLICATION | 15 DAYS AFTER PUBLICATION | 30 DAYS AFTER PUBLICATION | 45 DAYS AFTER PUBLICATION | 60 DAYS AFTER PUBLICATION | 90 DAYS AFTER PUBLICATION |
|---|---|---|---|---|---|
| April 3 | April 18 | May 3 | May 18 | June 2 | July 3 |
| April 4 | April 19 | May 4 | May 19 | June 5 | July 3 |
| April 5 | April 20 | May 5 | May 22 | June 5 | July 5 |
| April 6 | April 21 | May 8 | May 22 | June 5 | July 5 |
| April 7 | April 24 | May 8 | May 22 | June 6 | July 6 |
| April 10 | April 25 | May 10 | May 25 | June 9 | July 10 |
| April 11 | April 26 | May 11 | May 26 | June 12 | July 10 |
| April 12 | April 27 | May 12 | May 30 | June 12 | July 11 |
| April 13 | April 28 | May 15 | May 30 | June 12 | July 12 |
| April 14 | May 1 | May 15 | May 30 | June 13 | July 13 |
| April 17 | May 2 | May 17 | June 1 | June 16 | July 17 |
| April 18 | May 3 | May 18 | June 2 | June 19 | July 17 |
| April 19 | May 4 | May 19 | June 5 | June 19 | July 18 |
| April 20 | May 5 | May 22 | June 5 | June 19 | July 19 |
| April 21 | May 8 | May 22 | June 5 | June 20 | July 20 |
| April 24 | May 9 | May 24 | June 8 | June 23 | July 24 |
| April 25 | May 10 | May 25 | June 9 | June 26 | July 24 |
| April 26 | May 11 | May 26 | June 12 | June 26 | July 25 |
| April 27 | May 12 | May 30 | June 12 | June 26 | July 26 |
| April 28 | May 15 | May 30 | June 12 | June 27 | July 27 |