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RESERVATIONS: (202) 741–6008

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Rules and Regulations

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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–2005–22034; Directorate Identifier 2004–NM–182–AD; Amendment 39–14607; AD 2006–11–03]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model GV and GV–SP Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Gulfstream Model GV and certain Model GV–SP series airplanes. This AD requires a one-time inspection of the left and right aileron and elevator actuators to determine the part and serial numbers of each actuator, repetitive inspections of suspect actuators to detect broken damper shafts, and replacement of any actuator having a broken damper shaft. This AD also requires that operators report any broken damper shaft they find to the FAA. This AD also requires a terminating action for the repetitive inspections. This AD results from reports of broken or cracked damper shafts within the aileron and elevator actuator assemblies. We are issuing this AD to prevent broken damper shafts, which could result in locking of an aileron or elevator actuator (hard-over condition), which would activate the hard-over protection system (HOPS), resulting in increased pilot workload and consequent reduced controllability of the airplane.

DATES: This AD becomes effective June 29, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 29, 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 Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, Georgia 31402–2206, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Gerald Avella, Aerospace Engineer, Systems and Equipment Branch, ACE–119A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6066; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Gulfstream Model GV and certain Model GV–SP series airplanes. That supplemental NPRM was published in the **Federal Register** on March 30, 2006 (71 FR 16066). That supplemental NPRM proposed to require a one-time inspection of the left and right aileron and elevator actuators to determine the part and serial numbers of each actuator, repetitive inspections of suspect actuators to detect broken damper shafts, and replacement of any actuator having a broken damper shaft. That supplemental NPRM also proposed to require that operators report any broken damper shaft they find to the FAA. That supplemental NPRM also proposed to mandate the previously optional terminating action.

Comments

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

Conclusion

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

Costs of Compliance

There are about 214 airplanes of the affected design in the worldwide fleet. This AD will affect about 174 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD. Gulfstream has stated that it will provide replacement parts at no cost to operators.

ESTIMATED COSTS

Action	Gulfstream airplane model	Work hours	Average labor rate per hour	Cost per airplane	Fleet cost
Inspection for part/serial number	GV and GV–SP series airplanes.	1	$80	$80	$13,920
Inspection of actuators, per inspection cycle (if accomplished).	GV series airplanes	14 per actuator	80	1,120	[1] 194,880
	GV–SP series airplanes	4 per actuator	80	320	[1] 55,680

ESTIMATED COSTS—Continued

Action	Gulfstream airplane model	Work hours	Average labor rate per hour	Cost per airplane	Fleet cost
Terminating replacement	GV series airplanes	26 per aileron actuator (2 actuators per airplane).	80	4,160	723,840
		52 per elevator actuator (2 actuators per airplane).	80	8,320	1,447,680
	GV–SP series airplanes	32 per aileron actuator (2 actuators per airplane).	80	5,120	890,880
		52 per elevator actuator (2 actuators per airplane).	80	8,320	1,447,680

[1] Per actuator, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–11–03 Gulfstream Aerospace Corporation: Amendment 39–14607. Docket No. FAA–2005–22034; Directorate Identifier 2004–NM–182–AD.

Effective Date

(a) This AD becomes effective June 29, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Gulfstream Model GV series airplanes, and Model GV–SP series airplanes having serial numbers (S/Ns) 5001 through 5052 inclusive; certificated in any category.

Unsafe Condition

(d) This AD results from reports of broken or cracked damper shafts within the aileron and elevator actuator assemblies. We are issuing this AD to prevent broken damper shafts, which could result in locking of an aileron or elevator actuator (hard-over condition), which would activate the hard-over protection system (HOPS), resulting in increased pilot workload and consequent reduced controllability of the airplane.

Compliance

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

Service Information References

(f) The term ''customer bulletin,'' as used in this AD, means the Accomplishment Instructions of the applicable Gulfstream customer bulletins specified in Table 1 of this AD. Although the customer bulletins recommend completing and submitting the Service Reply Card or reporting compliance with the customer bulletin, those actions are not required by this AD.

TABLE 1.—APPLICABLE GULFSTREAM CUSTOMER BULLETINS

For—	For model—	Use—	Dated—
(1) Initial/repetitive inspections of and corrective actions for identified subject actuators.	(i) GV–SP series airplanes	Gulfstream G500 Customer Bulletin 4	August 23, 2004.
	(ii) GV–SP series airplanes	Gulfstream G550 Customer Bulletin 4	August 23, 2004.
	(iii) GV series airplanes	Gulfstream GV Customer Bulletin 123	August 23, 2004.
(2) Terminating replacement of subject actuators.	(i) GV–SP series airplanes	Gulfstream G500 Customer Bulletin 6	December 8, 2004.
	(ii) GV–SP series airplanes	Gulfstream G550 Customer Bulletin 6	December 8, 2004.
	(iii) GV series airplanes	Gulfstream GV Customer Bulletin 124	December 8, 2004.

Inspection To Determine Actuator Part and Serial Numbers

(g) Within 500 flight hours after the effective date of this AD: Do a one-time inspection of the left and right aileron and elevator actuators to determine the part number (P/N) and S/N of each actuator, in accordance with the applicable customer bulletin.

No Subject Actuators Installed

(h) If no actuator with a P/N and S/N listed in Table 1 ''Serial Number Effectivity Table'' of the applicable customer bulletin is identified during the inspection required by paragraph (g) of this AD, no further action is required by this AD, except as required by paragraph (l) of this AD.

Initial and Repetitive Inspections of Subject Actuators

(i) For any actuator identified during the inspection required by paragraph (g) of this AD with a P/N and S/N listed in Table 1 ''Serial Number Effectivity Table'' of the applicable customer bulletin, and for actuators for which the P/N or S/N is missing or unreadable: Before further flight, do a detailed inspection of the identified actuator to detect a broken damper shaft, in accordance with the applicable customer bulletin.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(1) If no damper shaft is found broken: Repeat the inspection required by paragraph (i) of this AD thereafter at intervals not to exceed 500 flight hours, until the terminating replacement specified in paragraph (j) of this AD is accomplished.

Corrective Action for Subject Actuators

(2) If any damper shaft is found broken: Before further flight, do the action specified in paragraph (i)(2)(i), (i)(2)(ii), or (j) of this AD, in accordance with the applicable customer bulletin.

(i) Replace the actuator with a new or serviceable actuator having a P/N and S/N listed in Table 1 ''Serial Number Effectivity Table'' of the applicable customer bulletin, provided the new or serviceable actuator has been inspected in accordance with the requirements of paragraph (i) of this AD. Thereafter, repeat the inspection required by paragraph (i) of this AD for that actuator at intervals not to exceed 500 flight hours, until the terminating replacement specified in paragraph (j) of this AD is accomplished.

(ii) Replace the actuator with a new or serviceable actuator having a new P/N listed in Table 2 ''Retrofit Part Number Replacement Table'' of the applicable customer bulletin. This replacement terminates the requirements of this paragraph for that actuator only.

Terminating Replacement

(j) Within 24 months after the effective date of this AD: Replace all identified suspect actuators with new or serviceable actuators having a new P/N listed in Table 2 ''Retrofit Part Number Replacement Table'' of the applicable customer bulletin. This replacement terminates the requirements of this AD, except as required by paragraph (l) of this AD.

Reporting Requirement

(k) Submit a report of any broken damper shafts to the Manager, Atlanta Aircraft Certification Office (ACO), FAA, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; fax (770) 703–6097. The report must be done at the applicable time specified in paragraph (k)(1) or (k)(2) of this AD. The report must include the inspection date, the airplane model and S/N, the actuator position (left or right aileron or elevator), and the actuator P/N and S/N. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) If the inspection required by paragraph (i) of this AD is done after the effective date of this AD: Submit a report within 30 days after the inspection is done.

(2) If an inspection required by paragraph (i) of this AD was done before the effective date of this AD: Submit a report within 30 days after the effective date of this AD.

Parts Installation

(l) As of the effective date of this AD, no person may install an aileron or elevator actuator having a P/N and S/N specified in the applicable customer bulletin on any airplane, unless the actuator has been inspected according to paragraph (i) of this AD.

Special Flight Permit Prohibited

(m) Special flight permits (14 CFR 21.197 and 21.199) are not allowed if any broken damper shaft is found during any inspection required by paragraph (i) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Material Incorporated by Reference

(o) You must use the applicable customer bulletins specified in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, Georgia 31402–2206, 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

Customer bulletin	Date
Gulfstream G500 Customer Bulletin 4	August 23, 2004.
Gulfstream G500 Customer Bulletin 6	December 8, 2004.
Gulfstream G550 Customer Bulletin 4	August 23, 2004.
Gulfstream G550 Customer Bulletin 6	December 8, 2004.
Gulfstream GV Customer Bulletin 123	August 23, 2004.
Gulfstream GV Customer Bulletin 124	December 8, 2004.

Issued in Renton, Washington, on May 15, 2006.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4714 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24084; Directorate Identifier 2006–NM–017–AD; Amendment 39–14611; AD 2006–11–07]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 800XP Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Raytheon Model Hawker 800XP airplanes. This AD requires inspecting certain bus bars in the DA–A panel to ensure that the bus bars match the panel configuration and clearance is adequate between the bus bars and adjacent components, and performing corrective action if necessary. This AD results from two reports of inadequate clearance between the bus bars in the DA–A panel. We are issuing this AD to prevent insufficient electrical isolation for the electrical bus configuration and inability of the flightcrew to isolate the bus bars in an emergency situation involving a dual generator failure, which could result in extra loads on the main ship batteries and consequent loss of power to the main essential bus.

DATES: This AD becomes effective June 29, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 29, 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 Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer, Electrical Systems and Avionics, ACE–119W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Raytheon Model Hawker 800XP airplanes. That NPRM was published in the **Federal Register** on March 7, 2006 (71 FR 11343). That NPRM proposed to require inspecting certain bus bars in the DA–A panel to ensure that the bus bars match the panel configuration and clearance is adequate between the bus bars and adjacent components, and performing corrective action if necessary.

Comments

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

Explanation of Change Made to Proposed AD

We have clarified the inspection requirement contained in the proposed AD. The proposed AD specifies a detailed inspection. We have revised this final rule to clarify the definition of a detailed inspection; Note 1 of this final rule defines that inspection.

Conclusion

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

Costs of Compliance

There are about 164 airplanes of the affected design in the worldwide fleet. This AD will affect about 123 airplanes of U.S. registry. The required inspection will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the inspection for U.S. operators is $7,995, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–11–07 Raytheon Aircraft Company: Amendment 39–14611. Docket No. FAA–2006–24084; Directorate Identifier 2006–NM–017–AD.

Effective Date

(a) This AD becomes effective June 29, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Raytheon Model Hawker 800XP airplanes, certificated in any category; serial numbers 258541, 258556, 258567 through 258609 inclusive, 258611 through 258628 inclusive, 258630 through 258684 inclusive, and 258686 through 258728 inclusive.

Unsafe Condition

(d) This AD results from two reports of inadequate clearance between the bus bars in the DA–A panel. We are issuing this AD to prevent insufficient electrical isolation for the electrical bus configuration and inability of the flightcrew to isolate the bus bars in an emergency situation involving a dual generator failure, which could result in extra loads on the main ship batteries and consequent loss of power to the main essential bus.

Compliance

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

Inspection/Corrective Action

(f) Within 30 days after the effective date of this AD: Do a detailed inspection of the four bus bars in the DA–A panel to ensure that the bus bars match the panel configuration and clearance is adequate between the bus bars and adjacent components, by doing all the actions in accordance with the Accomplishment Instructions of Raytheon Service Bulletin SB 24–3745, Revision 1, dated September 2005. Accomplish any applicable corrective action before further flight in accordance with the service bulletin.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Note 2: A note in the Accomplishment Instructions of the Raytheon service bulletin instructs operators to contact Raytheon if any difficulty is encountered in accomplishing the service bulletin. However, any deviation from the instructions provided in the service bulletin must be approved as an alternative method of compliance (AMOC) under paragraph (i)(1) of this AD.

Inspections Accomplished According to Previous Issue of Service Bulletin

(g) Inspections accomplished before the effective date of this AD in accordance with Raytheon Service Bulletin SB 24–3745, dated September 2005, are considered acceptable for compliance with the inspections specified in paragraph (f) of this AD.

No Reporting Requirement

(h) Although the Accomplishment Instructions of Raytheon Service Bulletin SB 24–3745, Revision 1, dated September 2005, specify submitting certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

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

Material Incorporated by Reference

(j) You must use Raytheon Service Bulletin SB 24–3745, Revision 1, dated September 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 15, 2006.

Kevin M. Mullin,

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

[FR Doc. 06–4801 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24204; Directorate Identifier 2005–NM–178–AD; Amendment 39–14612; AD 2006–11–08]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ 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 BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes. That AD currently requires a one-time inspection to detect corrosion of the flap structure and machined ribs, corrective actions if necessary, and reprotection of the rib boss bores. This new AD requires a records review of the results of that inspection, and an additional inspection and related investigative/corrective action if necessary. This AD results from the development of an improved inspection for corrosion in the subject area. We are issuing this AD to detect and correct corrosion in the flap structure and machined ribs, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective June 29, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 29, 2006.

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

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer,

International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2002–03–07, amendment 39–12648 (67 FR 6852, February 14, 2002). The existing AD applies to certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes. That NPRM was published in the **Federal Register** on March 27, 2006 (71 FR 15076). That NPRM proposed to require a records review of the results of a certain inspection, and an additional inspection and related investigative/corrective action if necessary.

Comments

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

Conclusion

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

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD. This AD will affect about 35 airplanes of U.S. registry.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per hours airplane
Records review	1	$65	None	$65
Flaps-on inspection if required	4	65	None	260
Flaps-off inspection if required	40	65	None	2,600

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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 39–12648 (67 FR 6852, February 14, 2002) and by adding the following new airworthiness directive (AD):

2006–11–08 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14612. Docket No. FAA–2006–24204; Directorate Identifier 2005–NM–178–AD.

Effective Date

(a) This AD becomes effective June 29, 2006.

Affected ADs

(b) This AD supersedes AD 2002–03–07.

Applicability

(c) This AD applies to BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes, and BAE Systems (Operations) Limited Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category; except those modified by BAE Systems (Operations) Limited Modification HCM01694F.

Unsafe Condition

(d) This AD results from the development of an improved inspection for corrosion in the subject area. We are issuing this AD to detect and correct corrosion in the flap structure and machined ribs, which could result in reduced structural integrity of the airplane.

Compliance

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

Records Review

(f) For airplanes on which the initial inspection required by AD 2002–03–07 was done before the effective date of this AD: Within 24 months after the effective date of this AD, review the airplane maintenance

records to identify the results of the inspection.

Inspection: Airplanes Not Previously Inspected

(g) For airplanes that were not inspected in accordance with AD 2002–03–07 before the effective date of this AD: Before the accumulation of 72 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 24 months after the effective date of this AD, whichever occurs later, do a general visual ''flaps off'' inspection to detect corrosion of the of the flap structure and machined ribs, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–066, Revision 2, dated March 18, 2004. If no corrosion is found: Before further flight, reprotect the rib boss bores and faces, in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–066, Revision 2, dated March 18, 2004.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Follow-On Actions: No Corrosion Found

(h) If it is positively determined from the records review required by paragraph (f) of this AD that no corrosion was found during the initial inspection, or if no corrosion was found during the initial inspection required by paragraph (g) of this AD: No further work is required by this AD.

Follow-On Actions: Corrosion Found

(i) If it is determined during the records review required by paragraph (f) of this AD that any corrosion was found during the initial inspection, or if it cannot be positively determined from the records review required by paragraph (f) of this AD that no corrosion was found during the initial inspection, or if any corrosion was found during the initial inspection required by paragraph (g) of this AD: Within 36 months after the initial inspection or 24 months after the effective date of this AD, whichever occurs later, but not sooner than 24 months after the initial inspection, perform a general visual inspection of the flap structure and machined ribs to detect corrosion, as specified in paragraph (i)(1) or (i)(2), as applicable, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–066, Revision 2, dated March 18, 2004.

(1) If the corrosion extended into the boss bores, or if it cannot be positively determined from the records review specified in paragraph (f) of this AD that corrosion did not extend into the boss bores, do a ''flaps-off'' inspection.

(2) If the corrosion did not extend into the boss bores, do a ''flaps-on'' inspection.

Corrective Actions

(j) If any corrosion is found during any inspection required by this AD: Repair before further flight in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–066, Revision 2, dated March 18, 2004, except as required by paragraph (k) of this AD.

Exceptions to Service Bulletin Specifications

(k) If any corrosion is detected and BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–066, Revision 2, dated March 18, 2004, specifies to contact the manufacturer for repair instructions: Repair before further flight, using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (or its delegated agent).

(l) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Actions Accomplished According to Previous Issue of Service Bulletin

(m) Actions done before the effective date of this AD in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–066, dated May 15, 2001; or Revision 1, dated September 20, 2002, are acceptable for compliance with the corresponding requirements of paragraphs (g), (h), (i), and (j) of this AD.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Related Information

(o) British airworthiness directive G–2005–0018, dated July 20, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(p) You must use BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–066, Revision 2, dated March 18, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 15, 2006.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4802 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22321; Directorate Identifier 2005–NM–123–AD; Amendment 39–14610; AD 2006–11–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 767–200 and –300 series airplanes. This AD requires replacing the placards on certain stowage bins with new placards, installing partial dividers in certain other stowage bins, and installing straps on stowage bins containing life rafts. For certain airplanes, this AD also requires related concurrent actions. This AD results from test data indicating that outboard overhead stowage bins are unable to withstand the 4.5g down-load standard intended to protect passengers during flight turbulence or a hard landing. We are issuing this AD to prevent the stowage bins from opening during flight turbulence or a hard landing, which could result in the contents of the stowage bins falling onto the passenger seats below and injuring passengers, or blocking the aisles, impeding the evacuation of passengers in an emergency.

DATES: This AD becomes effective June 29, 2006.

The Director of the Federal Register approved the incorporation by reference

of certain publications listed in the AD as of June 29, 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: Patrick Gillespie, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6429; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 767–200 and –300 series airplanes. That NPRM was published in the **Federal Register** on September 7, 2005 (70 FR 53106). That NPRM proposed to require replacing the placards on certain stowage bins with new placards, installing partial dividers in certain other stowage bins, and installing straps on stowage bins containing life rafts. For certain airplanes, that NPRM also proposed to require related concurrent actions; including replacing door latches, strikes, and thresholds on the outboard overhead stowage compartments with new, improved latches, strikes, and thresholds.

Comments

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

Request To Extend Compliance Time

ATA, on behalf of its member, Delta Airlines (Delta), requests that we extend the compliance time from 60 months to 72 months. Delta states that this will allow operators to spread out the costs over a longer period of time without any demonstrable decrease in safety to the fleet.

We agree with this request. We have determined that an additional 12 months for compliance will not significantly affect overall fleet safety. Therefore, we have revised paragraph (f) of the AD to extend the compliance time to 72 months.

Request To Give Credit for Using Original Issue of Service Information

ATA, on behalf of its member, Delta, requests that we revise the NPRM to give credit for actions accomplished using the original issue of Boeing Service Bulletin 767–25–0211, dated August 12, 1993. Delta states that Revision 1 of Service Bulletin 767–25–0211, dated July 14, 1994 (referred to as the appropriate source of service information for accomplishing the actions required by paragraph (g) of this AD), requires no new work in certain areas.

We agree with this request for the reason given. Therefore, we have revised paragraph (h) of the AD to include a statement that actions accomplished before the effective date of this AD in accordance with Service Bulletin 767–25–0211, dated August 12, 1993, are acceptable for compliance with the corresponding actions of this AD.

Request To Eliminate Need To Account for Bins Not Installed

ATA, on behalf of its member, Delta, requests that we revise the NPRM to exclude the need to account for bins that have been removed from the airplane. Delta states that Boeing Service Bulletins 767–25–0336 and 767–25–0211 both identify specific bin modules which must be modified. Delta asserts that the NPRM, as written, will require certain bins to be modified even if those bins have been removed in accordance with an alternative method of compliance (AMOC), and that another AMOC will be required to release operators from this unnecessary compliance.

We do not agree with this request. We find that an AMOC for the requirements of paragraphs (f) and (g) of this AD is not necessary if a stowage bin has been removed. The requirements of paragraphs (f) and (g) apply only to stowage bins identified in the referenced service bulletin. However, stowage bins that have been removed from airplanes are still subject to the requirements of paragraph (i) of this AD. We have not changed the AD in this regard.

Request for Justification of NPRM

One commenter, Delta, suggests that we review our decision to issue an AD to mandate the modifications described in the referenced service information. Delta states that the cost would be excessive in an airplane that is approaching its maximum age. Delta asks if we or Boeing have researched fleet data for past incidents as described in the NPRM. Delta further asks if such an incident is probable and if the probability is high enough to substantiate that this is a true safety concern that justifies the costs to correct it.

Though Delta did not specifically request us to do so, we infer that Delta is requesting us to withdraw this proposed AD. We do not agree. This AD corrects an unsafe condition related to a stowage bin design that is significantly under strength. We have performed an analysis that indicates that several serious injuries may occur during the remaining service life of the affected fleet if this condition is not corrected. Further, Boeing has reported seven events of inadvertent opening of these stowage bins. Therefore, we have determined that this AD is both warranted and necessary. We have made no changes to the AD in this regard; however, we have provided some relief to operators by extending the compliance time as previously discussed.

Recommendation To Revise Accomplishment Instructions

The Air Transport Association (ATA), on behalf of its member, American Airlines (AAL), recommends that the manufacturer revise the Accomplishment Instructions of the service information referenced in the NPRM to allow operators to meet the intent of the NPRM without using partial dividers in the stowage compartments. AAL states that the change as described is costly and time consuming because it creates two different configurations of outboard stowage bins in the 767 fleet, the cost of repair of the partial dividers is not accounted for, and use of partial dividers will impact stowage space.

We do not agree. We have determined that accomplishing the modifications described in the referenced service information adequately addresses the unsafe condition. In addition, we do not consider it appropriate to include various provisions in an AD applicable to a single operator's unique use of an affected airplane. However, under the

provisions of paragraph (j) of the AD, we may consider requests for approval of an AMOC if sufficient data that are submitted to substantiate that such a design change would provide an acceptable level of safety.

Request To Provide Warranty Coverage for Material Costs

Avianca Airlines states that the materials cost for this modification is very expensive. Avianca Airlines further states that the materials kit for this modification was provided free of charge by Boeing until 1994. Avianca Airlines made no request to revise the NPRM, but recommends that Boeing continue to provide the materials kit free of charge while the operators cover the cost of labor.

As no change was requested, we have not revised the AD in this regard. Further, as material and parts costs are determined by manufacturers, Avianca Airlines may wish to contact Boeing to discuss this recommendation.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

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

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the 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 366 airplanes of the affected design in the worldwide fleet and 138 airplanes of U.S. registry. The following tables provide the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours per kit	Average labor rate per hour	Cost of parts kit per airplane	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Installation of placards, dividers, and straps.	Between 46 and 74	$65	Between $26,700 and $44,196.	Between $29,690 and $49,006.	138	Between $4,097,220 and $6,762,828.

ESTIMATED COSTS OF CONCURRENT SERVICE BULLETIN

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Installation of new door latches, strikes, and thresholds.	Between 24 and 31	$65	Between $7,000 and $70,000.	Between $8,560 and $72,015.	105	Between $898,800 and $7,561,575.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–11–06 Boeing: Amendment 39–14610. Docket No. FAA–2005–22321; Directorate Identifier 2005–NM–123–AD.

Effective Date

(a) This AD becomes effective June 29, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200 and –300 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 767–25–0336, Revision 2, dated August 11, 2005.

Unsafe Condition

(d) This AD results from test data indicating that outboard overhead stowage bins are unable to withstand the 4.5g down-load standard intended to protect passengers during flight turbulence or a hard landing. We are issuing this AD to prevent the stowage bins from opening during flight turbulence or a hard landing, which could result in the contents of the stowage bins falling onto the passenger seats below and injuring passengers, or blocking the aisles, impeding the evacuation of passengers in an emergency.

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.

Replacement of Placards and Installation of Partial Divider Panels and Life Raft Straps

(f) Within 72 months after the effective date of this AD: Replace the placards on certain stowage bins with new placards, install partial dividers in certain other stowage bins, and install straps on stowage bins containing life rafts, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–25–0336, Revision 2, dated August 11, 2005.

Actions Required To Be Accomplished Prior to or Concurrently With Paragraph (f) of This AD

(g) For Group 1 airplanes as identified in Boeing Special Attention Service Bulletin 767–25–0336, Revision 2, dated August 11, 2005: Prior to or concurrently with the accomplishment of paragraph (f) of this AD, replace the door latches, strikes, and thresholds on the outboard overhead stowage compartments with new latches, strikes, and thresholds. Do the replacement in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–25–0211, Revision 1, dated July 14, 1994.

Actions Accomplished Previously

(h) Accomplishment of the stowage bin modifications required by paragraph (f) of this AD in accordance with Boeing Special Attention Service Bulletin 767–25–0336, dated May 15, 2003; or Revision 1, dated October 21, 2004; and paragraph (g) of this AD in accordance with Boeing Service Bulletin 767–25–0211, dated August 12, 1993; before the effective date of this AD; is considered acceptable for compliance with the corresponding requirements of this AD.

Parts Installation

(i) As of the effective date of this AD, no person may install on any airplane a stowage bin having a part number identified in Table 2 of Figure 1 of Boeing Special Attention Service Bulletin 767–25–0336, Revision 2, dated August 11, 2005, unless it has been modified by performing the applicable actions in paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(k) You must use Boeing Special Attention Service Bulletin 767–25–0336, Revision 2, dated August 11, 2005; and Boeing Service Bulletin 767–25–0211, Revision 1, dated July 14, 1994; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4803 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 358

[Docket No. RM01–10–005]

Standards of Conduct for Transmission Providers

Issued May 18, 2006.

AGENCY: Federal Energy Regulatory Commission; DOE.

ACTION: Order on Request for Additional Clarification.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this Order to clarify that, in the event of a grid disturbance, a Transmission Provider may communicate to an affiliated nuclear power plant specific information about transmission system conditions on a real-time basis.

DATES: *Effective Date:* The Order on Request for Additional Clarification will become effective May 25, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Kipp, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8228. *mary.kipp@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

Order on Request for Additional Clarification

1. In this order, the Commission addresses the request seeking clarification of the Commission's February 16, 2006 ''Interpretive Order Relating to the Standards of Conduct'' (Interpretive Order).[1] The Interpretive Order clarified that, subject to the no-conduit rule, Transmission Providers may communicate with affiliated nuclear power plants regarding certain matters related to the safety and reliability of the transmission system, in order to comply with requirements of the Nuclear Regulatory Commission (NRC). For the reasons discussed herein, we grant the request for additional clarification.

2. On March 20, 2006, Exelon Corporation (''Exelon'') filed comments and a request for clarification of the Interpretive Order. Specifically, Exelon requests that the Commission clarify that a Transmission Provider can provide its affiliated nuclear power plants (''NPPs'') with specific information concerning the location and nature of grid disturbances that potentially threaten the grid's ability to provide power to a plant's safety systems. On March 21, 2006, the Nuclear Energy Institute (''NEI'') filed comments in support of Exelon's position. In this order, the Commission clarifies that, in the event of a grid disturbance, a Transmission Provider may communicate to an affiliated NPP specific information about transmission system conditions on a real-time basis, including: (i) A technical description of the grid disturbance, along with its specific location on the system; (ii) the grid elements, whether lines, substations, or other elements, that may

[1] *Interpretive Order Relating to the Standards of Conduct,* 71 FR 9446 (Feb. 24, 2006), FERC Stats. & Regs. ¶ 31,206 (2006).

be affected by the disturbance, and their specific locations on the system; (iii) the projected duration of the disturbance; and (iv) steps being taken by the Transmission Provider to resolve the disturbance. This order benefits customers because it clarifies that Transmission Providers and NPPs may share information necessary to maintain the safety and reliability of the transmission grid while ensuring that there is no undue preference or services.

I. Background

3. On November 25, 2003, the Commission issued a Final Rule adopting Standards of Conduct for Transmission Providers (Order No. 2004).[2] Under Order No. 2004, the Standards of Conduct govern the relationships between Transmission Providers and all of their Marketing Affiliates and Energy Affiliates. The Standards of Conduct also contain various information-sharing prohibitions to help ensure that Transmission Providers do not use their access to information about transmission to unfairly benefit their own or their affiliates' sales to the detriment of competitive markets. Absent one of the exceptions articulated in section 358.5 of the Commission's regulations, if a Transmission Provider discloses transmission information to its Marketing or Energy Affiliate, the Transmission Provider is required to immediately post that information on its OASIS or Internet Web site.

4. On February 16, 2006, the Commission issued the Interpretive Order. The Interpretive Order clarified that sections 358.5(a) and (b) of the Commission's regulations, 18 CFR 358.5(a) and (b) (2005), do not prohibit a Transmission Provider and its affiliated NPP from engaging in necessary communications related to the safety and reliability of the transmission system or the NPP, including information relating to the loss of or potential loss of transmission lines that provide off-site power to the NPP.[3] The Commission issued the Interpretive Order to clarify that Transmission Providers may communicate with affiliated and non-affiliated NPPs to enable the NPPs to comply with the requirements of the NRC as described in the NRC's February 1, 2006 Generic Letter 2006–002, Grid Reliability and the Impact on Plant Risk and the Operability of Offsite Power (the ''Generic Letter'').[4] The Commission also reemphasized that, although such communications are permitted, the NPP operator is prohibited from being a conduit for sharing this information with employees of other Marketing or Energy Affiliates. 18 CFR 358.5(b)(7) (2005).[5]

5. Although no public notice or comment on the Interpretive Order was required pursuant to section 4(b)(A) of the Administrative Procedure Act, 5 U.S.C. 533(b)(A) (2000), which exempts from such notice or comment ''interpretive rules, general statements of policy or rules of agency organization, procedure or practice,'' the Commission invited all interested persons to submit written comments.[6] Comments were due March 20, 2006. Reply comments were due on April 19, 2006. The Generic Letter and the Interpretive Order were also discussed at the first ever joint meeting of the Commission and the NRC held on April 24, 2006.

6. Exelon filed timely comments in which it expresses agreement with the Commission that the clarifications set forth in the Interpretive Order will enhance safe operations at nuclear facilities. Exelon also requests that the Commission make additional clarifications. NEI filed comments in support of Exelon's position. No other comments or reply comments were filed.

7. Exelon argues that, while the Interpretive Order expressly held that Transmission Providers may communicate information on grid disturbances and the duration of power unavailability, the Interpretive Order only implicitly approved disclosure of the location and nature of the disturbance. Exelon asserts that such information clearly encompasses the ''necessary communications related to safety or reliability that the Standards of Conduct are not intended to impede.'' Thus, Exelon asks that the Commission further clarify that, subject to the no-conduit rule, a Transmission Provider may provide its affiliated NPPs with specific information concerning the location and nature of grid disturbances that potentially threaten the grid's ability to provide power to a plant's safety systems.

8. Exelon asserts that grid conditions may not only interfere with NPP access to offsite power, but may also require the Transmission Provider to ask the NPP to take some action, such as reducing output or operating switchyard equipment. In addition, Exelon points out that grid conditions may involve actual system emergencies or transmission element outages that create contingencies. Finally, Exelon states that grid conditions that may impact an NPP may occur on transmission system elements directly connected to the NPP, on more remote elements on the Transmission Provider's system, or even on elements in the system of another Transmission Provider. Exelon argues that under any and all such conditions, the NPP needs to know whether an affiliated Transmission Provider may disclose to an NPP specific information about transmission system conditions on a real-time basis, including: (i) A technical description of the grid disturbance, along with its specific location on the system; (ii) the grid elements, whether lines, substations, or other elements, that may be affected by the disturbance, and their specific locations on the system; (iii) the projected duration of the disturbance; and (iv) steps being taken by the Transmission Provider to resolve the disturbance.

II. Commission Decision

9. In the Interpretive Order the Commission recognized that, in addition to permitting communications necessary to operate and maintain the transmission system, the Transmission Provider and its interconnected NPP must engage in certain limited communications to operate and maintain the interconnection and the safety and reliability of the NPP.[7] Consequently, the Commission clarified that permitted communications may include, *inter alia*, information on grid disturbances and the duration of power unavailability in order for the NPP to plan for off-site power in the event of a grid-related loss of power or station blackout, as required by the NRC.[8]

10. The Commission did not intend to restrict to generalized information the types of communications that comprise ''information on grid disturbances and the duration of power unavailability'' as used in the Interpretive Order. Rather, the Commission intends that, subject to the no conduit rule, Transmission

[2] *Standards of Conduct for Transmission Providers,* Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003), *order on reh'g,* Order No. 2004–A, III FERC Stats. & Regs. ¶ 31,161 (2004), 107 FERC ¶ 61,032 (2004), *order on reh'g,* Order No. 2004–B, III FERC Stats. & Regs. ¶ 31,166 (2004), 108 FERC ¶ 61,118 (2004), *order on reh'g,* Order No. 2004–C, 109 FERC ¶ 61,325 (2004), *order on reh'g,* Order No. 2004–D, 110 FERC ¶ 61,320 (2005), *appeal docketed sub nom., National Gas Fuel Supply Corporation* v. *FERC,* No. 04–1183 (DC Cir. June 9, 2004).

[3] Interpretive Order at P 1.

[4] *Id.* referencing Nuclear Regulatory Commission's Generic Letter 2006–002, Grid Reliability and the Impact on Plant Risk and the Operability of Offsite Power. February 1, 2006. OMB Control No.: 3150–0011.

[5] *Interpretive Order* at P 6.

[6] *Id.* at P 10.

[7] *Id.* at P 7.

[8] *Id.*

Providers and their affiliated NPPs may communicate as necessary to preserve the safety and reliability of the grid, the interconnection, and the NPP. The Commission agrees with Exelon that it may be necessary for the Transmission Provider and the NPP to discuss specific technical information.

11. Accordingly, the Commission specifically clarifies that ''information on grid disturbances and the duration of power unavailability'' as used in the Interpretive Order encompasses specific information about transmission system conditions on a real-time basis, including: (i) A technical description of the grid disturbance, along with its specific location on the system; (ii) the grid elements, whether lines, substations, or other elements, that may be affected by the disturbance, and their specific locations on the system; (iii) the projected duration of the disturbance; and (iv) steps being taken by the Transmission Provider to resolve the disturbance.

III. Document Availability

12. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

13. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

14. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or (202) 502–8222 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659 (e-mail at *public.referenceroom@ferc.gov*).

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 06–4841 Filed 5–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–06–016]

RIN 1625–AA09

Drawbridge Operation Regulations; Massalina Bayou, Panama City, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary rule.

SUMMARY: The Commander, Eighth Coast Guard District, has temporarily changed the regulation governing the operation of the Tarpon Dock bascule span drawbridge across Massalina Bayou, mile 0.0, at Panama City, Bay County, Florida. The regulation will allow the draw of the bridge to remain closed to navigation for one hour to facilitate the American Heart Walk.

DATES: This temporary rule is effective from 9 a.m. to 10 a.m. on October 28, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [CGD08–06–016] and are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 500 Poydras Street, New Orleans, Louisiana 70130–3310, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Eighth District Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Thousands of pedestrians will cross the bridge during the event and this temporary rule is necessary to ensure their safety as they cross the bridge. Additionally, the event will only impact the waterway users for one hour and will open for vessels in distress.

Background and Purpose

The American Heart Association, on behalf of the City of Panama City, has requested a temporary rule changing the operation of the Tarpon Dock bascule span drawbridge across Massalina Bayou, mile 0.0, in Panama City, Bay County, Florida. This temporary rule is needed to accommodate approximately 2,000 pedestrians that are expected to participate in a 3.5-mile walk. The bridge is near the beginning of the walk and allowing the bridge to open for navigation during this short time period would disrupt the event and could result in injury. The bridge has a vertical clearance of 7 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Navigation on the waterway consists primarily of commercial fishing vessels, sailing vessels and other recreational craft. Presently, 33 CFR 117.301 states: ''The draw of the Tarpon Dock bascule span bridge, Massalina Bayou, mile 0.0, shall open on signal; except that from 9 p.m. until 11 p.m. on July 4, each year, the draw need not open for the passage of vessels. The draw will open at any time for a vessel in distress.'' This temporary rule will allow the bridge to be maintained in the closed-to-navigation position from 9 a.m. to 10 a.m. on October 28, 2006 to facilitate the American Heart Walk.

Discussion of Rule

The Coast Guard is temporarily changing the regulation in 33 CFR part 117. The temporary change allows the bridge to remain closed for one hour to facilitate a community activity and will minimally affect waterway users wishing to transit through the bridge on this date. This event is an annual event and waterway users have never expressed any concerns regarding the delays to facilitate this event.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This temporary rule will be only one hour in duration and is therefore expected to have only a minor affect on the local economy.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered

whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit through the Tarpon dock bridge across Massalina Bayou during the closure. There is not expected to be a significant impact due to the short duration of the closure and the publicity given to the event.

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 rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, and Department of Homeland Security Management Directive 5100.1, which 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.

Regulations

■ For the reasons set out 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. Effective 9 a.m. until 10 a.m. on October 28, 2006, § 117.301 is temporarily suspended and a new § 117.T302 is added to read as follows:

§ 117.T302 Massalina Bayou.

The draw of the Tarpon Dock bascule span bridge, Massalina Bayou, mile 0.0, shall open on signal; except that from 9 a.m. until 10 a.m. on October 28, 2006, the draw need not open for the passage of vessels. The draw will open at any time for a vessel in distress.

Dated: May 16, 2006.

Ronald W. Branch,

Captain, U.S.Coast Guard, Commander, 8th Coast Guard Dist., Acting.

[FR Doc. E6–8072 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–06–052]

RIN 1625–AA87

Security Zone; Severn River and College Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing the waters of the Severn River and College Creek in order to safeguard high-ranking public officials from terrorist acts and incidents during the U.S. Naval Academy graduation ceremony on May 26, 2006. This action is necessary to ensure the safety of persons and property, and prevent terrorist acts or incidents. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Baltimore.

DATES: This rule is effective from 7:30 a.m. to 2 p.m. on May 26, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–06–052 and are available for inspection or copying at Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Houck, Waterways Management Division, at Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, telephone number (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard is establishing this security zone to coordinate security operations and establish a secure environment for this highly visible and publicized event. The publication of an NPRM is impracticable and contrary to the public interest as immediate action is necessary to protect high-ranking public officials and the public from terrorist acts and incidents during the U.S. Naval Academy graduation ceremony on May 26, 2006. This temporary security zone of short duration is necessary to provide for the security of high-ranking officials and the public at large.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures contemplated by the rule are intended to protect high-ranking public officials and the public from waterborne acts of terrorism, which terrorists have demonstrated a capability to carry out. Immediate action is needed to defend against and deter these terrorist acts. Any delay in the effective date of this rule is contrary to public and national interests.

Background and Purpose

On May 26, 2006, the Vice President of the United States, Richard B. Cheney, will attend the commencement at the U.S. Naval Academy in Annapolis, Maryland. Due to increased awareness that future terrorist attacks are possible the Coast Guard, as lead federal agency for maritime homeland security, has determined that the Coast Guard Captain of the Port 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.

The Captain of the Port is establishing a security zone to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against a gathering of high-ranking officials at or near Annapolis, Maryland, would have. This temporary security zone applies to all waters of the Severn River, between Horseshoe Point and Biemans Point, and all waters of College Creek eastward of the King George Street Bridge. Marine vessel travel in the area of the Naval Academy Bridge in the Severn River and College Creek will be restricted. The area affected covers nearly 2000 yards of the Severn River's length. 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 and any revisions to the zone. This security zone is issued under authority contained in 50 U.S.C. 191 and 33 U.S.C. 1226.

Except for Public vessels and vessels at berth, mooring or at anchor, this rule temporarily requires all vessels in the designated security zone as defined by this rule to depart the security zone.

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).

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate or transit on the Severn River, between Horseshoe Point and Biemans Point, and on College Creek, eastward of the King George Street Bridge, from 7:30 a.m. to 2 p.m. on May 26, 2006. This security zone will not have a significant economic impact on a substantial number of small entities due to the

limited duration of the regulation. In addition, the waterway may be opened by the Captain of the Port Baltimore for the passage of traffic during specific times throughout the day.

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. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please contact one of the points of contact listed under **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 effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule, because this is an emergency situation lasting less than one week.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–052 to read as follows:

§ 165.T05–052 Security Zone; Severn River and College Creek, Annapolis, Maryland.

(a) *Definitions.* For the purposes of this section:

(1) *Captain of the Port Baltimore* means the Commander, U.S. Coast Guard Sector Baltimore, Maryland and any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Commander, U.S. Coast Guard Sector Baltimore, Maryland to act as a designated representative on his or her behalf.

(2) *State and/or local law enforcement officers* means any State or local

government law enforcement officer who has the authority to enforce State criminal laws.

(b) *Location.* The following area is a security zone: All waters of the Severn River, from shoreline to shoreline, bounded by a line drawn from Horseshoe Point eastward across the Severn River to a point located at 39°39′1.5″ N 076°29′8.5″ W, and a line drawn from Biemans Point westward across the Severn River to a point 39°59′04″ N 076°28′50″ W, located on the Naval Academy waterfront. This security zone includes the waters of College Creek eastward of the King George Street Bridge (NAD 1983).

(c) *Regulations.* (1) The general regulations governing security zones found in § 165.33 of this part apply to the security zone described in paragraph (b).

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore or his designated representative. Except for Public vessels and vessels at berth, mooring or at anchor, all vessels in this zone are to depart the security zone.

(3) Persons desiring to transit the area of the security zone must first obtain authorization from the Captain of the Port Baltimore. To seek permission to transit the area, the Captain of the Port Baltimore 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 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 is effective from 7:30 a.m. to 2 p.m. on May 26, 2006.

Dated: May 15, 2006.

Curtis A. Springer,

Captain, U.S. Coast Guard, Captain of the Port Baltimore, Maryland.

[FR Doc. E6–8068 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Charleston 06–003]

RIN 1625–AA00

Safety Zone; Cooper River, Hog Island Channel, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Hog Island Reach on the Cooper River, for demolition of the Grace Memorial and Silas Pearman Bridges and associated recovery operations. The temporary safety zone includes all waters within the area bounded by the following coordinates: 32°48.566′ N, 079°55.211′ W to 32°48.389′ N, 079°54.256′ W to 32°47.824′ N, 079°54.401′ W thence to 32°47.994′ N, 079°55.359′ W. This rule prohibits entry, anchoring, mooring, or transiting within the temporary safety zone without the permission of the Captain of the Port Charleston or his designated representative. This regulation is necessary to protect life and property on the navigable waters of the Cooper River from the dangers associated with the demolition and recovery of these bridges.

DATES: The rule is effective from 7:30 a.m. on May 25, 2006 through 8:01 a.m. on December 31, 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 [COTP Charleston 06–003] and are available for inspection or copying at Coast Guard Sector Charleston (WWM), 196 Tradd Street, Charleston, South Carolina 29401 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer James J. McHugh, Sector Charleston Office of Waterways Management, at (843) 724–7647.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM, which would incorporate a comment period before a final rule could be issued and delay the effective date, would be contrary to the public interest because immediate action is needed to protect the public and waters of the United States.

For the same reason, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. A Coast Guard patrol vessel will be on scene for the duration of the effective period to notify mariners of the restriction.

Background and Purpose

The demolition and removal of the Grace Memorial and Silas Pearman Bridges is an on-going operation that will continue throughout the year. This operation will require several explosive detonations to remove the steel trusses and supporting columns for the two bridges. These detonations present a direct danger to mariners transiting in the vicinity of the bridges on Hog Island Reach on the Cooper River. At this time, the detonation schedule can not be exactly determined, however Coast Guard Sector Charleston expects to receive two weeks notice, at maximum, from the contractor before any detonation will occur.

The purpose of this temporary safety zone is to protect mariners from the demolition and recovery operations. While the effective period for this zone extends from May 25, 2006 to December 31, 2006, the zone will only be activated and enforced immediately preceding a detonation, and for a short duration following a detonation to allow for the safe removal of debris. Upon receiving notice from the contractor that a detonation will occur, Coast Guard Sector Charleston will notify the public of the date and time the safety zone will be enforced and when enforcement will stop. While the safety zone is being enforced, mariners may request permission to transit through the zone by contacting the U.S. Coast Guard via VHF–FM channel 16 or by phone at (843) 724–7616. Mariners and the general public may also contact the Coast Guard to request information on the status of the safety zone, including whether it is currently enforced and when the next enforcement period will be.

Discussion of Rule

This rule creates a temporary safety zone around the Grace Memorial and Silas Pearman Bridges on Hog Island Reach, and includes all waters within the area bounded by the following coordinates: 32°48.566′ N, 079°55.211′ W to 32°48.389′ N, 079°54.256′ W to 32°47.824′ N, 079°54.401′ W thence to 32°47.994′ N, 079°55.359′ W. This zone

will only be enforced immediately preceding a detonation, and for a short time following a detonation while debris is removed. These enforcement periods will be announced by Coast Guard Sector Charleston through broadcast notice to mariners, marine safety information bulletins, and through local media press releases. While the zone is enforced, persons and vessels may not enter or remain in the zone without the prior permission of the Captain of the Port Charleston or designated representative.

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. The rule is not a significant regulatory action because the safety zone will only be enforced for a short duration before and after detonations on the bridge, the impact on routine navigation is expected to be minimal, commercial marine traffic will still be able to safely transit around the temporary safety zone by using the Town Creek Channel, and vessels may be allowed to enter the zone after obtaining the permission of the COTP or their designated representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The owners and operators of vessels who wish to navigate through Hog Island Reach may be impacted by this rule. This impact will not be significant because the safety zone will only be enforced for a short duration before and after detonations on the bridge, the impact on routine navigation is expected to be minimal, commercial marine traffic will still be able to safely transit around the temporary safety zone by using the Town Creek Channel, and vessels may be allowed to enter the zone after obtaining the permission of the COTP or their designated representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, 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. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, subpart C as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T07–003 is added to read as follows:

§ 165.T07–003 Safety Zone, Hog Island Channel, Grace Memorial and Silas Pearman Bridges, Charleston, SC.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone around the Grace Memorial and Silas Pearman Bridges on the Cooper River on Hog Island Reach, in the City of Charleston and Mt. Pleasant, SC. The following area is a safety: All waters within the area bounded by the following coordinates: 32°48.566′ N, 079°55.211′ W to 32°48.389′ N, 079°54.256′ W to 32°47.824′ N, 079°54.401′ W thence to 32°47.994′ N, 079°55.359′ W.

(b) *Definitions.* The following definitions apply to this section:

Designated representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port (COTP) Charleston in the enforcement of the regulated area.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entering, anchoring, mooring or transiting in the Regulated Area is prohibited, except as provided for herein, or unless authorized by the Coast Guard Captain of the Port Charleston, South Carolina, or his designated representative. Persons and vessels may request permission to enter the safety zone on VHF–FM channel 16 or via phone at (843) 724–7616.

(d) *Enforcement Period.* This regulation will only be enforced at times immediately preceding an explosive detonation on the Grace Memorial or Silas Pearman Bridges, and for a short period after the detonation during debris removal operations. Coast Guard Sector Charleston will announce the start date and expected duration of each enforcement period through broadcast notice to mariners, marine safety information bulletins, through local media press releases and on-scene patrol assets. Additionally, anyone wishing to inquire as to the status of the safety zone may contact Coast Guard Sector Charleston at (843) 724–7616.

(e) *Dates.* This rule is effective from 7:30 a.m. EDT on May 25, 2006 until 8:01 a.m. EDT on December 31, 2006.

Dated: January 6, 2006.

John E. Cameron,

Captain, U.S. Coast Guard, Captain of the Port Charleston, SC.

[FR Doc. E6–8073 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–06–029]

RIN 1625–AA00

Safety Zone; Thunder on the Niagara, the Niagara River at Gratwick Riverside Park, North Tonowanda, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing the navigable waters of the upper Niagara River by Gratwick Riverside Park in North Tonawanda, NY. This safety zone is necessary to ensure the safety of spectators and vessels from the hazards associated with a boat race. This safety zone restricts vessel traffic from a portion of the Niagara River at Gratwick Riverside Park, North Tonawanda, NY.

DATES: This rule is in effect from 11 a.m. on June 3, 2006 until 5 p.m. on June 4, 2006. This rule will be enforced from 11 a.m. until 5 p.m. on June 3, 2006, and from 12 p.m. until 5 p.m. on June 4, 2006. All times are local.

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 the docket (CGD09–06–029), and are available for inspection or copying at U.S. Coast Guard Sector Buffalo, 1 Fuhrmann Blvd, Buffalo, New York 14203 between 7 a.m. and 4 p.m. (local), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Tracy Wirth, U.S. Coast Guard Sector Buffalo, at (716) 843–9573.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This safety zone will only be in effect for two days and there was insufficient time to publish an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest since immediate action is needed to minimize potential danger to the public during the fireworks demonstration.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with powerboat races. Based on recent accidents that have occurred in other Captain of the Port zones, the Captain of the Port Buffalo has determined powerboat races pose significant risks to public safety and property.

In the absence of a safety zone, the likely combination of large numbers of recreational vessels, congested waterways, and alcohol use, could easily result in serious injuries or fatalities.

Discussion of Rule

The proposed safety zone consists of all navigable waters of the Upper

Niagara River located at 42°03′36″ N, 078°54′45″ W to 43°03′09″ N, 078°55′21″ W to 43°03′00″ N, 078°53′42″ W to 43°02′42″ N, 078°54′09″ W. All Geographic coordinates are North American Datum of 1983 (NAD 83). The size of this proposed zone was determined using the location of the race course approved by the Captain of the Port Buffalo and local knowledge concerning wind, waves, and currents.

All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or his designated patrol representative. The designated on-scene patrol representative will be the patrol commander. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

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 this rule under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone, and the zone is in areas where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

Small Entities

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

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

This rule may affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect for two short periods of time. Vessel traffic can safely pass outside the safety zone during the event. In cases where traffic congestion is greater than expected or blocks shipping channels, traffic may be allowed to pass through the safety zone under Coast Guard or assisting agency escort with the permission of the Captain of the Port Buffalo. Additionally, the Coast Guard has not received any negative reports from small entities affected during these displays in previous years.

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 rule so that they can better evaluate its effects and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement 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 1–800–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 will 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 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, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T09–029 to read as follows:

§ 165.T09–029 Safety Zone; Thunder on the Niagara, Gratwick Riverside Park, North Tonawanda, NY.

(a) *Location.* The following area is a temporary safety zone: all waters of the upper Niagara River located at 42°03′36″ N, 078°54′45″ W to 43°03′09″ N, 078°55′21″ W to 43°03′00″ N, 078°53′42″ W to 43°02′42″ N, 078°54′09″ W. All Geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo.

(2) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo, or his designated on-scene representative.

(c) *Effective time and date.* This rule is in effect from 11 a.m. (local) on June 3, 2006 until 5 p.m. (local) on June 4, 2006. This rule will be enforced from 11 (local) a.m. until 5 p.m. (local) on June 3, 2006 and from 12 p.m. (local) until 5 p.m. (local) on June 4, 2006.

Dated: May 12, 2006.

S.J. Furguson,

Commander, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. E6–8067 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 107

[Docket No. PHMSA–2006–24824]

RIN 2137–AE18

Hazardous Materials: Preemption Determinations; Procedural Regulations

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration is revising its procedural regulations for issuing administrative determinations as to whether Federal hazardous material transportation law preempts a State, local, or Indian tribe requirement and for issuing waivers of preemption.

DATES: This rule is effective May 25, 2006.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of Chief Counsel, (202) 366–4400, Pipeline and Hazardous Materials Safety Administration.

SUPPLEMENTARY INFORMATION: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, authorizes any person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision or tribe to apply to the Secretary of Transportation for a determination as to whether the requirement is preempted. 49 U.S.C. 5125(d)(1). The statutory criteria for preemption of a non-Federal requirement are set forth in section 5125(a), (b), (c), and (f). Section 5125(e) authorizes the Secretary of Transportation to waive preemption on a finding that the non-Federal requirement is not an unreasonable burden on commerce and provides the public at least as much protection as the requirements of Federal hazardous material transportation law and regulations.

The Secretary of Transportation has delegated authority to PHMSA to decide all requests for preemption determinations and waivers of preemption under 49 U.S.C. 5125, except those concerning highway routing (which have been delegated to the Federal Motor Carrier Safety Administration (FMCSA)). 49 CFR 1.53(b)(2), 1.73(d)(2). PHMSA's procedural regulations implementing this authority (49 CFR part 107, subpart C (107.201–107.227)) currently designate PHMSA's Associate Administrator for Hazardous Materials Safety to receive applications, conduct proceedings, and make decisions on applications for preemption determinations and waivers.

PHMSA is transferring these functions to its Chief Counsel and amending its procedural regulations accordingly. This change is made effective upon publication.

PHMSA also is amending its procedural regulations to provide that decisions on applications under 49 U.S.C. 5125(d) and (e), and decisions on petitions for reconsideration of these administrative actions, are final upon publication of the decision in the **Federal Register**. Accordingly, the filing of a petition for reconsideration will not postpone the 60-day period for filing a petition for judicial review of the decision under 49 U.S.C. 5127.

Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of 49 U.S.C. 5125 and 49 CFR 1.53(b)(2), and amends previously issued regulations relating to PHMSA's authority to issue Federal preemption determinations and waivers of preemption.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under

section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This final rule has no economic impact, and preparation of a regulatory evaluation is not warranted.

C. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). The final rule has no preemptive effect on State, local, or Indian tribe enforcement procedures and penalties, and preparation of a federalism assessment is not warranted.

D. Regulatory Flexibility Act and Executive Order 13272

I certify this final rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

There are no new information requirements in this final rule.

F. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Act of 1995. It does not result in annual costs of $120.7 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector, and is the least burdensome alternative to achieve the objective of the rule.

G. Environmental Assessment

There are no significant environmental impacts associated with this final rule.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the spring and fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 107

Administrative practices and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR, Subtitle B, Chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 § 4 (28 U.S.C. 2461 note); Pub. L. 104–121 §§ 212–213; Pub. L. 104–134 § 31001; 49 CFR 1.45, 1.53.

■ 2. In § 107.201, revise paragraph (d) to read as follows:

§ 107.201 Purpose and scope.

* * * * *

(d) An application for a preemption determination that includes an application for a waiver of preemption will be treated and processed solely as an application for a preemption determination.

■ 3. In § 107.203, revise paragraphs (a), (b)(1), and (d) to read as follows:

§ 107.203 Application.

(a) With the exception of highway routing matters covered under 49 U.S.C. 5125(c), any person, including a State or political subdivision thereof or an Indian tribe, directly affected by any requirement of a State or political subdivision thereof or an Indian tribe, may apply to the Chief Counsel for a determination as to whether that requirement is preempted by § 107.202(a), (b), or (c).

(b) * * *

(1) Be submitted to the Chief Counsel:

(i) By mail addressed to the Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 7th Street, SW., Suite 8417, Washington, DC 20590–0001;

(ii) By facsimile to 202–366–7041; or

(iii) Electronically to the Chief Counsel at *phmsachiefcounsel@dot.gov.*

* * * * *

(d) Once the Chief Counsel has published notice in the **Federal Register** of an application received under paragraph (a) of this section, no applicant for such determination may seek relief with respect to the same or substantially the same issue in any court until final action has been taken on the application or until 180 days after filing of the application, whichever occurs first. Nothing in § 107.203(a) prohibits a State or political subdivision thereof or Indian tribe, or any other person directly affected by any requirement of a State or political subdivision thereof or Indian tribe, from seeking a determination of preemption in any court of competent jurisdiction in lieu of applying to the Chief Counsel under paragraph (a) of this section.

■ 4. In § 107.205, make the following changes:

■ a. In paragraph (a), remove the term ''Associate Administrator'' both times it appears and add in its place the term ''Chief Counsel.''

■ b. In paragraph (b), remove the term ''Associate Administrator'' and add in its place the term ''Chief Counsel.''

■ c. Revise paragraph (c).

The revisions read as follows:

§ 107.205 Notice.

* * * * *

(c) Each person submitting written comments to the Chief Counsel with respect to an application filed under this section must send a copy of the comments to the applicant and certify to the Chief Counsel that he or she has complied with this requirement. The Chief Counsel may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond. Late-filed comments are considered so far as practicable.

§ 107.207 [Amended]

■ 5. In § 107.207(a) and (b), remove the term ''Associate Administrator'' each time it appears (five times in total) and add in its place the term ''Chief Counsel.''

■ 6. In § 107.209, make the following changes:

■ a. In paragraphs (a) and (b), remove the term ''Associate Administrator'' and add in its place the term ''Chief Counsel.''

■ b. Revise paragraph (c) to read as follows:

§ 107.209 Determination.

* * * * *

(c) The Chief Counsel provides a copy of the determination to the applicant and to any other person who substantially participated in the proceeding or requested in comments to the docket to be notified of the determination. A copy of each determination is placed on file in the public docket. The Chief Counsel will publish the determination or notice of the determination in the **Federal Register,** at which time the determination becomes a final agency action.

* * * * *

■ 7. In § 107.211, make the following changes:

■ a. Revise paragraphs (a) and (d).

■ b. In paragraph (b), remove the term ''Associate Administrator'' and add in its place the term ''Chief Counsel''.

■ c. In paragraph (c), remove the term ''Associate Administrator'' both times it appears and add in its place the term ''Chief Counsel.''

The revisions read as follows:

§ 107.211 Petition for reconsideration.

(a) Any person aggrieved by a determination issued under § 107.209 may file a petition for reconsideration. The petition must be filed with the Chief Counsel, in the same manner specified for filing an application in § 107.203(b), within 20 days of publication of the determination in the **Federal Register.**

* * * * *

(d) The Chief Counsel will publish the decision on the petition for reconsideration or notice of the decision in the **Federal Register,** at which time the decision on the petition for reconsideration becomes a final agency action.

■ 8. Revise § 107.213 to read as follows:

§ 107.213 Judicial review.

A party to a proceeding under § 107.203(a) may seek review of a determination of the Chief Counsel by filing a petition, within 60 days after the determination becomes final, in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the United States for the circuit in which the person resides or has its principal place of business.

■ 9. In § 107.215, revise paragraph (a) introductory text and paragraph (b)(1) to read as follows:

§ 107.215 Application.

(a) With the exception of requirements preempted under 49 U.S.C. 5125(c), a State or political subdivision thereof, or Indian tribe may apply to the Chief Counsel for a waiver of preemption with respect to any requirement that the State or political subdivision thereof or Indian tribe acknowledges to be preempted under the Federal hazardous materials transportation law, or that has been determined by a court of competent jurisdiction to be so preempted. The Chief Counsel may waive preemption with respect to such requirement upon a determination that such requirement—

* * * * *

(b) * * *

(1) Be submitted to the Chief Counsel:

(i) By mail addressed to the Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 7th Street, SW., Suite 8417, Washington, DC 20590–0001;

(ii) By facsimile to 202–366–7041; or

(iii) Electronically to the Chief Counsel at *phmsachiefcounsel@dot.gov.*

* * * * *

§ 107.217 [Amended]

■ 10. In § 107.217, make the following changes:

■ a. In paragraph (a), remove the phrases ''to the Associate Administrator'' and ''filed with the Associate Administrator.''

■ b. In paragraph (b)(2), remove the phrase ''filed with the Associate Administrator.''

■ c. In paragraph (c) , remove the term ''Associate Administrator'' and add in its place the term ''Chief Counsel.''

■ d. In paragraph (d), remove the term ''Associate Administrator'' and add in its place the term ''Chief Counsel.''

■ e. In paragraph (e), remove the phrase ''to the Associate Administrator'' both times it appears and, in the last sentence, remove the term ''Associate Administrator'' and add in its place the term ''Chief Counsel.''

§ 107.219 [Amended]

■ 11. In § 107.219, make the following changes:

■ a. In paragraphs (a) and (b), remove the term ''Associate Administrator'' each time it appears (four times in total) and add in its place the term '' Chief Counsel.''

■ b. In the first sentence of paragraph (c), remove the term ''Associate Administrator'' and add in its place the term ''Chief Counsel.''

■ c. In the first sentence of paragraph (d), remove the term ''Associate Administrator'' and add in its place the term ''Chief Counsel.''

■ 12. In § 107.221, make the following changes:

■ a. In paragraph (a), remove the term ''Associate Administrator'' and add in its place the term ''Chief Counsel.''

■ b. In paragraph (b) remove the term ''Associate Administrator'' both times it appears and add in its place the term ''Chief Counsel.''

■ c. In paragraph (c), remove the term ''Associate Administrator'' and add in its place the term ''Chief Counsel.''

■ d. Revise paragraph (d) to read as follows:

§ 107.221 Determination.

* * * * *

(d) The Chief Counsel provides a copy of the determination to the applicant and to any other person who substantially participated in the proceeding or requested in comments to the docket to be notified of the determination. A copy of the determination is placed on file in the public docket. The Chief Counsel will publish the determination or notice of the determination in the **Federal Register,** at which time the determination becomes a final agency action.

* * * * *

■ 13. In § 107.223, make the following changes:

■ a. Revise paragraphs (a) and (d).

■ b. In paragraph (b), remove the term ''Associate Administrator'' and add in its place the term ''Chief Counsel.''

■ c. In paragraph (c), remove the term ''Associate Administrator'' both times it appears and add in its place the term ''Chief Counsel.''

The revisions read as follows:

§ 107.223 Petition for reconsideration.

(a) Any person aggrieved by a determination under § 107.221 may file a petition for reconsideration. The petition must be filed with the Chief Counsel, in the same manner specified for filing an application in § 107.215(b), within 20 days of publication of the determination in the **Federal Register.**

* * * * *

(d) The Chief Counsel will publish the decision on the petition for reconsideration or notice of the decision in the **Federal Register,** at which time the decision on the petition for reconsideration becomes a final agency action.

■ 14. Revise § 107.227 to read as follows:

§ 107.227 Judicial review.

A party to a proceeding under § 107.215(a) may seek review of a determination of the Chief Counsel by filing a petition, within 60 days after the determination becomes final, in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the United States for the circuit in which the person resides or has its principal place of business.

Issued in Washington, DC on May 18, 2006.

Brigham A. McCown,

Acting Administrator.

[FR Doc. E6–8064 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 71, No. 101
Thursday, May 25, 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD03

Assessments; Correction

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking and request for comment; correction.

SUMMARY: This document corrects the preamble to the proposed rule published in the **Federal Register** of May 18, 2006, regarding Assessments. Specifically, this document corrects the Agency Web site for submitting comments on this proposed rule.

FOR FURTHER INFORMATION CONTACT: Munsell W. St. Clair, Senior Policy Analyst, Division of Insurance and Research, (202) 898–8967; Donna M. Saulnier, Senior Assessment Policy Specialist, Division of Finance, (703) 562–6167; and Christopher Bellotto, Counsel, Legal Division, (202) 898–3801.

Correction

In the proposed rule FR Doc. 06–4657, beginning on page 28790 in the issue of May 18, 2006, make the following correction to the Agency Web site in the **ADDRESSES** section:

''You may submit comments, identified by RIN number by any of the following methods:

- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web site.''

Please note that the Agency Web site contains a slash (''/'') mark between the words ''federal'' and ''propose.html.''

Dated: May 18, 2006.

Carol L. Middlebrook,

Special Assistant to the Executive Secretary.

[FR Doc. E6–7999 Filed 5–24–06; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD07

Dividends; Correction

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the preamble to the proposed rule published in the **Federal Register** of May 18, 2006, regarding Dividends. Specifically, this document corrects the Agency Web site for submitting comments on this proposed rule.

FOR FURTHER INFORMATION CONTACT: Munsell W. St. Clair, Senior Policy Analyst, Division of Insurance and Research, (202) 898–8967; Donna M. Saulnier, Senior Assessment Policy Specialist, Division of Finance, (703) 562–6167; and Kymberly K. Copa, Counsel, Legal Division, (202) 898–8832.

Correction

In the proposed rule FR Doc. E6–7585, beginning on page 28804 in the issue of May 18, 2006, make the following correction to the Agency Web site in the **ADDRESSES** section:

''You may submit comments, identified by RIN number by any of the following methods:

- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web site.''

Please note that the Agency Web site contains a slash (''/'') mark between the words ''federal'' and ''propose.html.''

Dated: May 18, 2006.

Carol L. Middlebrook,

Special Assistant to the Executive Secretary.

[FR Doc. E6–7998 Filed 5–24–06; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD08

One-Time Assessment Credit; Correction

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the preamble to the proposed rule published in the **Federal Register** of May 18, 2006, regarding the One-time Assessment Credit. Specifically, this document corrects the Agency Web site for submitting comments on this proposed rule.

FOR FURTHER INFORMATION CONTACT: Munsell W. St. Clair, Senior Policy Analyst, Division of Insurance and Research, (202) 898–8967; Donna M. Saulnier, Senior Assessment Policy Specialist, Division of Finance, (703) 562–6167; and Kymberly K. Copa, Counsel, Legal Division, (202) 898–8832.

Correction

In the proposed rule FR Doc. E6–7583, beginning on page 28809 in the issue of May 18, 2006, make the following correction to the Agency Web site in the **ADDRESSES** section:

''You may submit comments, identified by RIN number by any of the following methods:

- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web site.''

Please note that the Agency Web site contains a slash (''/'') mark between the words ''federal'' and ''propose.html.''

Dated: May 18, 2006.

Carol L. Middlebrook,

Special Assistant to the Executive Secretary.

[FR Doc. E6–8000 Filed 5–24–06; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24867; Directorate Identifier 2006–NM–064–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, and –106 Airplanes, and DHC–8–200 and DHC–8–300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier Model DHC–8–102, –103, and –106 airplanes, and DHC–8–200 and DHC–8–300 series airplanes. This proposed AD would require performing a one-time inspection for non-conforming chain links of chain assemblies of the elevator trim system and gust lock system, and corrective actions if necessary. This proposed AD would also require temporary revisions to the airplane flight manuals of the affected airplanes, which describe procedures for elevator trim checks. This proposed AD results from several reports of failure of the elevator trim chain, due to hydrogen embrittlement. We are proposing this AD to prevent breakage of the elevator trim chain, which would prevent the actual position of the elevator trim tab from being annunciated to the flightcrew. Attempting to adjust the trim tab to the full nose up or full nose down position with a broken trim chain could cause reduced control during airplane rotation on the ground or a stall during flight.

DATES: We must receive comments on this proposed AD by June 26, 2006.

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

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

Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7320; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–24867; Directorate Identifier 2006–NM–064–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model DHC–8–102, –103, and –106 airplanes, and DHC–8–200 and DHC–8–300 series airplanes. TCCA has received reports of several failures of the elevator trim chain, due to cracking of certain chain links caused by hydrogen embrittlement. This condition, if not corrected, could result in breakage of the elevator trim chain, which would prevent the actual position of the elevator trim tab from being annunciated to the flightcrew. Attempting to adjust the trim tab to the full nose up or full nose down position with a broken trim chain could cause reduced control during airplane rotation on the ground or a stall during flight.

Relevant Service Information

Bombardier has issued temporary amendments (TA) to the product support manuals (PSM) of the airplane flight manuals (AFM) of the affected airplanes, as shown in the following table. The TAs describe procedures for visual trim checks to verify that elevators are in acceptable positions relative to elevator trim wheel settings. Operators should note that the suffixes ''NS,'' ''S,'' and ''HT,'' only appear on the labels of certain AFMs and do not indicate separate airplane models. For example, a Model 102NS airplane is a Model 102 airplane.

TEMPORARY AMENDMENTS (TAS)

Airplane model/AFM No.	PSM	TA No.	Effective date
102, 103, and 106	1–81–1A	9	January 28, 2004.
102NS, 103NS, and 106NS	1–81–1A	8	January 28, 2004.
201	1–82–1A	11	June 22, 2005.
202	1–82–1A	10	January 28, 2004.
201S and 202S	1–82–1A	9	June 22, 2005.

TEMPORARY AMENDMENTS (TAs)—Continued

Airplane model/AFM No.	PSM	TA No.	Effective date
202HT	1–82–1A	8	January 28, 2004.
301	1–83–1A	8	January 28, 2004.
311	1–83–1A	15	January 28, 2004.
315	1–83–1A	9	January 28, 2004.

Bombardier has issued Service Bulletin 8–27–105, Revision 'A,' dated September 13, 2005. The service bulletin describes procedures for performing a one-time inspection for non-conforming chain links of chain assemblies of the elevator trim system and gust lock system, and corrective actions if necessary. Conforming chain links are identified with the number RC–25; non-conforming chain links are identified with other numbers. Corrective actions include replacing any non-conforming chain links with conforming chain links, or replacing the trim chain/chain assembly with a new or serviceable trim chain/chain assembly.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. TCCA mandated the service information and issued Canadian airworthiness directive CF–2005–38, dated October 25, 2005, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

This proposed AD would affect about 166 airplanes of U.S. registry. The proposed inspection would take about 5 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed inspection for U.S. operators is $66,400, or $400 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2006–24867; Directorate Identifier 2006–NM–064–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by June 26, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–102, –103, and –106 airplanes, and DHC–8–200 and DHC–8–300 series airplanes, certificated in any category; as identified in Bombardier Service Bulletin 8–27–105, Revision 'A,' dated September 13, 2005.

Unsafe Condition

(d) This AD results from reports of several failures of the elevator trim chain, due to hydrogen embrittlement. We are issuing this AD to prevent breakage of the elevator trim chain, which would prevent the actual position of the elevator trim tab from being annunciated to the flightcrew. Attempting to adjust the trim tab to the full nose up or full nose down position with a broken trim chain could cause reduced control during airplane rotation on the ground or a stall during flight.

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.

Temporary Amendments (TAs)

(f) Within 30 days after the effective date of this AD, revise the applicable airplane

flight manual (AFM) of the affected airplanes by incorporating the information in the TAs into the product support manuals (PSM) listed in Table 1 of this AD. This may be accomplished by inserting a copy of the applicable TA into the AFM. The copy of the TA may be removed from the AFM when a new revision of the AFM is released that incorporates material identical to the content of the TA.

TABLE 1.—BOMBARDIER TEMPORARY AMENDMENTS (TAS)

Airplane model/AFM No.	PSM	TA No.	Effective date
102, 103, and 106	1–81–1A	9	January 28, 2004.
102NS, 103NS, and 106NS	1–81–1A	8	January 28, 2004.
201	1–82–1A	11	June 22, 2005.
202	1–82–1A	10	January 28, 2004.
201S and 202S	1–82–1A	9	June 22, 2005.
202HT	1–82–1A	8	January 28, 2004.
301	1–83–1A	8	January 28, 2004.
311	1–83–1A	15	January 28, 2004.
315	1–83–1A	9	January 28, 2004.

Note 1: The suffixes ''NS,'' ''S,'' and ''HT,'' do not indicate separate airplane models; for example, a Model 102NS airplane is a Model 102 airplane.

Inspection and Corrective Actions

(g) Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, perform a one-time general visual inspection for non-conforming chain links of the trim chain/chain assemblies of the elevator trim system and gust lock system and, before further flight, do applicable corrective actions, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–27–105, Revision 'A,' dated September 13, 2005. After accomplishing the requirements of this paragraph, operators may remove the AFM revisions required by paragraph (f) of this AD from the AFM.

Parts Installation

(h) As of the effective date of this AD, no person may install an elevator trim chain/chain assembly on any airplane, unless the chain links of that trim chain/chain assembly are identified with the number RC–25.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(j) Canadian airworthiness directive CF–2005–38, dated October 25, 2005, also addresses the subject of this AD.

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–8008 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24868; Directorate Identifier 2006–NM–103–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Fokker Model F.28 Mark 0070 and 0100 airplanes. This proposed AD would require modification of the wiring distribution of the alternating current bus transfer power system and the right-hand and left-hand windshield anti-icing system, as necessary. This proposed AD results from a report of electrical sparks coming out of the flight deck from a panel behind the left seat. We are proposing this AD to prevent failure of the sliding window heating element(s), due to electrical overload, which could result in smoke and fire in the cockpit.

DATES: We must receive comments on this proposed AD by June 26, 2006.

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

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

Contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–24868; Directorate Identifier 2006–NM–103–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets,

including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified us that an unsafe condition may exist on all Fokker Model F.28 Mark 0070 and 0100 airplanes. The CAA–NL advises that, a few minutes after takeoff, electrical sparks came out of the flight deck from a panel behind the left seat, on a Fokker Model F.28 Mark 0070 airplane. The flightcrew also noticed a strong electrical smell, but no visible smoke. Investigation revealed that several contacts of the J 4222A/P 4222B connector were burnt, creating a conductive path between the contacts of the left-hand (LH) windshield heating system and the LH sliding window heating system. The conductive path resulted in too high of a voltage on the LH sliding window, causing the overheat of the LH sliding window heating element. Failure of the sliding window heating element(s), due to electrical overload, if not corrected, could result in smoke and fire in the cockpit.

Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin SBF100–30–027, dated May 9, 2005; including Manual Change Notification—Maintenance Documentation MCNM F100–098, dated May 9, 2005; and including the drawings listed in the following table. (To conform to certain Office of the Federal Register requirements for incorporating these materials by reference, the table identifies the date of the service bulletin for undated drawings.)

DRAWINGS INCLUDED IN FOKKER SERVICE BULLETIN SBF100–30–027

Drawing	Sheet	Issue	Date
W41043	007	H	May 9, 2005.
W41043	008	H	May 9, 2005.
W41249	006	F	May 9, 2005.
W41249	007	F	May 9, 2005.
W41249	008	F	May 9, 2005.
W41249	009	G	May 9, 2005.
W41249	010	G	May 9, 2005.

The service bulletin describes procedures for modifying the wiring distribution of the alternating current bus transfer power system and the right-hand and left-hand windshield anti-icing system, as necessary. Specifically, the service bulletin describes modifying the following areas:

- For Block A airplanes, in the passenger compartment ceiling through receptacle J 2953A/plug P 2953B, zone 267; in the flight compartment ceiling through receptacle J 4261A/plug P 4261B, zone 259; and in the flight compartment ceiling through receptacle J 4222A/plug P 4222B, zone 258.
- For Block B airplanes, in the electrical power control (EPC) panel 1 through receptacle J 1566A/plug P 1566B, zone 244; and in EPC panel 3 through receptacle J 1590A/plug P 1590B, zone 242.
- For Block C airplanes, in EPC panel 1 through receptacle J 1566A/plug P 1566B, zone 244.
- For Block D airplanes, in EPC panel 3 through receptacle J 1590A/plug P 1590B, zone 242.
- For Block E airplanes, in the passenger compartment ceiling through receptacle J 2953A/plug P 2953B, zone 267.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA–NL mandated the service information and issued Dutch airworthiness directive NL–2005–009, dated June 30, 2005, to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA–NL has kept the FAA informed of the situation described above. We have examined the CAA–NL's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

This proposed AD would affect about 10 airplanes of U.S. registry. The proposed actions would take about 3 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $2,400, or $240 per airplane.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket No. FAA–2006–24868; Directorate Identifier 2006–NM–103–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by June 26, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Fokker Model F.28 Mark 0070 and 0100 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of electrical sparks coming out of the flight deck from a panel behind the left seat. We are issuing this AD to prevent failure of the sliding window heating element(s), due to electrical overload, which could result in smoke and fire in the cockpit.

Compliance

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

Modification of Wiring Distribution

(f) Within 36 months after the effective date of this AD, modify the wiring distribution of the alternating current bus transfer power system and the right-hand and left-hand windshield anti-icing system, by accomplishing all of the actions specified in the Accomplishment Instructions of Fokker Service Bulletin SBF100–30–027, dated May 9, 2005, as applicable; including Manual Change Notification—Maintenance Documentation MCNM F100–098, dated May 9, 2005; and including the drawings listed in Table 1 of this AD. (To conform to certain Office of the Federal Register requirements for incorporating these materials by reference, the table identifies the date of the service bulletin for undated drawings.)

TABLE 1.—DRAWINGS INCLUDED IN FOKKER SERVICE BULLETIN SBF100–30–027

Drawing	Sheet	Issue	Date
W41043	007	H	May 9, 2005.
W41043	008	H	May 9, 2005.
W41249	006	F	May 9, 2005.
W41249	007	F	May 9, 2005.
W41249	008	F	May 9, 2005.
W41249	009	G	May 9, 2005.
W41249	010	G	May 9, 2005.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Related Information

(h) Dutch airworthiness directive NL–2005–009, dated June 30, 2005, also addresses the subject of this AD.

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–8009 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24877; Directorate Identifier 2005–NM–253–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747SR, and 747SP Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 747 series airplanes. The existing AD currently requires repetitive inspections to detect cracks at certain stringer fastener locations; and repair, if necessary. For certain airplanes, the existing AD requires a modification in certain areas where reports indicate that cracking was prevalent. This modification terminates the repetitive inspections only for those areas, and is also an option for other airplanes affected by the existing AD. This proposed AD would require one-time inspections at a reduced inspection threshold of areas that may have Alodine-coated rivets installed, and repair if necessary. This proposed AD results from a report of cracking discovered in a skin lap joint that was previously inspected using the eddy current method. We are proposing this AD to prevent rapid decompression of the airplane due to disbonding and subsequent cracking of the skin panels.

DATES: We must receive comments on this proposed AD by July 10, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: Nicholas Kusz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6432; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–24877; Directorate Identifier 2005–NM–253–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

On December 3, 1990, we issued AD 90–26–10, amendment 39–6836 (55 FR 51401, December 14, 1990), for certain Boeing Model 747 series airplanes. That AD requires repetitive inspections to detect cracks at certain stringer fastener locations; and repair, if necessary. For certain airplanes, AD 90–26–10 requires a modification in certain areas where reports indicate that cracking was prevalent. This modification terminates the repetitive inspections only for those areas. That AD resulted from reports of multiple longitudinal skin cracks. We issued that AD to prevent rapid decompression of the airplane.

Actions Since Existing AD Was Issued

Since 1985, Boeing has incorporated rivets coated with Alodine into production fuselage aluminum skins and post-production skin modification kits. Alodine coating on rivets provides a protective chemical conversion coating, but also increases electrical conductivity. Certain non-destructive inspection (NDI) methods rely on disruptions in the electromagnetic field around cracks in metallic structures to detect cracking. One such NDI method is the sliding probe eddy current inspection, which was one inspection method required by AD 90–26–10. Conductivity of the Alodine-coated rivet could be strong enough to mask cracking in the fastener hole during eddy current inspections.

Since we issued AD 90–26–10, cracking was discovered in a skin lap joint that was previously inspected using the eddy current method. The cracking was discovered during a full-scale fatigue test on a Model 737 fuselage. The skin lap joints on Model 737 airplanes are similar to those on the affected Model 747 airplanes.

The manufacturer has accomplished a comprehensive study of the effect of Alodine-coated rivets on all Boeing Airplane models. Based on the critical nature of the sliding probe eddy current inspection method, this study indicates that two existing ADs, AD 96–23–02 and AD 90–26–10, require further rulemaking. We are proposing this NPRM to supersede AD 90–26–10, and Docket No. FAA–2006–24865 to supersede AD 96–23–02. In addition, based on this study, the FAA does not propose to issue other ADs related to Alodine-coated rivets.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–53A2321, Revision 7, dated October 27, 2005 (the original issue of Boeing Alert Service Bulletin 747–53A2321, dated October 31, 1989, was referenced as the appropriate source of service information for accomplishing the required actions in AD 90–26–10). Revision 7 of the alert service bulletin describes the procedures that were required by AD 90–26–10, and includes new procedures for a one-time external detailed inspection for cracking of the skin area between the lap joints between stringer 6 and stringer 14, from body station 340 to 520, which is designated as Area 1 by the original issue of Boeing Alert Service Bulletin 747–53A2321; and a new external high-frequency eddy current inspection to ensure a thorough inspection for cracking of the areas where Alodine-coated rivets are installed. Alodine-coated rivets may have been installed within Area 1 during accomplishment of a modification specified in Boeing Service

Bulletin 747–53–2275, which was mandated by AD 90–06–06, amendment 39–6490 (55 FR 8374, March 7, 1990). The modification installed external doublers in a small portion of Area 1 and also replaced stringers throughout Area 1. The fasteners used for the stringer replacement and doubler installation may have been Alodine-coated rivets. However, the service bulletin excludes from this inspection those areas covered by the modification doublers. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 90–26–10 and would retain the requirements of the existing AD. This proposed AD would also require accomplishing the actions specified in the alert service bulletin described previously, except as discussed under ''Difference Between the Proposed AD and the Alert Service Bulletin.''

Difference Between the Proposed AD and the Alert Service Bulletin

Boeing Alert Service Bulletin 747–53A2321, Revision 7, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Changes to Existing AD

Paragraphs E. and F. of AD 90–26–10 allow for adjustment to the compliance threshold by not counting the flight cycles in which cabin differential pressure is at 2.0 pounds per square inch (psi) or less; or allow for multiplication by an adjustment factor based on continued mixed operation at lower cabin pressure differentials. This proposed AD would not allow those adjustments. However, this proposed AD states that operators may continue to adjust the repetitive inspection interval based on a lower cabin differential pressure until the next scheduled inspection. Thereafter, this proposed AD would not allow such adjustment. We have determined that an adjustment of flight cycles due to a lower cabin differential pressure is not substantiated and will not be allowed for use in determining the flight-cycle threshold for this proposed AD. There have been several instances on other in-service issues where analytical rationales have indicated that pressurization cycles of less than 2.0 psi should not be counted. However, when fleet records have been examined, the airplanes engaged in such operations have the same or greater occurrences of crack findings compared with those on which all pressurized flights are counted. As a result, we consider such matters based on all available factors, including individual operators' specific maintenance programs, technical rationale, and fleet experience. We have found that such provisions are applicable only to a small number of operators that may not pressurize their airplanes above 2.0 psi in all their flights. We have determined that the best way to handle such circumstances is for operators to request an AMOC in accordance with the procedures in paragraph (n) of this proposed AD, rather than by increasing the complexity of the AD by addressing each operator's unique situation.

Boeing has received a Delegation Option Authorization (DOA). We have revised this proposed AD to delegate the authority to approve an alternative method of compliance for any repair that would be required by this proposed AD to the Authorized Representative for the Boeing DOA Organization.

The ''detailed visual inspection'' specified in AD 90–26–10 is referred to as a ''detailed inspection'' in this proposed AD. We have included the definition for a detailed inspection in a note in the proposed AD.

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

This proposed AD would retain certain requirements of AD 90–26–10. Since AD 90–26–10 was issued, the AD format has been revised, and certain Paragraphs have been rearranged. As a result, the corresponding Paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 90–26–10	Corresponding requirement in this proposed AD
Paragraph A	Paragraph (f).
Paragraph C	Paragraph (g).
Paragraph D	Paragraph (h).
Paragraph E	Paragraph (i).
Paragraph F	Paragraph (j).

Costs of Compliance

There are about 132 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. This proposed AD would affect about 59 airplanes of U.S. registry. The average labor rate is $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Fleet cost
Inspection (required by AD 90–26–10).	48	None	$3,840, per inspection cycle	$226,560, per inspection cycle.
Modification (required by AD 90–26–10).	620	69, 246	118,846	7,011,914.
Inspection (new proposed action)	48	None	3,840, per inspection cycle	226,560, per inspection cycle.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–6836 (55 FR 51401, December 14, 1990) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2006–24877; Directorate Identifier 2005–NM–253–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 10, 2006.

Affected ADs

(b) This AD supersedes AD 90–26–10.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747SR, and 747SP series airplanes, certificated in any category; line numbers 001 through 430 inclusive.

Unsafe Condition

(d) This AD results from a report of cracking discovered in a skin lap joint that was previously inspected using the eddy current method. We are issuing this AD to prevent rapid decompression of the airplane due to disbonding and subsequent cracking of the skin panels.

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 90–26–10

Inspections

(f) Prior to the accumulation of 12,000 flight cycles or within the next 1,000 flight cycles after January 22, 1991 (the effective date of AD 90–26–10), whichever occurs later, unless previously accomplished within the last 1,000 flight cycles, conduct an external detailed and external high frequency eddy current (HFEC) inspection for cracks of the fuselage skin from body station (BS) 220 to BS 520, left and right hand side of the airplane between stringers (S)–6 and S–14, excluding the skin lap joints, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2321, dated October 31, 1989; or Revision 7, dated October 27, 2005. After the effective date of this AD, only Revision 7 may be used. Doing the inspections in this paragraph in accordance with Revision 7 of the service bulletin eliminates the need for doing the actions in paragraph (k) of this AD. Repeat the inspections thereafter at intervals not to exceed 2,000 flight cycles until the terminating modification in paragraph (g) of this AD is done, except as provided by paragraph (h) of this AD.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Terminating Modification

(g) For airplanes line numbers 001 through 200, prior to the accumulation of 20,000 total flight cycles, or within 48 months after January 22, 1991, whichever occurs later: Perform the terminating modification of the skin panel from BS 340 to BS 520, S–6 to S–14, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2321, dated October 31, 1989; or Revision 7, dated October 27, 2005. After the effective date of this AD, only Revision 7 may be used. The modification consists of replacing the skin panel with a new skin panel which was manufactured utilizing the improved hot phosphoric anodize bonding process.

(h) Replacement of the skin panel required by paragraph (g) of this AD constitutes terminating action for the inspections from BS 340 to BS 520 required by paragraphs (f) and (k) of this AD. The inspections from BS 220 to BS 340 required by paragraph (f) of this AD are to be continued.

Adjustments for Cabin Differential Pressure

(i) Before the effective date of this AD: Flight cycles conducted at 2.0 pounds per square inch (psi) or less cabin differential pressure need not be counted for the purpose of this airworthiness directive.

(j) Before the effective date of this AD: For Model 747SR airplanes only, the threshold and repetitive inspection intervals specified herein may be multiplied by the 1.2 adjustment factor based on continued mixed operation at lower cabin pressure differentials.

New Requirements of This AD

Inspections of Skins With Alodine-Coated Rivets

(k) For airplanes identified in Figure 9 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2321, Revision 7, dated October 27, 2005, as requiring additional inspection: Within 150 flight cycles after the effective date of this AD, do the inspection in paragraph (k)(1) or (k)(2) of this AD in accordance with the Accomplishment Instructions of the service bulletin.

(1) Do an external detailed inspection for cracking of Area 1, and repeat the inspection thereafter at intervals not to exceed 150 flight cycles until one of the actions in paragraph (k)(1)(i), (k)(1)(ii), or (k)(1)(iii) is accomplished. Repeat the inspection of Area 1 thereafter in accordance with the requirements of paragraph (f) of this AD.

(i) The inspection in accordance with paragraph (k)(1) of this AD has been done seven times at intervals not to exceed 150 flight cycles. If this option is used: Within 150 flight cycles after the seventh inspection, do the inspection required by paragraph (k)(2) of this AD.

(ii) The inspection in accordance with paragraph (k)(2) has been accomplished.

(iii) The inspections in accordance with paragraph (f) of this AD has been accomplished once in accordance with Revision 7 of the service bulletin.

(2) Do an external HFEC inspection for cracking of Area 1 in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2321, Revision 7, dated October 27, 2005. Repeat the HFEC inspection of Area 1 thereafter in accordance with the requirements of paragraph (f) of this AD.

Repair

(l) If any crack is found during any inspection required by this AD: Before further flight, repair in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2321, dated October 31, 1989; or Revision 7, dated October 27, 2005. After the effective date of this AD, only Revision 7 of the service bulletin may be used. Where Revision 7 of the service bulletin specifies to contact Boeing for repair instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

Adjustments to Compliance Time: Cabin Differential Pressure

(m) For the purposes of calculating the compliance threshold and repetitive interval for actions required by paragraph (f), (g), and (k) of this AD, on or after the effective date of this AD: All flight cycles, including the number of flight cycles in which cabin differential pressure is at 2.0 psi or less, must be counted when determining the number of flight cycles that have occurred on the airplane, and a 1.2 adjustment factor may not be used. However, for airplanes on which the repetitive interval for the actions required by paragraphs (f) and (k) of this AD have been calculated in accordance with paragraph (i) or (j) of this AD by excluding the number of flight cycles in which cabin differential pressure is at 2.0 pounds psi or less, or by using a 1.2 adjustment factor: Continue to adjust the repetitive interval in accordance with paragraph (i) or (j) of this AD until the next inspections required by paragraph (f) or (k) of this AD are accomplished. Thereafter, no adjustment to compliance times based on paragraph (i) or (j) of this AD is allowed.

Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved previously in accordance with AD 90–26–10 are acceptable for compliance with the requirements of this AD, provided that any alternative terminating action was not based upon inspection results using sliding probe low-frequency eddy current (LFEC), sliding probe HFEC, or mid-frequency eddy current (MFEC) inspection method; and provided that any alternative method future inspections did not incorporate sliding probe LFEC or MFEC inspection method.

Issued in Renton, Washington, on May 16, 2006.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–8007 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24785; Directorate Identifier 2006–NE–20–AD]

RIN 2120–AA64

Airworthiness Directives; Lycoming Engines (L)O–360, (L)IO–360, AEIO–360, O–540, IO–540, AEIO–540, (L)TIO–540, IO–580, AEIO–580, and IO–720 Series Reciprocating Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Lycoming Engines (L)O–360, (L)IO–360, AEIO–360, O–540, IO–540, AEIO–540, (L)TIO–540, IO–580, AEIO–580, and IO–720 series reciprocating engines. This proposed AD would require replacing certain crankshafts. This proposed AD results from reports of 23 confirmed failures of similar crankshafts in Lycoming Engines 360 and 540 series reciprocating engines. We are proposing this AD to prevent failure of the crankshaft, which will result in total engine power loss, in-flight engine failure, and possible loss of the aircraft.

DATES: We must receive any comments on this proposed AD by June 26, 2006.

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

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

You can get the service information identified in this proposed AD from Lycoming, 652 Oliver Street, Williamsport, PA 17701; telephone (570) 323–6181; fax (570) 327–7101, or on the Internet at *http://www.Lycoming.Textron.com.*

You may examine the comments on this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7337; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2006–24785; Directorate Identifier 2006–NE–20–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and, any final disposition in person at the DOT Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif

Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the Docket Management Facility receives them.

Discussion

We determined that 23 failures of similar crankshafts in Lycoming 360 and 540 series reciprocating engines have occurred due to subsurface material flaws that progress to a fatigue failure. Lycoming Engines issued Mandatory Service Bulletin (MSB) No. 552, MSB No. 553, MSB No. 566, Supplement No. 1 to MSB No. 566, MSB No. 569, and MSB No. 569A to address the crankshaft failures. We issued AD 2002–19–03 (MSB No. 552 and MSB No. 553 crankshaft populations), AD 2005–19–11 (MSB No. 566 crankshaft population), and AD 2006–06–16 (Supplement No. 1 to MSB No. 566 crankshaft population) to also address the crankshaft failures. The group of crankshafts listed in Lycoming MSB No. 569, dated February 21, 2006, and in the revised version, Lycoming MSB No. 569A, dated April 11, 2006, which is referenced in this proposed AD, has been found to have the same material flaws as those crankshafts addressed by the earlier MSBs and ADs noted. We have determined that the crankshafts listed in Lycoming MSB No. 569 and MSB No. 569A, must be replaced because of the similarity in the design and manufacture with the groups that have previously failed. This condition, if not corrected, will result in total engine power loss, in-flight engine failure, and possible loss of the aircraft.

Relevant Service Information

We reviewed and approved the technical contents of Lycoming MSB No. 569A, dated April 11, 2006. That MSB describes procedures for replacing crankshafts listed by serial number (SN) in that MSB.

Lycoming records indicate the engine SNs in MSB No. 569A, Tables 1, 2, 3, and 4, may have a suspect crankshaft installed. MSB No. 569A Table 5 lists the crankshaft SNs that Lycoming confirmed were part of the suspect population. Because the engine and crankshaft populations are so large, they are not repeated in this proposed AD. Owner operators must determine applicability by comparing engine and crankshaft SNs listed in MSB No. 569A.

We have also reviewed and approved the technical contents of Lycoming Service Instruction No. 1009AR, dated June 22, 2004, that specifies engine time between overhaul periods.

Differences Between the Proposed AD and the Manufacturer's Service Information

Lycoming MSB No. 569A, dated April 11, 2006, requires compliance at the next accessibility of the crankshaft, but no later than February 21, 2009. However, this proposed AD would require compliance at the next accessibility of the crankshaft, but no later than the next engine overhaul specified in Lycoming Service Instruction (SI) No. 1009AR, dated June 22, 2004. SI No. 1009AR requires engine overhaul at the specified hourly interval, but no later than 12 years since new, or since the previous engine overhaul. The AD compliance interval could be longer than the MSB No. 569 and MSB No. 569A intervals if the affected engine does not require maintenance that allows accessibility of the crankshaft, or if the engine accumulates hours at a low rate per calendar year. We are allowing this later compliance termination date because we determined that the unsafe condition is unrelated to calendar time and that crankshaft removal at overhaul will reduce the risk of failure to an acceptable level.

Lycoming IO–390 and AEIO–390 engines listed in MSB No. 569A are experimental engines not affected by this AD. Lycoming Engines included these engine models in MSB No. 569A because a suspect crankshaft may have been installed.

FAA's Determination and Requirements of the Proposed AD

We evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require replacing certain crankshafts at the next engine overhaul as specified in Lycoming Service Instruction No. 1009AR, dated June 22, 2004, or at the next separation of the crankcase, whichever is earlier. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that this proposed AD would affect 3,774 engines installed on airplanes of U.S. registry. Because the proposed AD compliance interval coincides with engine overhaul or other engine maintenance, we estimate no additional labor hours will be needed to comply with this proposed AD. Parts would cost about $16,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to be $60,384,000. Lycoming said it may provide the parts for $2,000, until February 21, 2009, but will not extend the parts price beyond that date.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Lycoming Engines (formerly Textron Lycoming): Docket No. FAA–2006–24785; Directorate Identifier 2006–NE–20–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by June 26, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Lycoming Engines (L)O–360, (L)IO–360, AEIO–360, O–540, IO–540, AEIO–540, (L)TIO–540, IO–580, AEIO–580, and IO–720 series reciprocating engines. These applicable engines are manufactured new or rebuilt, overhauled, or had a crankshaft installed after March 1, 1997. These engines are installed on, but not limited to, the following aircraft:

BILLING CODE 4910–13–P

Engine Model	Manufacturer	Aircraft Model
AEIO-360-A1B6	Moravan	Z242L Zlin
	Scottish Avia	Bulldog
	Valmet	Leko 70
AEIO-360-A1E6	Integrated Systems	Omega
IO-360-A1B6	Aircraft Manufacturing Factory	Mushshak
	Beech	C-24R Sierra or 200 Sierra
	Cessna	R-G Cardinal
	Korean Air	Chang Gong-91
	Partenavia	P-68C
	Saab	MFI-15 Safari, MFI-17 Supporter
	Scottish Avia	Bulldog
IO-360-A1B6D	Cessna	R-6 Cardinal
	Siai Marchetti	S-205
IO-360-A3B6	Mod Works	Trophy 212 Conversion
IO-360-A3B6D	Mooney	M20J-201
IO-360-B1G6	American	Blimp Spector 42
IO-360-C1C6	Piper Aircraft	PA-28-200R Arrow IV
	Ruschmeyer	MF-85
IO-360-C1D6	M.B.B.	Flamingo 223
	Rockwell	112
IO-360-C1E6	Piper	PA-34-200 Seneca I
IO-360-C1G6	Zeppelin	NT
IO-360-X178	Ly-Con	STC
(L)O-360-A1G6D	Beech	76 Duchess
(L)O-360-A1H6	Piper	PA-44 Seminole
O-360-A1F6	Cessna	177 Cardinal

Engine Model	Manufacturer	Aircraft Model
O-360-A1F6D	Cessna	177 Cardinal
	Teal III	TSC 1A3
O-360-A1G6D	Beech	76 Duchess
O-360-A1H6	Piper	PA-44 Seminole
O-360-E1A6D	Piper	PA-44-180 Seminole
O-360-F1A6	Cessna	C-172RG Cutlass RG
AEIO-540-D4A5	Christen	Pitts S-2S, S-2B
	H.A.L.	HPT-32
	Siai-Marchetti	SF-260
	Slingsby	T3A Firefly
AEIO-540-L1B5	Extra-Flugzeugbau	Extra 300
	F.F.A.	FFA-2000 Eurotrainer
AEIO-540-L1D5	Apex	Apex
IO-540-AA1A5	Piper	602P Sequoia
IO-540-AB1A5	Cessna	C-182 Skylane
IO-540-AC1A5	Cessna	C-206 Stationair
IO-540-AE1A5	Robinson	R44
IO-540-C4B5	Aerofab	250 Renegade
	Avions Pierre Robin	HR100/250
	Bellanca	T-250 Aries
	Piper	Aztec C PA-23 “250”, Aztec F
	Wassmer	WA4-21
IO-540-C4D5	S.O.C.A.T.A.	TB-20
IO-540-C4D5D	S.O.C.A.T.A.	TB-20 Trinidad
IO-540-D4A5	Piper	PA-24 260 Comanche
	Siai-Marchetti	SF-260
IO-540-D4B5	Cerva	CF-34 Guepard
IO-540-E1A5	Aero Commander	500-E
IO-540-E1B5	Aero Commander	500-U

Engine Model	Manufacturer	Aircraft Model
	Poeschel	P-300
	Shrike	500-S
IO-540-J4A5	Piper	Aztec PA-23 "250"
IO-540-K1A5	Aeronautica Agricula Mexicana	Quail
	Celair	Eagle
	Embraer	EMB-720 Minuano, EMB-721 Sertanejo
	Piper	PA-32-300 Cherokee Six
IO-540-K1A5D	Piper	PA-32-300
IO-540-K1B5	Evangel-Air	Evangel-Air
	Pilotus Britton-Norman	BN-2B Islander
	Transavara	T-300 Skyfarmer
IO-540-K1E5	Bellanca	Bellanca
IO-540-K1F5	Ted Smith	Aerostar 600
IO-540-K1G5	Embraer	EMB-720 Minuano
	Piper	Saratoga PA-32-300, Brave 300
IO-540-K1G5D	Embraer	EMB-721 Sertanejo
	Piper	PA-32-300R Lance, SP PA-32-300R Saratoga
IO-540-K1H5	Seawind	Seawind
IO-540-K1J5	Piper	600A Aerostar
IO-540-K1J5D	Embraer	EMB-201 Ipanema
IO-540-K1K5	Piper	T35
IO-540-L1C5	Swearingen	SX300
IO-540-M1A5	Piper	PA-31-300 Navajo
IO-540-M1C5	King Engineering	Angel
IO-540-S1A5	Piper	601B Aerostar, 601P Aerostar
IO-540-T4A5D	General Aviation	Model 114
IO-540-T4B5	Commander	114B

Engine Model	Manufacturer	Aircraft Model
IO-540-T4B5D	Rockwell	114
IO-540-V4A5	Aircraft Manufacturing Factory	Aircraft Manufacturing Factory
	Maule	MT-7-260, M-7-260
IO-540-W1A5	Maule	MX-7-235, MT-7-235, M7-235
IO-540-X160	Airship Management	Airship Management
IO-540-X170	Robinson	Robinson
O-540-A1A5	Helio	Military H-250
O-540-A1B5	Piper	PA-32 "250" Aztec, PA-24 "250" Comanche
O-540-A1C5	Piper	PA-24 "250" Comanche
O-540-A1D5	Piper	PA-24 "250" Comanche
O-540-A4D5	American Champion	American Champion
	Gomozig	Gomozig
	Avipro	Bearhawk
O-540-B1A5	Piper	PA-23 "235" Apache
O-540-B2B5	S.O.C.A.T.A.	235CA Rallye.
O-540-B2C5	Piper	PA-24 "235" Pawnee
O-540-B4B5	Embraer	EMB-710 Corioca
	Maule	MX-7-235 Star Rocket, M-6-235 Super Rocket, M-7-235 Super Rocket
	Piper	PA-28 "235" Cherokee
	S.O.C.A.T.A.	235GT Rallye, 235C Rallye
O-540-E4A5	Aviamilano	F-250 Flamingo
	Piper	PA-24 "260" Comanche
	Siai-Marchetti	SF-260, SF-208
O-540-E4B5	Britton-Norman	BN-2
	Piper	PA-32 "260" Cherokee Six
O-540-E4C5	Pilotus Britton-Norman	BN-2A-26 Islander; BN-2A-27 Islander; BN-2B-26 Islander II; BN-2A-21 Islander; BN-2A-Mark III-2

Engine Model	Manufacturer	Aircraft Model
		Trislander
O-540-F1B5	Robinson	R-44
O-540-G1A5	Piper	PA-25 "260" Pawnee
O-540-J1A5D	Maule	MX-7-235 Star Rocket, M-6-235 Super Rocket, M-7-235 Super Rocket
O-540-J3A5	Robin	R-3000/235
O-540-J3A5D	Piper	PA-28-236 Dakota
O-540-J3C5D	Cessna	TR-182, Turbo Skylane RG
TIO-540-AA1AD	Aerofab Inc	270 Turbo Renegade
TIO-540-AB1AD	S.O.C.A.T.A.	TC TB-21 Trinidad
TIO-540-AE2A	Piper	PA-46-350P Mirage
TIO-540-AF1B	Mooney	TLS M20M
TIO-540-AG1A	Commander Aircraft	112TC
TIO-540-AH1A	Piper	TC PA-32-301T TurboSaratoga
TIO-540-AK1A	Cessna	T182T Turbo Skylane
TIO-540-C1A	Piper	PA-23-250 Turbo Aztec
TIO-540-J2B	Piper	T-1020
TIO-540-U2A	Piper	700P Aerostar
TIO-540-W2A	Aero Mercantil	Gavilan
TIO-540-X136	Schweizer	Schweizer
TIO-540-X155	Cessna	T182 (AK1A)
AEIO-580-X165	Apex	Apex
IO-720-D1B	Embraer	EMB-400 Ipanema, IAR-821
	Nauchang	N5
IO-720-D1C	Piper	PA-36-375 Brave

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Unsafe Condition

(d) This AD results from reports of 23 confirmed failures of similar crankshafts in Lycoming Engines 360 and 540 series reciprocating engines. We are issuing this AD to prevent failure of the crankshaft, which will result in total engine power loss, in-flight engine failure, and possible loss of the aircraft.

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.

Engines Exempted From the AD

(f) If your engine meets any of the following conditions, and you haven't had the crankshaft replaced since meeting the condition, no further action is required:

(1) Engines that are in compliance with Lycoming Mandatory Service Bulletin (MSB) No. 552 (AD 2002–19–03) or MSB No. 553 (AD 2002–19–03 Table 3 or Table 5); or

(2) Engines that are in compliance with Lycoming MSB No. 566 AD (2005–19–11); or

(3) Engines that are in compliance with Lycoming Supplement No. 1 to MSB No. 566 (AD 2006–06–16); or

(4) Engines that are in compliance with the original issue of Lycoming MSB No. 569, or MSB No. 569A.

(g) If Lycoming Engines manufactured new, rebuilt, overhauled, or repaired your engine, or replaced the crankshaft in your engine before March 1, 1997, and you haven't had the crankshaft replaced, no further action is required.

(h) If Table 1, Table 2, Table 3, or Table 4 of Lycoming MSB No. 569A, dated April 11, 2006, lists your engine serial number (SN), and Table 5 of MSB No. 569A, dated April 11, 2006, does not list your crankshaft SN, no further action is required.

Engines Not Exempted From the AD

(i) If Table 1, Table 2, Table 3, or Table 4 of Lycoming MSB No. 569A, dated April 11, 2006, lists your engine SN, and Table 5 of MSB No. 569A, dated April 11, 2006, lists your crankshaft SN, replace the affected crankshaft with a crankshaft that is not listed in Table 5 of MSB No. 569A at either of the following:

(1) The next engine overhaul as specified in Lycoming Engines Service Instruction No. 1009AR, dated June 22, 2004; or

(2) The next separation of the crankcase, whichever is earlier.

(j) If Table 1, Table 2, Table 3, or Table 4 of Lycoming MSB No. 569A, dated April 11, 2006, does not list your engine SN, and Table 5 of MSB No. 569A does list your crankshaft SN (an affected crankshaft was installed as a replacement), replace the affected crankshaft with a crankshaft that is not listed in Table 5 of MSB No. 569A at either of the following:

(1) The next engine overhaul as specified in Lycoming Engines Service Instruction No. 1009AR, dated June 22, 2004; or

(2) The next separation of the crankcase, whichever is earlier.

Prohibition Against Installing Certain Crankshafts

(k) After the effective date of this AD, do not install any crankshaft that has a SN listed in Table 5 of Lycoming MSB No. 569A, dated April 11, 2006, into any engine.

Alternative Methods of Compliance

(l) The Manager, New York Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(m) None.

Issued in Burlington, Massachusetts, on May 19, 2006.

Robert J. Ganley,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 06–4850 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24864; Directorate Identifier 2006–NM–072–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–30, DC–10–30F (KDC–10), DC–10–40, and DC–10–40F Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain McDonnell Douglas airplanes, identified above. This proposed AD would require reducing the length of the sump drain collar and replacing the fuel tank sump drain lockring for fuel tanks 1, 2, and 3; and reducing the length of the drain outlet barrel for the auxiliary fuel tank, if applicable. For airplanes with an auxiliary fuel tank, this proposed AD also would require relocating the sump drain outlet to allow draining the sumps without opening the doors of the main landing gear wheel well. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to reduce the potential of ignition sources inside fuel tanks in the event of a lightning strike, which, in combination with flammable fuel vapors, could result in arcing in the fuel tank, fuel tank explosions, and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by July 10, 2006.

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

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

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–24864; Directorate Identifier 2006–NM–072–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Review of the lightning protection for the valve installation for the sump drain of the fuel tanks showed that the drain valves must be insulated. If the fuel level is below the drain valve body, and there is a lightning strike, electrical current could travel from the airplane skin up the sump drain collar into the valve housing. This condition, in combination with a lightning strike and flammable fuel vapors, could result in arcing in the fuel tank, fuel tank explosions, and consequent loss of the airplane.

Relevant Service Information

We have reviewed McDonnell Douglas DC–10 Service Bulletin 28–61, dated January 17, 1978. The service bulletin describes procedures for reducing the length of the sump drain collar and replacing the fuel tank sump drain lockring for fuel tanks 1, 2, and 3 with an improved lockring; and reducing the length of the drain outlet barrel for the auxiliary fuel tank, if applicable.

McDonnell Douglas DC–10 Service Bulletin 28–61 specifies that for certain airplanes, before or concurrently with the modification of the sump drain outlets described above, the sump drain outlet for the auxiliary tank must be relocated to allow draining the sumps without opening the doors of the main landing gear wheel well. The procedures for doing this action are described in McDonnell Douglas DC–10 Bulletin 28–19, Revision 1, dated October 15, 1973. This action applies only to those airplanes identified as Group II in McDonnell Douglas DC–10 Service Bulletin 28–61, that are also contained in the effectivity of McDonnell Douglas DC–10 Bulletin 28–19, Revision 1.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and Service Bulletin 28–61.''

Difference Between the Proposed AD and Service Bulletin 28–61

McDonnell Douglas DC–10 Service Bulletin 28–61 recommends doing the modification at the operator's convenience, which would not ensure an adequate level of safety for the affected fleet. In developing an appropriate compliance time for this AD, we considered the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition, and the average utilization of the affected fleet. In light of all of these factors, we find that a compliance time of 60 months after the effective date of this AD represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with Boeing, and Boeing concurred.

Costs of Compliance

There are about 135 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The labor rate is $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
For all airplanes: Reduce the length of the sump drain collar and replace the fuel tank sump drain for fuel tanks 1, 2, and 3.	3 to 15	$720 to $4,858	$960 to $6,058	109	$104,640 to $660,322.
For airplanes with an auxiliary fuel tank: Reduce the length of the drain outlet barrel for the auxiliary fuel tank.	6 to 15	$0 to $720	$480 to $1,920	Up to 109	$52,320 to $209,280.

ESTIMATED COSTS—Continued

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Prior requirement for certain airplanes	1 to 6 ...	The manufacturer states that it will supply required parts to the operators at no cost.	$80 to $480	Up to 109	$8,720 to $52,320.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2006–24864; Directorate Identifier 2006–NM–072–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 10, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–30, DC–10–30F (KDC–10), DC–10–40, and DC–10–40F airplanes, certificated in any category; as identified in McDonnell Douglas DC–10 Service Bulletin 28–61, dated January 17, 1978.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks in the event of a lightning strike, which, in combination with flammable fuel vapors, could result in arcing in the fuel tank, fuel tank explosions, and consequent loss of the airplane.

Compliance

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

Corrective Actions

(f) Within 60 months after the effective date of this AD: Reduce the length of the sump drain collar and replace the fuel tank sump drain lockring for fuel tanks 1, 2, and 3; and reduce the length of the drain outlet barrel for the auxiliary fuel tank, as applicable; by doing all the applicable actions in accordance with the Accomplishment Instructions of McDonnell Douglas DC–10 Service Bulletin 28–61, dated January 17, 1978.

Prior Requirement

(g) For airplanes identified as Group II airplanes in McDonnell Douglas DC–10 Service Bulletin 28–61, dated January 17, 1978, that are also contained in the effectivity of McDonnell Douglas DC–10 Bulletin 28–19, Revision 1, dated October 15, 1973: Before the actions in paragraph (f) of this AD, relocate the sump drain outlet for the auxiliary tank in accordance with the Accomplishment Instructions of McDonnell Douglas DC–10 Bulletin 28–19, Revision 1, dated October 15, 1973.

Alternative Methods of Compliance (AMOCs)

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

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

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–8010 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24866; Directorate Identifier 2006–NM–105–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all McDonnell Douglas Model MD–90–30 airplanes. This proposed AD would require installing a clamp, bonding jumper assembly, and attaching hardware to the refueling manifold in the right wing refueling station area. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent arcing on the in-tank side of the fueling valve during a lightning strike, which could result in an ignition source that could ignite fuel vapor and cause a fuel tank explosion.

DATES: We must receive comments on this proposed AD by July 10, 2006.

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

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

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: William Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–24866; Directorate Identifier 2006–NM–105–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

We have received a report indicating that an SFAR 88 review of the fuel system on McDonnell Douglas Model MD–80 airplanes revealed a potential for arcing on the in-tank side of the fueling valve during a lightning strike. The non-conductive coating, which keeps the rigid pipes and valves electrically isolated, may wear off or be scratched. Any wear or scratch in the coating could allow lightning-induced current to flow from the refueling manifold to the airplane structure through the fueling valve and could cause arcing. Arcing on the in-tank side

of the fueling valve, could result in an ignition source that could ignite fuel vapor and cause a fuel tank explosion.

The subject area on McDonnell Douglas Model MD–90–30 airplanes is identical to that on the affected McDonnell Douglas Model MD–80 airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Related Rulemaking

We are considering additional rulemaking to address the same unsafe condition on McDonnell Douglas Model MD–80 airplanes.

Relevant Service Information

We have reviewed Boeing Service Bulletin MD90–28–011, dated May 16, 2005. The service bulletin describes procedures for installing a clamp, bonding jumper assembly, and attaching hardware to the refueling manifold in the right wing refueling station area. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 116 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 21 airplanes of U.S. registry. The proposed actions would take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Required parts would cost about $8 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $3,528, or $168 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2006–24866; Directorate Identifier 2006–NM–105–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 10, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model MD–90–30 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent arcing on the in-tank side of the fueling valve during a lightning strike, which could result in an ignition source that could ignite fuel vapor and cause a fuel tank explosion.

Compliance

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

Installation

(f) Within 60 months after the effective date of this AD: Install a clamp, bonding jumper assembly, and attaching hardware to the refueling manifold in the right wing refueling station area, by doing all of the actions specified in the Accomplishment Instructions of Boeing Service Bulletin MD90–28–011, dated May 16, 2005.

Alternative Methods of Compliance (AMOCs)

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

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

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24865; Directorate Identifier 2005–NM–194–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 747 airplanes. The existing AD currently requires inspections to detect disbonding, corrosion, and cracking at the longitudinal rows of fasteners in the bonded skin panels in section 41 of the fuselage, and repair, if necessary. This proposed AD would add airplanes to the applicability, and require new inspections of airplanes that may have Alodine-coated rivets installed. This proposed AD results from a report of cracking discovered in a skin lap joint that was previously inspected using the eddy current method. We are proposing this AD to prevent rapid decompression of the airplane due to disbonding and subsequent cracking of the skin panels.

DATES: We must receive comments on this proposed AD by July 10, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: Nicholas Kusz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6432; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–24865; Directorate Identifier 2005–NM–194–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

On October 28, 1996, we issued AD 96–23–02, amendment 39–9807 (61 FR 57994, November 12, 1996), for certain Boeing Model 747 airplanes. That AD requires inspections to detect disbonding, corrosion, and cracking at the longitudinal rows of fasteners in the bonded skin panels in section 41 of the fuselage, and repair, if necessary. That AD resulted from a report of skin cracking due to disbonding of the internal doubler of the cracked skin panels. We issued that AD to prevent rapid decompression of the airplane due to disbonding and subsequent cracking of the skin panels.

Actions Since Existing AD Was Issued

Since 1985 Boeing has incorporated rivets coated with Alodine into production fuselage aluminum skins and post-production skin modification kits. Alodine coating on rivets provides a protective chemical conversion coating, but also increases electrical conductivity. Certain non-destructive inspection (NDI) methods rely on disruptions in the electromagnetic field around cracks in metallic structures to detect cracking. One such NDI method is the sliding probe eddy current inspection, which was one inspection method required by AD 96–23–02. Conductivity of the Alodine-coated rivet could be strong enough to mask cracking in the fastener hole during eddy current inspections.

Since we issued AD 96–23–02, cracking was discovered in a skin lap joint that was previously inspected using the eddy current method. Further investigation showed that the crack was not detected due to masking from Alodine rivets. The crack was discovered during a full-scale fatigue test on a Model 737 fuselage.

The manufacturer has accomplished a comprehensive study of the effect of Alodine-coated rivets on all Boeing Airplane models. Based on the critical nature of the sliding probe eddy current inspection method, this study indicates that two existing ADs, AD 96–23–02 and AD 90–26–10, require further rulemaking. We are proposing this NPRM to supersede AD 96–23–02, and Docket No. FAA–2006–24877 to supersede AD 90–26–10. In addition, based on this study, the FAA does not propose to issue other ADs related to Alodine-coated rivets.

Since we issued AD 96–23–02, we have also received reports of new crack findings on Model 747 airplanes that were not originally included in the applicability of AD 96–23–02.

Other Relevant Rulemaking

On December 3, 1990, we issued AD 90–26–10, amendment 39–6836 (55 FR 51401, December 14, 1990). That AD requires repetitive inspections to detect cracks at certain stringer fastener locations; and repair, if necessary. For certain airplanes, AD 90–26–10 requires a modification in certain areas where reports indicate that cracking was prevalent. This modification terminates the repetitive inspections only for those areas, and is also an option for other airplanes. Skin panels replaced in accordance with AD 90–26–10 are not susceptible to the disbonding and cracking that is the unsafe condition addressed by this proposed AD. That AD resulted from reports of multiple longitudinal skin cracks. We issued that AD to prevent rapid decompression of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–53A2409, Revision 5, dated August 18, 2005 (the original issue of Boeing Alert Service Bulletin 747–53A2409, dated September 26,

1996, was referenced as the appropriate source of service information for accomplishing the required actions in AD 96–23–02). Operators should note Revision 5 of the alert service bulletin revises the airplane group numbers that were referenced in AD 96–23–02.

Boeing Alert Service Bulletin 747–53A2409, Revision 5, describes procedures for initial inspections to detect disbonding, corrosion, and cracking of the longitudinal rows of fasteners in the bonded skin panels in section 41 of the fuselage, and repair if necessary. The alert service bulletin also describes procedures for related investigative actions if any discrepancy is found. These actions depend on the inspected area and the discrepancy and can include additional inspections using one of the methods described below.

The alert service bulletin identifies four affected skin areas:

- *Area 1:* The flat skin panel aft of the cockpit windows from body station (BS) 340 to BS 520 between S–6 and S–14.
- *Area 2:* The flat skin panels below the cockpit windows.
- *Area 3:* The large-radius skin panels in the main deck area (excluding Area 4).
- *Area 4:* The section of the large-radius skin panel aft of door 1 from BS 488 to BS 500 between S–16 and S–26.

The alert service bulletin also specifies four methods of inspection, with related corrective actions:

- *Method 1:* One-time external ultrasonic inspections of the skin for disbonded doublers; and an external inspection of the skin for cracks, and repair, if necessary;
- *Method 2:* One-time internal detailed inspections of the skin for disbonded doublers, corrosion, or cracks; and repair, or an external inspection of the skin for cracks, if necessary;
- *Method 3:* Repetitive external detailed inspections of the skin for cracks, and repair, if necessary; and
- *Method 4:* Repetitive external high frequency eddy current (HFEC) inspections of the skin for cracks, and repair, if necessary.

Figures 1, 2, 3, 17, 18, 19, 20, 21, and 22 of the alert service bulletin provide the compliance times for all inspections. The compliance times for doing the initial and repetitive inspections depend on previous installation of rivets coated with Alodine, and on previous inspections, modifications, and repairs. The thresholds for initial inspections are the latest of 150 flight cycles after the date of the service bulletin or 3,000 flight cycles after a previous inspection. The repetitive intervals also depend on certain previous repairs and range from 150 flight cycles to 3,000 flight cycles. The compliance time for all applicable repairs is before further flight.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 96–23–02 and would retain the requirements of the existing AD. This proposed AD would also require accomplishing the actions specified in the alert service bulletin described previously, except as discussed under ''Differences Between the Proposed AD and the Alert Service Bulletin.''

Differences Between the Proposed AD and the Alert Service Bulletin

Operators should note that, although the referenced alert service bulletin describes procedures for submitting an inspection report to the manufacturer, this proposed AD would not require that action.

The alert service bulletin specifies compliance times relative to the date of issuance or receipt of the service bulletin; however, this proposed AD would require compliance before the specified compliance time after the effective date of this AD or another applicable AD, as specified.

While the alert service bulletin describes procedures for inspections of four particular areas of the airplane, this proposed AD would require inspections of only two of those areas.

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions or do certain actions, but this proposed AD would require repairing those conditions or doing those actions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

The service bulletin specifies that it is not necessary to count flight cycles at 2.0 psi or less cabin differential pressure. We find that insufficient data exist to support this adjustment to flight cycles. Consequently, this AD does not allow for this adjustment factor.

These differences have been coordinated with Boeing.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

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

Explanation of Change in Applicability

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

Costs of Compliance

There are about 623 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Cost per airplane, per inspection cycle	U.S.-registered airplanes	Fleet cost, per inspection cycle
Inspections (required by AD 96–23–02, and continued in this proposed AD).	308	$24,640	79	$1,946,460.
New inspections (for airplanes with alodine-coated rivets)	42	3,360	96	Up to $322,560.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–9807 (61 FR 57994, November 12, 1996) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2006–24865; Directorate Identifier 2005–NM–194–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 10, 2006.

Affected ADs

(b) This AD supersedes AD 96–23–02.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2409, Revision 5, dated August 18, 2005.

Unsafe Condition

(d) This AD results from a report of cracking discovered in a skin lap joint that was previously inspected using the eddy current method. We are issuing this AD to prevent rapid decompression of the airplane due to disbonding and subsequent cracking of the skin panels.

Compliance

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

Requirements of AD 96–23–02

Actions for Groups 1 Through 10, and 17 Through 36, as Specified in Boeing Alert Service Bulletin 747–53A2409, Revision 5

(f) For airplanes identified as Groups 1 through 10 inclusive, and 17 through 36 inclusive, in Boeing Alert Service Bulletin 747–53A2409, Revision 5, dated August 18, 2005: Do the inspections in paragraphs (f)(1); and do the corrective action in paragraph (f)(2) of this AD as applicable. Except as provided by paragraph (i) of this AD, do all actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2409, dated September 26, 1996; or Revision 5, dated August 18, 2005. After the effective date of this AD, only Revision 5 may be used.

(1) At the applicable time in Figures 1, 2, 18, and 20 of Revision 5 of the service bulletin, do initial and repetitive inspections of Areas 1 and 4, as applicable, to detect disbonding, corrosion, and cracking of the skin; except any inspection using Method 1 or 2 must not be accomplished before the latest of the following, as applicable: Before the accumulation of 2,000 total flight cycles; 2,000 flight cycles since modification to the stretched upper deck (SUD) configuration; or 2,000 flight cycles since skin panel replacement in accordance with AD 90–26–10, amendment 6836 (55 FR 51401, December 14, 1990). If inspection Method 1 or 2 is used and no disbonded doubler is found, no further action is required by this AD.

(2) If any corrosion or cracking is found during any inspection required by paragraph (f)(1) of this AD: Before further flight, except as provided by paragraph (i) of this AD, repair and do any applicable related investigative actions in accordance with the Accomplishment Instructions of the service bulletin.

New Requirements of This AD

Actions for Groups 11 Through 16 as Specified in Boeing Alert Service Bulletin 747–53A2409, Revision 5 (Airplanes Added To the Applicability of This AD)

(g) For airplanes identified as Groups 11 through 16 inclusive in Boeing Alert Service Bulletin 747–53A2409, Revision 5, dated August 18, 2005: Do the inspections in paragraph (g)(1); and do the corrective action in paragraph (g)(2) of this AD as applicable. Except as provided by paragraph (i) of this AD, do all actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2409, Revision 5, dated August 18, 2005.

(1) At the applicable time in Figures 18 and 20 of the service bulletin, do initial inspections of Area 4 and repetitive inspections, as applicable, to detect disbonding, corrosion, and cracking of the skin; except any inspection using Method 1 or 2 must not be accomplished before the latest of the following, as applicable: Before the accumulation of 2,000 total flight cycles; 2,000 flight cycles since modification to the SUD configuration; or 2,000 flight cycles since skin panel replacement in accordance with AD 90–26–10, amendment 6836 (55 FR 51401, December 14, 1990). If inspection Method 1 or 2 is used and no disbonded doubler is found, no further action is required by this AD.

(2) If any corrosion, disbonding, or cracking is found during any inspection required by paragraph (g)(1) of this AD, before further flight: Repair and do any applicable related investigative actions in accordance with the Accomplishment Instructions of the service bulletin.

Actions for Airplanes With Alodine-Coated Rivets for Groups 1 Through 10, and 17 Through 36 as Specified in Boeing Alert Service Bulletin 747–53A2409, Revision 5

(h) For airplanes identified as Groups 1 through 10 inclusive, and 17 through 36 inclusive, in Boeing Alert Service Bulletin 747–53A2409, Revision 5, dated August 18, 2005: Do the inspections in paragraph (h)(1); and do the corrective action in paragraph (h)(2) of this AD if necessary. Except as provided by paragraph (i) of this AD, do all actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2409, Revision 5, dated August 18, 2005.

(1) At the applicable time in Figures 21 and 22 of the service bulletin: Do initial and repetitive inspections of Areas 1 and 4, as applicable, to detect cracking of the skin.

(2) If any cracking is found during any inspection required by paragraph (h)(1) of

this AD, before further flight: Repair in accordance with the Accomplishment Instructions of the service bulletin.

Exceptions

(i) Do all actions in accordance with the applicable service bulletin except as provided by paragraphs (i)(1), (i)(2), (i)(3), (i)(4), and (i)(5) of this AD.

(1) For the action in paragraph (f)(1) of this AD: Where Boeing Alert Service Bulletin 747–53A2409, dated September 26, 1996; and Boeing Alert Service Bulletin 747–53A2409, Revision 5, dated August 18, 2005; specify a compliance time after the issuance of any revision of the service bulletin, this paragraph requires compliance before the specified compliance time after November 27, 1996, the effective date of AD 96–23–02.

(2) For the actions in paragraphs (g)(1) and (h)(1) of this AD: Where Boeing Alert Service Bulletin 747–53A2409, Revision 5, dated August 18, 2005, specifies a compliance time after the issuance or receipt of any revision of the service bulletin, this paragraph requires a compliance time after the effective date of this AD.

(3) For any repair or any inspection where Boeing Alert Service Bulletin 747–53A2409, Revision 5, dated August 18, 2005, specifies to contact the manufacturer for further instructions: Before further flight, repair or inspect using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(4) If corrosion is found during any inspection required by this AD, before further flight: Repair in accordance with an FAA-approved method.

(5) Where Boeing Alert Service Bulletin 747–53A2409, Revision 5, dated August 18, 2005, specifies that it is not necessary to count flight cycles at 2.0 psi or less cabin differential pressure, this AD does not allow for that adjustment factor.

Credit for Actions Accomplished Previously

(j) Actions done before the effective date of this AD in accordance with the service bulletins specified in Table 1 of this AD are acceptable for compliance with the corresponding requirements of paragraphs (f) and (g) of this AD.

TABLE 1.—CREDIT SERVICE BULLETINS

Service bulletin	Revision level	Date
Boeing Alert Service Bulletin 747–53A2409	1	May 29, 1997.
Boeing Alert Service Bulletin 747–53A2409	2	August 6, 1998.
Boeing Alert Service Bulletin 747–53A2409	3	October 22, 1998.
Boeing Alert Service Bulletin 747–53A2409	4	February 17, 2000.

Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved previously in accordance with AD 96–23–02, amendment 39–9807, are approved as AMOCs for the corresponding provisions of paragraph (f) of this AD, except AMOCs for terminating action based upon inspection results using a sliding probe low frequency eddy current (LFEC), sliding probe high frequency eddy current (HFEC), or mid frequency surface eddy current (MFEC) inspection methods; and provided that any alternative method for future inspections did not incorporate a sliding probe LFEC, sliding probe HFEC, or MFEC inspection methods.

(4) 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.

Issued in Renton, Washington, on May 16, 2006.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–8006 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 193

[Docket No. FAA–2006–24855]

Voluntary Disclosure Reporting Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Order Designating Information as Protected from Disclosure.

SUMMARY: The FAA is proposing that information provided to the agency from a Voluntary Disclosure Reporting Program (VDRP) be designated by an FAA order as protected from public disclosure in accordance with the provisions of 14 CFR part 193. Under 49 U.S.C. 40123, the FAA is required to protect the information from disclosure to the public, including disclosure under the Freedom of Information Act (5 U.S.C. 552) or other laws, following issuance of such order. The designation is intended to encourage participation in the VDRP.

DATES: Comments must be received on or before June 26, 2006.

ADDRESSES: You may send comments [identified by Docket Number [Insert docket number, for example, FAA–200X–24855]] 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: Dr. Thomas Longridge, Flight Standards Service, AFS–230, Federal Aviation Administration, 800 Independence Ave., SW., Washington DC 20591, telephone (703) 661–0275.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to 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 on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

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

Availability of This Proposed Designation

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.*

Background

Under 49 U.S.C. 40123, certain voluntarily provided safety and security information is protected from disclosure to encourage persons to provide the information to the FAA. The FAA must issue an order making certain findings before the information is protected from disclosure. The FAA's rules implementing that section are in 14 CFR part 193. If the Administrator issues an order designating information as protected under 49 U.S.C. 40123, that information will not be disclosed under the Freedom of Information Act (5 U.S.C. 552) or other laws except as provided in 49 U.S.C. 40123, 14 CFR part 193, and the order designating the information as protected. This proposed order is issued under 14 CFR 193.11, which sets out the notice procedure for designating information as protected.

Description of the Proposed Information Sharing Program.

Civil penalties under the FAA's enforcement program have always been considered a means to promote compliance with the FAA's regulations, not an end in themselves. In addition to the deterrence achieved by the appropriate use of civil penalties, the public interest is also served by positive incentives to promote and achieve compliance. The FAA believes that aviation safety is well served by incentives for regulated entities to identify and correct their own instances of noncompliance and to invest more resources in efforts to preclude their recurrence. Under the VDRP, it is FAA policy generally to forgo civil penalty action when an entity detects violations, promptly discloses the violations to the FAA, and takes prompt corrective action to ensure that the same or similar violations do not recur. The VDRP is designed to develop long-term comprehensive fixes and encourage compliance with the FAA's regulations, foster safe operating practices, and promote the development of internal evaluation programs.

A disclosure under the VDRP is accomplished by initial notification of an apparent violation to the FAA by a certificate holder, indirect air carrier, design approval holder, production approval holder, or other regulated entity immediately after an apparent violation has been discovered by that regulated entity, and before the FAA learns of the apparent violation by some other means, unless otherwise permitted by written FAA policy for a related voluntary program. For example, under the Aviation Safety Action Program (ASAP) as described in AC 120–66, as amended, a voluntary disclosure may be accepted even if the FAA has already learned of an apparent violation from an employee submitted ASAP report. In any case, the initial notification to the FAA must comply with Advisory Circular 00–58, as amended. The form of initial notification may be oral, a written hard copy, or a written electronic copy. The VDRP disclosure and follow-on corrective action must be accomplished in accordance with the criteria and procedures specified in Advisory Circular (AC) 00–58, as amended.

The FAA responds by opening an enforcement investigative report (EIR) and sending a written acknowledgement of the regulated entity's initial VDRP notification. This acknowledgement includes a request for a written report, and is sent in place of a letter of investigation (LOI), provided the written report is completed in accordance with the procedures set forth in AC 00–58, as amended. The report must include a detailed description of the proposed comprehensive fix, outlining the planned corrective steps, the responsibilities for implementing those corrective steps, and the planned dates for both initial implementation and completion of the fix. The FAA advises the regulated entity by written acknowledgement when it determines that the report is or is not acceptable. Following initial implementation of the comprehensive fix, verification of it by the FAA, and an initial assessment by the FAA of the apparent effectiveness of the comprehensive fix, the EIR is closed by issuing a letter of correction (LOC) to the regulated entity that includes the date on which the comprehensive fix was initially implemented, and the expected date for final completion. Following issuance of the LOC, the case is closed, but remains subject to reopening if the agreed-upon corrective actions are not completed to the satisfaction of the FAA. The LOC remains on file at the FAA for a period of two years. [Comment: Administrative actions are expunged after two years only for individuals.] If the FAA determines that the corrective action taken is not satisfactorily completed, the LOC may be rescinded, the EIR re-opened, and appropriate legal enforcement action may be initiated.

Summary of the VDRP Voluntary Information Sharing Program

A. *Who may participate:* Regulated entities as provided in Advisory

Circular 00–58, as amended and Advisory Circular 121–37.

B. *What voluntarily provided information would be protected from disclosure under this proposed designation:* The content of all submissions by a regulated entity that are accepted under the VDRP, including, but not limited to, all of the items listed under Proposed Findings, Paragraph (2) below.

C. *How persons would participate:* Regulated entities participate by notification of an apparent violation to the FAA by the regulated entity in accordance with the VDRP reporting procedures, and completion of corrective actions in accordance with AC 00–58, as amended.

D. *Duration of this information sharing program:* This information sharing program would continue in effect indefinitely, unless the FAA terminates the VDRP, or until the order of designation under 14 CFR part 193 for the VDRP is withdrawn by the FAA.

Proposed Findings

The FAA proposes to designate information received under the VDRP as protected under 49 U.S.C. 40123 and 14 CFR 193.7 based on the following findings:

(1) *Summary of why the FAA finds that the information will be provided voluntarily.*

The FAA finds that the information will be provided voluntarily. No certificate holder is required to participate in the VDRP. Initiation of submissions under the VDRP are indicative of the willingness of regulated entities to identify and correct their own instances of regulatory noncompliance, develop long term comprehensive fixes, and foster safe operating practices.

(2) *Description of the type of information that may be voluntarily provided under the program and a summary of why the FAA finds that the information is safety or security related.*

The information that would be voluntarily submitted under a VDRP is described in AC 00–58, as amended. Because the Federal Aviation Regulations specify the minimum requirements for safety, and VDRP submissions entail violations of those regulations, the information is inherently safety related. It would include the following:

(a) Information contained in an initial notification to the FAA:

—A brief description of the apparent violation, including an estimate of the duration of time that it remained undetected, as well as how and when it was discovered;
—Verification that noncompliance ceased after it was identified;
—A brief description of the immediate action taken after the apparent violation was identified, the immediate action taken to terminate the conduct that resulted in the apparent violation, and the person responsible for taking the immediate action;
—Verification that an evaluation is underway to determine if there are any systemic problems;
—Identification of the person responsible for preparing the comprehensive fix; and
—Acknowledgment that a detailed written report will be provided to the designated FAA official within 10 working days.

(b) Information contained in a detailed written report:

—A list of the specific FAA regulations that may have been violated;
—A description of the apparent violation, including the duration of time it remained undetected, as well as how and when it was detected;
—A description of the immediate action taken to terminate the conduct that resulted in the apparent violation, including when it was taken, and who was responsible for taking the action;
—An explanation that shows the apparent violation was inadvertent;
—Evidence that demonstrates the seriousness of the apparent violation and the regulated entity's analysis of that evidence;
—A detailed description of the proposed comprehensive fix, outlining the planned corrective steps, the responsibilities for implementing those corrective steps, and a time schedule for completion of the fix; and
—Identification of the company official responsible for monitoring the implementation and completion of the comprehensive fix.

(3) *Summary of why the FAA finds that the disclosure of the information would inhibit persons from voluntarily providing that type of information.*

The FAA finds that disclosure of the information would inhibit the voluntary provision of that type of information. Regulated entities are reluctant to voluntarily disclose instances of regulatory noncompliance if such submissions might be subject to public disclosure. A significant impediment to participation in the VDRP is concern over public disclosure of the information, and, if disclosed, the potential for it to be used for other than the system safety enhancement purposes for which the VDRP was created. Withholding such information from disclosure is consistent with the FAA's safety and security responsibilities because, unless the FAA can provide assurance that it will not be disclosed, regulated entities will be reluctant to participate in the program.

Although regulated entities have voluntarily disclosed information under the VDRP for several years, they did so after the FAA promised that such information would be deidentified in the Enforcement Information System (EIS), which is the FAA's central and national database of enforcement action information. The entities were reluctant to participate in the VDRP without this promise for fear that information they disclosed would be readily available to the public through a FOIA request for records in the EIS. So that entities continue to use the VDRP, the FAA has not kept the identity of persons reporting, or detailed information about disclosures, under that program in the EIS or any other central database.

Once information provided under the VDRP is designated as protected under 14 CFR part 193, more regulated entities may be willing to submit disclosures under the program that were previously reluctant to. In addition, FAA will be able to retain more information about the disclosures, including the identity of the reporters, in an FAA database, without chilling participation in the VDRP. Disclosures under the VDRP enable the FAA to become aware of many more instances of regulatory noncompliance than it otherwise would, and moreover, the VDRP permits the FAA to assure that appropriate corrective action is taken. If regulated entities do not participate, the FAA and the public will be deprived of the opportunity to make the system safety improvements that receipt of the information otherwise enables.

(4) *Summary of why the receipt of that type of information aids in fulfilling the FAA's safety and security responsibilities.*

The FAA finds that receipt of VDRP information aids in fulfilling the FAA's safety and security responsibilities. A primary purpose of FAA regulations is to assure public safety. Because the VDRP identifies and corrects instances of regulatory noncompliance of which the FAA may be otherwise unaware, the program offers significant potential for enhancement of public safety. Receipt of this otherwise unavailable information would also provide the FAA with an improved basis for modifying procedures, policies, and regulations to improve safety and efficiency.

(5) *Summary of why withholding such information from disclosure would be*

consistent with the FAA's safety and security responsibilities, including a statement as to the circumstances under which, and a summary of why, withholding such information from disclosure would not be consistent with the FAA's safety and security responsibilities, as described in 14 CFR 193.9.

The FAA finds that withholding VDRP information provided to the FAA is consistent with the FAA's safety responsibilities. The VDRP specifically provides that appropriate corrective action must be taken by the regulated entity for all instances of regulatory noncompliance accepted under the program. To be accepted by the FAA, apparent violations disclosed under the program must be inadvertent, and, where applicable, must not indicate a lack, or reasonable question of a lack, of qualification of the regulated entity. Corrective action under the VDRP can be accomplished by the regulated entity and verified by the FAA without disclosure of the protected information. If the FAA determines that the steps taken by the entity are not those documented in the written report, the submission may be excluded from the VDRP, and appropriate legal enforcement action may be initiated.

The FAA will release information submitted under a VDRP as specified in part 193 and this proposed order. To explain the need for changes in FAA policies, procedures, and regulations, the FAA may disclose de-identified (*i.e.*, the identity of the source of the information and the names of the certificate holder, employees, and other persons, as well as any other information that could be used to ascertain the identity of the submitter, redacted) summary information that has been extracted from submissions accepted under the VDRP. The FAA may disclose de-identified, summarized VDRP information that identifies a systemic problem in the aviation system, when other persons need to be advised of the problem so that they can take corrective action. The FAA may disclose de-identified aggregate statistical information concerning VDRP submissions. The FAA may disclose independently obtained information relating to any event disclosed in a VDRP report. The FAA also may disclose any information about a disclosure initially submitted under the VDRP that is not accepted, or accepted, but later excluded because of the regulated entity's failure to comply with the criteria of the VDRP.

(6) *Summary of how the FAA will distinguish information protected under part 193 from information the FAA receives from other sources.*

In accordance with AC 00–58, all VRDP submissions must be clearly identified as such by the regulated entity making the submission. Any other information received by the FAA from the regulated entity concerning the content of a VDRP submission must be clearly labeled as follows to be eligible for protection under this designation: ''WARNING: The Information in this Document is Protected from Disclosure under 49 U.S.C. 40123 and 14 CFR part 193.'' If the information is submitted electronically, the warning notice must be appropriately embedded in the electronic submission in a fashion that assures the visibility of the warning to any viewer.

Proposed Designation

Accordingly, the Federal Aviation Administration proposes to designate the above-described information submitted under a VDRP to be protected under 49 U.S.C. 40123 and 14 CFR part 193.

Issued in Washington, DC, on May 17, 2006.

John M. Allen,

Acting Director, Flight Standards Service.

[FR Doc. E6–8078 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1300

[Docket No. DEA–260P]

RIN 1117–AA94

Definition of ''Positional Isomer'' as It Pertains to the Control of Schedule I Controlled Substances

AGENCY: Drug Enforcement Administration (DEA), U.S. Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Controlled Substances Act (CSA) and its implementing regulations specify which hallucinogenic substances are considered Schedule I controlled substances. The CSA states that all salts, isomers and salts of isomers of these substances are also Schedule I controlled substances. In non-technical terms, an isomer of a substance is a different compound, but a compound which has the same number and kind of atoms. The terms ''optical isomer'' and ''geometric isomer'' are specific scientific terms and it is easy to determine whether one substance is an optical or geometric isomer of another. The term ''positional isomer,'' however, is subject to scientific interpretation.

This Notice of Proposed Rulemaking proposes the addition of a specific definition for the term ''positional isomer'' to allow for the systematic determination of which isomers of Schedule I substances would be considered to be ''positional'' and, therefore subject to Schedule I control.

The addition of a definition for the term ''positional isomer'' will assist legitimate research and industry in determining the control status of materials that are ''positional isomers'' of Schedule I hallucinogens. While the DEA will remain the authority for ultimately determining the control status of a given material, providing a specific definition for ''positional isomer'' will ensure consistent criteria are utilized in making these determinations.

This rule is relevant only to specialized forensic or research chemists. Most of these individuals are existing DEA registrants who are authorized by the DEA to handle Schedule I hallucinogenic substances.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before July 24, 2006.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–260P'' on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to the DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be directly sent to the DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov.* An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. The DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. The DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration,

Washington, DC 20537 at (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Background

In many instances, the control of a substance under the CSA often includes the specific substance listed under the CSA, as well as the substance's salts, isomers and/or salts of isomers. In most instances, the term isomer includes only optical isomers. In other instances, however, the term isomer includes positional and/or geometric isomers.

In non-technical terms, isomers are different compounds that have the same molecular formula (the same number and types of atoms). The terms ''optical isomer'' and ''geometric isomer'' are specifically defined and well understood scientific terms, and it is easy to determine whether one substance is an optical or geometric isomer of another. The term ''positional isomer,'' however, is not universally defined and, therefore, is subject to scientific interpretation. In order to ensure that consistent criteria are utilized in determining whether one substance is considered a ''positional isomer'' of another, the DEA is proposing that a specific definition for ''positional isomer'' be added to 21 CFR 1300.01(b)(21).

Existing CSA and CFR References to ''Positional Isomers''

The CSA and its implementing regulations (21 CFR 1308.11(d)) specify which hallucinogenic substances are considered Schedule I controlled substances. Under the CSA and its implementing regulations, there are only three references to the term ''positional isomer'':

(1) Pursuant to 21 U.S.C. 802(14), ''the term 'isomer' means the optical isomer, except as used in Schedule I(c) and Schedule II(a)(4). As used in Schedule I(c), the term ''isomer'' means any optical, positional, or geometric isomer. As used in Schedule II(a)(4), the term ''isomer'' means any optical or geometric isomer.''

(2) Under 21 CFR 1300.01(b)(21), ''The term ''isomer'' means the optical isomer, except as used in §§ 1308.11(d) and 1308.12(b)(4) of this chapter. As used in § 1308.11(d) of this chapter, the term ''isomer'' means the optical, positional, or geometric isomer. As used in § 1308.12(b)(4) of this chapter, the term ''isomer'' means the optical or geometric isomer.''

(3) 21 CFR 1308.11(d) states, ''*Hallucinogenic substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term ''isomer'' includes the optical, positional and geometric isomers).''

Why Proposed Definition Is Needed

The CSA (21 U.S.C. 802(14) and 21 U.S.C. 812(c)(I)(c)) and its implementing regulations (21 CFR 1308.11(d)) specify which hallucinogenic substances are considered Schedule I controlled substances. The CSA further states that all salts, isomers and salts of isomers of these substances are also Schedule I controlled substances.

Under the definition of ''isomer'' found in 21 CFR 1300.01(b)(21), ''The term ''isomer'' means the optical isomer, except as used in §§ 1308.11(d) and 1308.12(b)(4) of this chapter. As used in § 1308.11(d) of this chapter, the term ''isomer'' means the optical, positional, or geometric isomer. As used in § 1308.12(b)(4) of this chapter, the term ''isomer'' means the optical or geometric isomer.''

Therefore, according to this definition as it specifically applies to hallucinogens, the term ''isomer'' includes all optical, positional, or geometric isomers. As such, all salts, isomers (including optical, positional, or geometric isomers) and salts of isomers (including optical, positional, or geometric isomers) of the hallucinogenic substances listed in 21 U.S.C. 812(c)(I)(c) and 21 CFR 1308.11(d) are considered Schedule I controlled substances.

Because the determination as to whether a substance is considered a ''positional isomer'' can be subject to scientific interpretation, the DEA believes it is necessary to specifically define the term ''positional isomer''. This definition will only pertain to those substances that are ''positional isomers'' of Schedule I controlled substances pursuant to 21 U.S.C. 812(c)(I)(c) and 21 CFR 1308.11(d).

The DEA is not proposing the addition of definitions for either optical or geometric isomers. The DEA believes that these terms are highly specific and are not subject to differing scientific interpretation.

Proposed Criteria That Will Apply to Positional Isomers

Pursuant to 21 U.S.C. 802(14), 21 U.S.C. 812(c)(I)(c) and 21 CFR 1308.11(d) positional isomers of Schedule I hallucinogens are any and all substances which:

(1) Are not already controlled in a different Schedule I category, or are listed in another Schedule, or are specifically exempted from control by law; and

(2) Have the same molecular formula and core structure as a Schedule I hallucinogen; and

(3) Have the same functional group(s) and/or substituent(s) as those found in the respective Schedule I hallucinogen, attached at any position(s) on the core structure, but in such manner that no new chemical functionalities are created and no existing chemical functionalities are destroyed relative to the respective Schedule I hallucinogen; except that

(4) Rearrangements of alkyl moieties within or between functional group(s) or substituent(s), or divisions or combinations of alkyl moieties, that do not create new chemical functionalities or destroy existing chemical functionalities, would be within the definition of positional isomer (and therefore be controlled).

As clarification, note that the ''core structure'' is the parent molecule that is the common basis for the class; for example, tryptamine, phenethylamine, or ergoline. The following are examples of rearrangements resulting in creation and/or destruction of chemical functionalities. These rearrangements result in compounds which are not positional isomers: ethoxy to *alpha*-hydroxyethyl, hydroxy and methyl to methoxy, or the repositioning of a phenolic or alcoholic hydroxy group to create a hydroxyamine. Examples of rearrangements resulting in compounds which would be positional isomers include, but are not limited to: *tert*-butyl to *sec*-butyl, methoxy and ethyl to isopropoxy, N,N-diethyl to N-methyl-N-propyl, or *alpha*-methylamino to N-methylamino.

Impact of Rule Limited to Specialized Forensic or Research Chemists

The addition of a definition for the term ''positional isomer'' as it applies to 21 CFR 1308.11(d) will assist legitimate research and industry in determining the control status of substances that are isomers of Schedule I hallucinogens. While the DEA will remain the authority on ultimately determining the control status of a given substance, providing a specific definition for ''positional isomer'' will greatly reduce any potential confusion or inconsistencies in making these determinations.

This definition will enable researchers and industry to determine definitively whether a substance is a

''positional isomer'' of a Schedule I hallucinogen. As such, they will be able to know the control status of a particular substance when considering new research.

This rule is relevant only to specialized forensic or research chemists. Most of these individuals are existing DEA registrants who are authorized by the DEA to handle Schedule I hallucinogenic substances.

Specific Changes and Proposed Definition

As currently defined in 21 CFR 1300.01(b)(21), the term ''isomer'' means the optical isomer, except as used in § 1308.11(d) and § 1308.12(b)(4) of this chapter. As used in § 1308.11(d) of this chapter, the term ''isomer'' means any optical, positional, or geometric isomer. As used in § 1308.12(b)(4) of this chapter, the term ''isomer'' means any optical or geometric isomer.

Title 21 CFR 1300.01(b)(21) is proposed to be revised to include a specific definition for the term ''positional isomer''. The proposed modification will specify that, as used in § 1308.11(d), the term ''positional isomer'' means any substance possessing the same molecular formula and core structure and has the same functional group(s) and/or substituent(s) as those found in the respective Schedule I hallucinogen, attached at any position(s) on the core structure, but in such manner that no new chemical functionalities are created and no existing chemical functionalities are destroyed relative to the respective Schedule I hallucinogen. Rearrangements of alkyl moieties within or between functional group(s) or substituent(s), or divisions or combinations of alkyl moieties, that do not create new chemical functionalities or destroy existing chemical functionalities, would be within the definition of positional isomer. For purposes of this definition, the ''core structure'' is the parent molecule that is the common basis for the class. Some examples would include tryptamine, phenethylamine, or ergoline. Examples of non-permissible rearrangements resulting in creation and/or destruction of chemical functionalities (and therefore would not be considered positional isomers) include, but are not limited to: ethoxy to *alpha*-hydroxyethyl, hydroxy and methyl to methoxy, or the repositioning of a phenolic or alcoholic hydroxy group to create a hydroxyamine. Examples of permissible rearrangements (that are within the definition of positional isomers) include: *tert*-butyl to *sec*-butyl, methoxy and ethyl to isopropoxy, N,N-diethyl to N-methyl-N-propyl, or *alpha*-methylamino to N-methylamino.

Scientific/Technical Nature of Proposed Definition

The DEA understands that the proposed definition is highly technical and laden with scientific terms. However, the DEA believes that such a highly technical definition is necessary to ensure that consistent criteria are utilized in determining whether one substance is a ''positional isomer'' of another.

Request for Comments

The proposed definition of ''positional isomer'' will be used in the determination of the control status of substances as Schedule I controlled substances pursuant to 21 CFR 1308.11(d). This definition is highly technical in nature and the DEA has sought to provide specific criteria for determination as to whether a substance is a ''positional isomer'' of Schedule I hallucinogens. The DEA welcomes input from all interested parties regarding the proposed definition of ''positional isomer.'' Prior to publication of a Final Rule, the DEA will consider all comments received. Comments must be submitted on or before July 24, 2006.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The inclusion of the definition of positional isomer set forth herein is unlikely to subject any new substances to CSA control. Also, this rule does not require the obtaining of new DEA registrations. Most persons affected by this rule are already DEA registrants (or would have to become registrants even absent this rule in order to handle Schedule I hallucinogens.) Further, this rule does not impose any additional regulatory burden on the regulated community. The proposed change simply will ensure that consistent criteria are utilized in making scheduling determinations.

Executive Order 12866

The Deputy Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 section 1(b). The DEA has determined that this is not a significant regulatory action. Therefore, this action has not been reviewed by the Office of Management and Budget.

Executive Order 12988

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

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $117,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $114,000,000 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 21 CFR Part 1300

Controlled substances, Definitions, Drug traffic control.

For the reasons set out above, 21 CFR part 1300 is proposed to be amended as follows:

PART 1300—DEFINITIONS [AMENDED]

1. The authority citation for part 1300 continues to read as follows:

Authority: 21 U.S.C. 802, 871(b), 951, 958(f).

2. § 1300.01 is proposed to be amended by revising paragraph (b)(21) to read as follows:

§ 1300.01 Definitions relating to controlled substances.

* * * * *

(b) * * *

(21)(i) The term *isomer* means the optical isomer, except as used in § 1308.11(d) and § 1308.12(b)(4) of this chapter. As used in § 1308.11(d) of this chapter, the term ''isomer'' means any optical, positional, or geometric isomer. As used in § 1308.12(b)(4) of this chapter, the term ''isomer'' means any optical or geometric isomer.

(ii) As used in § 1308.11(d) of this chapter, the term ''positional isomer'' means any substance possessing the same molecular formula and core structure and having the same functional group(s) and/or substituent(s) as those found in the respective Schedule I hallucinogen, attached at any position(s) on the core structure, but in such manner that no new chemical functionalities are created and no existing chemical functionalities are destroyed relative to the respective Schedule I hallucinogen. Rearrangements of alkyl moieties within or between functional group(s) or substituent(s), or divisions or combinations of alkyl moieties, that do not create new chemical functionalities or destroy existing chemical functionalities, are allowed i.e., result in compounds which are positional isomers. For purposes of this definition, the ''core structure'' is the parent molecule that is the common basis for the class; for example, tryptamine, phenethylamine, or ergoline. Examples of rearrangements resulting in creation and/or destruction of chemical functionalities (and therefore resulting in compounds which are not positional isomers) include, but are not limited to: ethoxy to *alpha*-hydroxyethyl, hydroxy and methyl to methoxy, or the repositioning of a phenolic or alcoholic hydroxy group to create a hydroxyamine. Examples of rearrangements resulting in compounds which would be positional isomers include: *tert*-butyl to *sec*-butyl, methoxy and ethyl to isopropoxy, N,N-diethyl to N-methyl-N-propyl, or *alpha*-methylamino to N-methylamino.

* * * * *

Dated: May 17, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E6–7979 Filed 5–24–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 630, 635 and 636

[FHWA Docket No. FHWA–2005–22477]

RIN 2125–AF12

Design-Build Contracting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to revise its regulations for design-build contracting as mandated by section 1503 of the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users'' (SAFETEA–LU). The primary revision would involve a statutory requirement that FHWA not preclude State transportation departments or local transportation agencies from issuing request-for-proposal documents, awarding contracts, and issuing notices-to-proceed for preliminary design work prior to the conclusion of the National Environmental Policy Act (NEPA) process. The FHWA also proposes to revise certain provisions in 23 CFR part 636 to facilitate the use of public-private partnerships.

DATES: Comments must be received on or before July 24, 2006.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or submit electronically at *http://dmses.dot.gov/submit* or fax comments to (202) 493–2251.

Alternatively, comments may be submitted via the eRulemaking Portal at *http://www.regulations.gov.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form on all documents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Yakowenko, Office of Program Administration, (202) 366–1562, or Mr. Michael Harkins, Office of the Chief Counsel, (202) 366–4928, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded by using the internet to reach the Office of the Federal Register's home page at: *http://www.archives.gov* or the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

Section 1503 of the SAFETEA–LU (Pub. L. 109–59; August 10, 2005, 119 Stat. 1144) revises the definition of a design-build ''qualified project'' in 23 U.S.C. 112(b)(3). Formerly, ''qualified projects'' included design-build projects approved by FHWA with total costs estimated to exceed $50,000,000 or intelligent transportation system projects exceeding $5,000,000. This statutory definition limited Federal-aid participation to design-build projects that met this monetary threshold. The revision required by Section 1503 removes the monetary threshold and defines a qualified project as ''* * * a project under this chapter (including intermodal projects) for which the Secretary has approved the use of design-build contracting under criteria specified in regulations issued by the Secretary.'' These regulations are found in 23 CFR part 636. Thus, it is no longer necessary for the FHWA to approve design-build projects exceeding certain dollar thresholds under Special Experimental Project No. 14 (SEP–14).[1] When appropriate, the FHWA will continue to make SEP–14 available for

[1] Information concerning Special Experimental Project No. 14 (SEP–14), ''Innovative Contracting Practices,'' is available on FHWA's home page: *http://www.fhwa.dot.gov.* Additional information may be obtained from the FHWA Division Administrator in each State.

projects that do not conform to the requirements of 23 CFR part 636.

Section 1503 also requires the Secretary of Transportation (hereinafter the Federal Highway Administrator for the purpose of this rule) to issue revised design-build regulations 90 days after the enactment of SAFETEA–LU. This NPRM proposes to make changes required by SAFETEA–LU. Section 1503 specifically states that the revised regulations must not preclude a State transportation department (or local transportation agency) from: (a) Issuing requests for proposals; (b) proceeding with awards of design-build contracts; or (c) issuing notices to proceed with preliminary design work under design-build contracts prior to the completion of section 102 of NEPA.[2] However, the State or local transportation agency must receive concurrence from the FHWA before carrying out any of the activities outlined in (a)–(c) above. Moreover, the design-build contractor must not proceed with final design activities or construction activities prior to completion of the NEPA process.

The FHWA also proposes to revise certain sections of 23 CFR part 636 to clarify its policies concerning the FHWA's approval of projects developed under public-private partnerships. In December 2002 when the FHWA issued the final rule for design-build contracting,[3] there was little experience with public-private partnerships. Since that time, several State DOTs have initiated public-private partnership programs. In addition, on October 6, 2004, the FHWA established a new Special Experimental Project (SEP–15) to encourage tests and experimentation with the use of public-private partnerships in developing transportation projects.[4] SEP–15 was initiated to evaluate the issues associated with increased project management flexibility, innovation, improved efficiency, timely project implementation, and new revenue streams.

Proposed Changes

The FHWA proposes to revise its regulation for design-build contracting in 23 CFR 636 as well as related regulations in 23 CFR 630.106(a) and 23 CFR 635.112(i).

For 23 CFR 630.106(a), we propose to include a provision for design-build projects such that the execution of the project agreement and the authorization to proceed will not occur until after the completion of the NEPA process.

For 23 CFR 635.112(i), we propose to revise our policy for advertising for bids and proposals to indicate that where the request for proposals document is issued prior to the completion of the NEPA process, the FHWA's approval will only constitute the FHWA's approval of the contracting agency's request to release the document.

For 23 CFR 636.103, we propose to revise the definition of a qualified project to be consistent with section 1503 and define several new terms to clearly indicate how the FHWA will implement the section 1503 requirements concerning the Request for Proposals (RFP) release, contract award and notice-to-proceed with preliminary design.

We propose to define the term ''preliminary design'' as ''all design activities necessary to complete the NEPA alternatives analysis and review process as outlined in 23 CFR 771.105, 771.111, and 771.113.'' We specifically request comment on this proposed definition.

We propose to define the term ''final design'' as ''any design activities following preliminary design as outlined in 23 CFR part 771.'' Final design activities are not necessary to complete the NEPA process.

We also propose to add new definitions for the terms ''developer'' and ''public-private agreement'' to clarify the eligibility of projects developed under a public-private partnership as described in 23 CFR 636.119.

In 23 CFR 636.106, we propose to add a sentence to indicate that there is no longer a monetary threshold that invokes Special Experimental Project No. 14—''Innovative Contracting,'' however, SEP–14 is still available for the experimental evaluation of contracting techniques that do not meet the requirement of part 636. When appropriate, the FHWA will consider submittals for approval under SEP–14.

In 23 CFR 636.107, we propose to amend this section as it is no longer necessary as a result of the statutory revision of the definition of a ''qualified project.'' We propose to substitute a new section to clarify the FHWA policy of not allowing local or geographic preferences on design-build projects. This is consistent with the FHWA's traditional policy for construction contracts administered under 23 CFR part 635.[5] We propose to prohibit geographic preferences (including contractual provisions, preferences or incentives for hiring, contracting, proposing or bidding) except where mandated by Federal statutes.

In 23 CFR 636.108, we propose to revise and reserve this section as it is no longer necessary as a result of the statutory revision of the definition of a ''qualified project.''

In 23 CFR 636.109(a), we propose to implement the section 1503 requirements that allow contracting agencies to issue request-for-proposal documents, award design-build contracts, and issue notices-to-proceed for preliminary design work prior to the conclusion of the NEPA process. Contracting agencies would be required to receive the FHWA's concurrence prior to proceeding with any of the above activities. Consistent with the requirements of section 1503, final design activities or construction activities are prohibited prior to the completion of the NEPA process.

In 23 CFR 636.109(b), we propose to state the Federal-aid requirements associated with a decision by the contracting agency to award a design-build contract prior to the conclusion of the NEPA process. If a contracting agency elects to do this, it would be required to implement project development procedures and incorporate design-build contract provisions that: (a) Prevent the design-builder (or developer) from proceeding with final design activities and physical construction prior to the completion of the NEPA process; (b) ensure that no commitment is made to any alternative under evaluation in the NEPA process; (c) ensure that the comparative merits of all alternatives presented in the NEPA document, including the no-build alternative, will be evaluated; (d) ensure that all environmental and mitigation measures identified in the NEPA decision document will be implemented; and (e) include contract termination provisions in the event that the no-build alternative is selected.

It is noted that the provisions of revised 23 U.S.C. 112 (b)(3)(D)(iii) preclude the design-builder from proceeding with final design or construction prior to the conclusion of the NEPA process. Thus, it is unacceptable to allow the design-builder to proceed with final design

[2] Section 102 of the NEPA established a mandate for Federal agencies to consider the potential environmental consequences of their proposals, document the analysis, and make this information available to the public for comment prior to implementation.

[3] The FHWA published the final rule on design-build contracting in the **Federal Register** on December 10, 2002, at 67 FR 75902.

[4] The notice announcing this new SEP–15 program was published in the **Federal Register** on October 6, 2004, at 69 FR 59983. For more information on SEP–15, go to *http://www.fhwa.dot.gov/ppp/sep15.htm.*

[5] See 23 CFR 635.117(b) and the FHWA's Chief Counsel's April 20, 1994, memorandum titled: ''Local Hiring Preferences,'' which is available on the FHWA's home page: *http://www.fhwa.dot.gov/programadmin/contracts/042094.htm.*

activities for a specific alternative, even on an ''at-risk/non-participating basis.''

In this section, we also propose to prohibit the design-builder from preparing the NEPA document or from having any decisionmaking responsibility with respect to the NEPA process. However, preliminary design work performed by the design-builder may be used in the NEPA analysis. This is consistent with the Council on Environmental Quality's conflict of interest policies found at 40 CFR 1506.5(c). This regulation requires the contactor preparing the NEPA document to execute a disclosure statement specifying that it has no financial or other interest in the outcome of the project. However, as explained below, a proposer is not precluded from submitting a proposal for a design-build contract when NEPA has been completed before the issuance of the RFP, even though that proposer may have prepared or assisted in the preparation of the NEPA document.

In 23 CFR 636.109(c), we propose to implement the section 1503 requirement that contracting agencies receive the FHWA's concurrence prior to issuing the RFP, proceeding with preliminary design, and awarding a design-build contract.

In 23 CFR 636.109(d), we propose to clarify that the FHWA's authorization and obligation of preliminary engineering funds prior to the conclusion of the NEPA process is limited to preliminary design activities. This includes the preliminary design work performed by the contracting agency in preparing the NEPA document or the work necessary to prepare the Request for Qualifications (RFQ) and RFP solicitations.

In 23 CFR 636.116 we propose to add 116(c) to clarify that in those situations where the NEPA document has been completed prior to the issuance of the RFP, the contracting agency may allow a consultant and/or subconsultant who assisted them in the preparation of the NEPA document to participate as an offeror or join a team submitting a proposal in response to the RFP. This is consistent with guidance issued by the Council on Environmental Quality (CEQ).[6] We propose to revise 23 CFR 636.119 in its entirety. Over the past three years, several State DOTs and the FHWA have gained experience with public-private partnerships. The FHWA has approved several waivers of our contracting requirements under SEP–15 for each of the public-private partnership projects that we have reviewed. At this point in time, we propose to revise our current contracting policies to reflect the experiences learned under the SEP–15.

For all of the SEP–15 projects approved to date, the contracting agency and the FHWA have determined that it is appropriate to initiate the procurement of the developer for a public-private partnership prior to the conclusion of the NEPA process. The developer is available to assist with the definition of the project scope and to provide preliminary design information. The benefits associated with having a developer on-board during the early stages of project development also include: value engineering assistance, constructability expertise and price information concerning various project alternatives.

Based on our recent experience with SEP–15, it is apparent that many of the Part 636 requirements are not appropriate for the procurement of the developer under a public-private partnership. In most cases, the developer acts as an ''agent-of-the-owner.'' In such cases, it is more appropriate to allow contracting agencies to use State-approved procurement procedures (or State-approved local procedures) for the selection of the developer than to continue to approve waivers of part 636 requirements under SEP–15.

In 23 CFR 636.119(a), we propose to allow contracting agencies to use State-approved procurement procedures to procure the services of the developer under a public private agreement (*i.e.*, the requirements of 23 CFR 636.201 through 23 CFR 636.514 would not apply). However, the use of State-approved procedures will be subject to the FHWA's review and approval of procurement procedures including the RFQ and RFP documents and the public-private agreement. All solicitation and procurement procedures must be fair and transparent to all proposers.

In 23 CFR 636.119(b) we propose to implement a procedure that provides for a determination of price reasonableness for any Federal-aid project that the developer proposes to accomplish with its own forces. If the contracting agency and the FHWA cannot concur in a determination of price reasonableness, the contracting agency must comply with the procurement procedures of 23 CFR Part 172, 635 or 636.

In 23 CFR 636.202(a)(1) we propose to revise the evaluation and award criteria that may be used for design-build contracts that are awarded prior to the conclusion of the NEPA process. The scope of work for such projects is usually in a very preliminary stage of development, and therefore, it would not be appropriate to use total contract price as a proposal evaluation factor. The evaluation and award criteria for such contracts may be based on qualitative considerations. The subsequent approval of final design and construction activities will be contingent upon a determination of price reasonableness by the contracting agency and the FHWA.

Conclusion

In conclusion, the FHWA is proposing to revise its regulations for design-build contracting as mandated by section 1503 of the SAFETEA–LU. The primary revision would allow contracting agencies to issue request-for-proposal documents, award design-build contracts, and issue notices-to-proceed for preliminary design work prior to the conclusion of NEPA. The FHWA also proposes to revise certain provisions in 23 CFR part 636 to facilitate the use of public-private partnerships.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to the late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action would be a significant regulatory action within the meaning of Executive Order 12866, and within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. The Office of Management and Budget has reviewed this document under E.O. 12866. The FHWA anticipates that the economic impact of this rulemaking would be minimal. However, this rule is considered to be significant because of the substantial State, environmental and industry interest in the design-build contracting technique. The FHWA anticipates that the proposed rule would

[6] See CEQ's ''NEPA's 40 Most Asked Questions'', specifically question #17 available at the following URL: *http://ceq.eh.doe.gov/nepa/regs/40/40p3.htm.*

not adversely affect, in a material way, any sector of the economy. This rulemaking merely revises the FHWA's policies concerning the design-build contracting technique. The proposed rule would not affect the total Federal funding available to the State DOTs under the Federal-aid highway program. Therefore, it is anticipated that an increased use of design-build delivery method will not yield significant economic impacts to the Federal-aid highway program. Consequently, a full regulatory evaluation is not required. The increased usage of the design-build contracting method may result in certain efficiencies in the cost and/or time it normally takes to deliver a transportation project. However, the FHWA does not have sufficient data to make a conclusive statement regarding the economic impacts. Interested parties are invited to comment on the anticipated economic impact. In addition, these proposed changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), we have evaluated the effects of this action on small entities and have determined that the action would not have a significant economic impact on a substantial number of small entities. The proposed amendment addresses the obligation of Federal funds to States for Federal-aid highway projects. As such, it affects only States and States are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the Regulatory Flexibility Act does not apply, and the FHWA certifies that the proposed action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995) as it will not result in the expenditure by State, local, tribal governments, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532 *et seq.*). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the affects on State, local, and tribal governments and the private sector.

Additionally, the definition of ''Federal Mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FHWA has determined that this proposed action would not have a substantial direct effect or sufficient federalism implications on the States. The FHWA has also determined that this proposed action would not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Accordingly, the FHWA solicits comments on this issue.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), the FHWA must obtain approval from the Office of Management and Budget (OMB) for each collection of information we conduct, sponsor, or require through regulations. The FHWA has determined that this proposal does not contain a collection of information requirement for purposes of the PRA.

National Environmental Policy Act

The FHWA has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and has determined that this proposed action would not have any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interface with Constitutionally Protected Property Rights. The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed action would not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. The proposed rulemaking addresses obligations of Federal funds to States for Federal-aid highway projects and would not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use dated May 18, 2001. We have determined that it is not a significant energy action under that order because, although it is a significant regulatory action under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes

the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 630

Bonds, Government contracts, Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements.

23 CFR Part 635

Construction and maintenance, Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements.

23 CFR Part 636

Design—build, Grant programs-transportation, Highways and roads.

Issued on: May 19, 2006.

J. Richard Capka,

Acting Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend parts 630, 635, and 636 of title 23, Code of Federal Regulations, as follows:

PART 630—PRECONSTRUCTION PROCEDURES

1. Revise the authority citation for part 630 to read as follows:

Authority: Sec. 1503 of Public Law 109–59, 119 Stat. 1144; 23 U.S.C. 106, 109, 115, 315, 320, and 402(a); 23 CFR 1.32 and 49 CFR 1.48(b).

2. Amend 23 CFR 630.106 by adding paragraph (a)(7) to read as follows:

§ 630.106 Authorization to proceed.

(a) * * *

(7) For design-build projects, the execution of the project agreement and authorization to proceed shall not occur until after the completion of the NEPA process. However, preliminary engineering activities may be authorized in accordance with this section.

* * * * *

PART 635—CONSTRUCTION AND MAINTENANCE

3. Revise the authority citation for part 635 to read as follows:

Authority: Sec. 1503 of Public Law 109–59, 119 Stat. 1144; 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; Sec. 1041(a), Public Law 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.48(b).

4. Amend 23 CFR 635.112(i) by revising paragraph (i)(1); by redesignating paragraphs (i)(2) and (i)(3) as (i)(3) and (i)(4), respectively; and by adding a new paragraph (i)(2) to read as follows:

§ 635.112 Advertising for bids and proposals.

* * * * *

(i) * * *

(1) When a Request for Proposals document is issued after the NEPA process is complete, the FHWA Division Administrator's approval of the Request for Proposals document will constitute the FHWA's project authorization and the FHWA's approval of the STD's request to release the document. This approval will carry the same significance as plan, specification and estimate approval on a design-bid-build Federal-aid project.

(2) Where a Request for Proposals document is issued prior to the completion of the NEPA process, the FHWA's approval of the document will only constitute the FHWA's approval of the STD's request to release the document.

* * * * *

5. Revise § 635.413(e)(1)(i) to read as follows:

§ 635.413 Guaranty and warranty clauses.

* * * * *

(e) * * *

(1) * * *

(i) The term of the warranty is short (generally one to two years); however, projects developed under a public-private agreement may include warranties that are appropriate for the term of the contract or agreement.

* * * * *

PART 636—DESIGN-BUILD CONTRACTING

6. Revise the authority citation for part 636 to read as follows:

Authority: Sec. 1503 of Public Law 109–59, 119 Stat. 1144; Sec. 1307 of Public Law 105–178, 112 Stat. 107; 23 U.S.C. 101, 109, 112, 113, 114, 115, 119, 128, and 315; 49 CFR 1.48(b).

Subpart A—General

7. Amend § 636.103 by placing all definitions in alphabetical order, by adding the definitions of ''developer,'' ''final design,'' ''preliminary design,'' ''price reasonableness,'' and ''public-private agreement,'' and by revising the definition of ''qualified project'' as follows:

§ 636.103 What are the definitions of terms used in this part?

* * * * *

Developer means each entity with whom the contracting agency has executed a public-private agreement for the development, design, construction, financing, operation, and maintenance of one or more projects under a public-private partnership. Depending on the context of the public-private agreement, the term ''developer'' may include affiliated entities of the developer.

* * * * *

Final design means any design activities following preliminary design. Final design activities are not necessary to complete the NEPA process as outlined in 23 CFR 771.

* * * * *

Preliminary design means all design activities necessary to complete the NEPA alternatives analysis and review process as outlined in 23 CFR 771.105, 771.111, and 771.113.

* * * * *

Price reasonableness means the determination that the price of the work for any project or series of projects is not excessive and is a fair and reasonable price for the services to be performed.

* * * * *

Public-private agreement means an agreement between a public agency and a private party under which the private party shares in the responsibilities, risks and benefits of constructing a project. Such agreement may involve an at-risk equity investment by the private party in the project.

Qualified project means any design-build project (including intermodal projects) funded under Title 23 U.S.C. which meets the requirements of this Part and for which the contracting agency deems to be appropriate on the basis of project delivery time, cost, construction schedule and/or quality.

* * * * *

8. Revise § 636.106 to read as follows:

§ 636.106 Is the FHWA's Special Experimental Project No. 14—''Innovative Contracting'' (SEP–14) approval necessary for a design-build project?

No, if a design-build project meets the requirements of this part, SEP–14 approval is not required. However, when the FHWA believes it is appropriate, SEP–14 is available for the experimental evaluation of techniques that do not meet the requirement of this part.

9. Revise § 636.107 to read as follows:

§ 636.107 May contracting agencies use geographic preference in Federal-aid design-build or public-private partnership projects?

No. Contracting agencies must not use geographic preferences (including contractual provisions, preferences or incentives for hiring, contracting, proposing or bidding) on Federal-aid highway projects. Contracting agencies

shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation and award of projects.

§ 636.108 [Removed and Reserved]

10. Remove and reserve § 636.108.

11. Revise § 636.109 to read as follows:

§ 636.109 How does the NEPA process relate to the design-build procurement process?

The purpose of this section is to ensure that there is an objective NEPA process, that public officials and citizens have the necessary environmental impact information for federally funded actions before actions are taken, and that design-build proposers do not assume an unnecessary amount of risk in the event the NEPA process results in a significant change in the proposal. Therefore, with respect to the design-build procurement process:

(a) The contracting agency may:

(1) Issue an RFQ solicitation prior to the conclusion of the NEPA process as long as the RFQ solicitation informs proposers of the general status of NEPA review;

(2) Issue an RFP after the conclusion of the NEPA process;

(3) Issue an RFP prior to the conclusion of the NEPA process as long as the RFP informs proposers of the general status of the NEPA process and that no commitment will be made as to any alternative under evaluation in the NEPA process, including the no-build alternative;

(4) Proceed with the award of a design-build contract prior to the conclusion of the NEPA process; and

(5) Issue notice to proceed with preliminary design pursuant to a design-build contract that has been awarded prior to the completion of the NEPA process.

(b) If the contracting agency proceeds to award a design-build contract prior to the conclusion of the NEPA process, then:

(1) The design-build contract must include appropriate provisions preventing the design-builder (or developer) from proceeding with final design activities and physical construction prior to the completion of the NEPA process (contract hold points or another method of issuing multi-step approvals must be used);

(2) The design-build contract must include appropriate provisions ensuring that no commitment is made to any alternative being evaluated in the NEPA process and that the comparative merits of all alternatives presented in the NEPA document, including the no-build alternative, will be evaluated;

(3) The design-build contract must include appropriate provisions ensuring that all environmental and mitigation measures identified in the NEPA decision document will be implemented;

(4) The design-builder (or developer) must not prepare the NEPA decision document or have any decisionmaking responsibility with respect to the NEPA process;

(5) Any consultant who prepares the NEPA decision document must be selected by and subject to the exclusive direction and control of the contracting agency;

(6) Preliminary design work performed by the design-builder (or developer) may be used in the NEPA analysis; and

(7) The design-build contract must include termination provisions in the event that the no-build alternative is selected.

(c) The contracting agency must receive prior FHWA concurrence before issuing the RFP, awarding a design-build contract and proceeding with preliminary design work under the design-build contract. Should the contracting agency proceed with any of the activities specified in this section before the completion of the NEPA process (with the exception of preliminary design, as provided in paragraph (d) of this section), the FHWA's concurrence merely constitutes the FHWA acquiescence that any such activities complies with Federal requirements and does not constitute project authorization or obligate Federal funds.

(d) The FHWA's authorization and obligation of preliminary engineering funds prior to the completion of the NEPA process is limited to preliminary design activities. After the completion of the NEPA process, the FHWA may issue an authorization to proceed with final design and construction and obligate Federal funds for such purposes.

12. Amend § 636.116 by adding paragraph (c) to read as follows:

§ 636.116 What organizational conflict of interest requirements apply to design-build projects?

* * * * *

(c) If the NEPA process has been completed prior to issuing the RFP, the contracting agency may allow a consultant and/or subconsultant who prepared the NEPA document to submit a proposal in response to the RFP.

13. Revise § 636.119 to read as follows:

§ 636.119 How does this Part apply to public-private agreements?

(a)(1) For public-private agreements, the contracting agency may use State-approved procurement procedures to procure the services of the developer and the requirements of 23 CFR 636.201 through 23 CFR 636.514 are optional. The use of State-approved procedures for the procurement of the developer is contingent upon the following:

(i) The State's procedures are approved by the FHWA,

(ii) The RFQ or RFP solicitations must be submitted to the FHWA for review and approval,

(iii) The procedures must be fair and transparent to all proposers,

(iv) If an unsolicited proposal is received, the contracting agency must offer adequate public notice and advertisement for competing proposals before considering an individual proposal for award,

(v) The appropriate RFQ or RFP document must clearly describe the contracting agency's conditions and procedures for sharing any proposer's ideas with other proposers during any phase of the negotiation process and whether a proposer's ideas may be incorporated into the project, even though that proposer was unsuccessful in obtaining the contract;

(vi) The selection of a developer is made on the basis of a best value selection, except that price does not have to be a consideration. Evaluation and selection criteria may include, but are not limited to, the degree and scope of work to be performed, services to be provided, ability to perform such work or services, responsibilities or risks that are to be shared, and the equity or total investment that may be contributed; and

(vii) The contracting agency submits the public-private agreement to FHWA for concurrence along with a timetable showing the major steps in the procurement process, a summary of the rationale for the selection, and a description of any major changes made during any negotiations.

(2) No procedure or requirement shall be approved under paragraph (a)(1) of this section which, in the judgment of the FHWA, may operate to unnecessarily restrict competition, is unfair, or may result in a process that is not transparent.

(b) For any public-private agreement that provides for the possibility of the physical construction of one or more projects by the developer, the public-private agreement must include a provision requiring the contracting agency to review the price reasonableness of the estimate provided by the developer to provide final design

services and/or physically construct any project involving Federal funds.

(1) The price reasonableness determination shall be made pursuant to a process provided for in the public-private agreement that includes a comparison of the developer's estimate to an estimate prepared by the contracting agency. Both parties may meet to discuss the differences in the estimates and make appropriate revisions. The estimates prepared under this paragraph shall be prepared on an open-book basis with respect to both the contracting agency and the developer.

(2) The contracting agency's determination of price reasonableness shall be submitted to the FHWA for concurrence.

(3) If the contracting agency cannot reach an agreement on price reasonableness with the developer, or if the FHWA does not concur, then the contracting agency shall proceed to procure the work with another firm pursuant to parts 172, 635, and 636 of this title, as appropriate.

(c) The contracting agency must ensure Federal-aid projects developed under a public-private partnership comply with all non-procurement requirements of 23 U.S. Code, regardless of the form of the FHWA funding (traditional Federal-aid funding or credit assistance). This includes compliance with all FHWA policies and requirements, such as environmental and right-of-way requirements and compliance with all applicable construction contracting requirements such as Buy America, Davis-Bacon prevailing wage rate requirements, etc.

12. Revise § 636.302(a)(1) to read as follows:

§ 636.302 Are there any limitations on the selection and use of proposal evaluation factors?

(a) * * *

(1) You must evaluate price in every source selection where construction is a significant component of the scope of work. However, where the contracting agency elects to release the final RFP and award the design-build contract before the conclusion of the NEPA process (see § 636.109), then the following requirements apply:

(i) It is not necessary to evaluate total contract price;

(ii) The evaluation of proposals and award of the contract may be based on qualitative considerations;

(iii) The subsequent approval of final design and construction activities will be contingent upon a finding of price reasonableness by the contracting agency;

(iv) In determining price reasonableness, the contracting agency and design-builder may negotiate the price, which shall be done on an open-book basis by both the design-builder and contracting agency; and

(v) The contracting agency's finding of price reasonableness is subject to FHWA concurrence.

* * * * *

[FR Doc. E6–8002 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–06–002]

RIN 1625–AA09

Drawbridge Operation Regulations; Missouri River, Iowa, Kansas, Missouri

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to make revisions in Missouri River drawbridge regulations covering Iowa, Kansas, and Missouri. Under the proposed revisions, the bridges will open on signal, except during the winter season when 24 hours advance notice will be required. These proposed revisions to the regulations will reduce delays to the vessels transiting through these States on the Missouri River.

DATES: Comments and related material must reach the Coast Guard on or before July 24, 2006.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832. Commander (dwb), Eighth 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 room 2.107f in the Robert A. Young Federal Building, Eighth Coast Guard District, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

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 [CGD08–06–002], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Eighth Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a meeting 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 Coast Guard reviewed the history of civil penalty actions for failure of the Missouri River drawbridges to open for navigation. Meetings were held with the bridge owner and vessel operators to determine the cause for not opening the bridge draw on signal. A procedure was incorporated in the regulations to help reduce the number of vessel delays caused by failure to open the bridge on signal. Experience has shown the procedure was never implemented and vessel delays were not reduced. Thus, the Coast Guard is proposing these revisions to these regulations so vessels may pass the bridge without delay.

Discussion of Proposed Rule

The Coast Guard determined that changes were needed to correct inaccuracies in State-related drawbridge operation regulations for § 117.407 (Iowa), § 117.411 (Kansas), and § 117.687 (Missouri). In addition, § 117.411(b) and § 117.687(b), which describe the procedure for the operation of A–S–B Highway and Railroad Bridge at Mile 365.6, are to be eliminated. This drawbridge was never operated in the manner described. It will open on signal as described in § 117.411 and § 117.687.

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.

The Coast Guard expects that these changes will have a minimal economic impact on commercial traffic operating on the Missouri River. The procedure is already in practice at the bridges, and the change to the CFR documents the procedure.

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 rule would not have a significant economic impact on a substantial number of small entities. This proposed rule is neutral to all business entities since it affects only how the vessel operators request bridge openings.

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 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 contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 2378. 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 may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant 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 rule is categorically excluded under figure 2–1, paragraph 32(e) of the Instruction from further environmental documentation. Paragraph 32(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of the National Environmental Policy Act (NEPA). Since this proposed regulation would alter the normal operating conditions of the drawbridge, it falls

within this exclusion. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

2. Revise § 117.407 to read as follows:

§ 117.407 Missouri River.

See § 117.691, Missouri River listed under Nebraska.

3. Revise § 117.411 to read as follows:

§ 117.411 Missouri River.

The draws of the bridges across the Missouri River shall open on signal; except during the winter season between the date of closure and the date of opening of the commercial navigation season as published by the Army Corps of Engineers, the draws need not open unless at least 24 hours advance notice is given.

4. Revise § 117.687 to read as follows:

§ 117.687 Missouri River.

The draws of the bridges across the Missouri River shall open on signal; except during the winter season between the date of closure and date of opening of the commercial navigation season as published by the Army Corps of Engineers, the draws need not open unless at least 24 hours advance notice is given.

Dated: April 25, 2006.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 06–4877 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–06–052]

RIN 1625–AA11

Regulated Navigation Area: Narragansett Bay, RI and Mount Hope Bay, MA, Including the Providence River and Taunton River

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise some provisions of the existing Regulated Navigation Area (RNA) in the Providence River, Narragansett Bay, RI and Mount Hope Bay, MA. Specifically, the purposes of this proposed rulemaking are to: First, modify provisions in the current RNA that were originally implemented to address severe shoaling in the Providence River; second, address navigational challenges associated with the two Brightman Street bridges; and third, introduce new measures to improve navigation safety in all of Narragansett Bay and Mount Hope Bay, including the Providence and Taunton Rivers, respectively.

DATES: Comments and related material must reach the Coast Guard on or before August 23, 2006.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Sector Southeastern New England, Prevention Department, 20 Risho Avenue, East Providence, RI, 02914–1208. U.S. Coast Guard Sector Southeastern New England maintains the public docket for this rulemaking. Comments and documents will become part of this docket and will be available for inspection and copying at the same address between 8 a.m. and 3 p.m. Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Edward G. LeBlanc at U.S. Coast Guard Sector Southeastern New England, 401–435–2351.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–06–052), 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 U.S. Coast Guard Sector Southeastern New England at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid the Coast Guard in determining what type of rulemaking (if any) is appropriate, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On May 1, 1994, the Coast Guard established a Regulated Navigation Area (RNA) in the Providence River, Providence, Rhode Island, described at 33 CFR 165.122 (59 FR 18487, April 19, 1994). It was designed to protect the maritime community from hazards to navigation resulting from the extreme shoaling that occurred in the northern section of the Providence River Channel.

Generally, the current RNA imposes certain navigation restrictions in various segments of the Providence River including, among other requirements, a maximum draft of 35 feet for most vessels, one-way vessel traffic, and a requirement that vessels over 65 feet in length make periodic SECURITE calls via VHF radio. In September 2005 the U.S. Army Corps of Engineers (''USACE'') completed a major maintenance dredging of the Providence River to remove most shoaling and restore the channel to a depth of 40 feet at Mean Lower Low Water (MLLW), and a minimum channel width of 600 feet. (The USACE ''Results of Survey'' dated September 16, 2005, is available for review in the docket, CGD01–06–052.)

The restoration of the Providence River Channel to the above described dimensions should permit sufficient depth and width for most commercial and recreational vessels to navigate safely within the channel. Consequently, because the primary conditions that warranted the RNA no longer exist, the Coast Guard is considering making modifications to it.

Construction of a new Brightman Street bridge (''The New Brightman Street Bridge'') approximately 1100 feet north of the existing Brightman Street

Bridge (''The Old Brightman Street Bridge'') presents navigational challenges, particularly for larger self-propelled tank vessels. The opening of the Old Brightman Street Bridge is only 98 feet while the opening of the New Brightman Street Bridge is 200 feet. There is an approximate centerline offset of 100 feet between the two bridges.

This configuration requires larger commercial vessels to transit through one opening, stop, be pushed transversely (sideways) by tugs for approximately 100 feet to align with the next bridge opening, and then proceed forward. The Coast Guard proposes to address the challenges in transiting between the bridges by codifying some navigational safety measures already practiced by local marine pilots. The Coast Guard elaborates on those navigational challenges in the *Discussion of Proposed Rule* section below.

On August 10, 2005, President Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59). Section 1948 of that law prohibits the expenditure of Federal funds for the demolition of the Old Brightman Street Bridge. Specifically, that Section states: ''Notwithstanding any Federal law, regulation, or policy to the contrary, no Federal funds shall be obligated or expended for the demolition of the existing Brightman Street Bridge connecting Fall River and Somerset, Massachusetts, and the existing Brightman Street Bridge shall be maintained for pedestrian and bicycle access, and as an emergency service route.''

The unique maneuvers required to navigate safely between these two bridges concern the Coast Guard and consequently, certain measures to mitigate those navigation challenges are suggested in this proposed rule. The safety measures suggested are currently being practiced voluntarily by the maritime community. Given that the configuration of the two bridges now appears to be the status quo, the Coast Guard proposes that modifying the existing RNA in the Providence River, Narragansett Bay, RI and Mount Hope Bay, MA, is an appropriate method to address the respective navigation safety issues.

Concurrently, the Coast Guard proposes to implement certain navigation safety measures applicable to the waterways that encompass Narragansett Bay and Mount Hope Bays (''The Bays'') in their entirety, including the Providence River and Taunton River.

On September 7, 2004 and September 8, 2004, the Coast Guard sponsored a Ports and Waterways Safety Assessment (PAWSA) of Narragansett Bay, which was conducted by a cross-section of waterways users and stakeholders. The report produced by the PAWSA participants identified several issues and areas within the Bays where navigational safety was of particular concern. (A copy of the PAWSA report is available in the docket, CGD01–06–052.) Although the Coast Guard has taken several non-regulatory actions to improve navigational safety, such as public outreach, education and improved aids to navigation, the Coast Guard is considering additional navigational safety regulations within the Bays.

On November 21, 2005, the Coast Guard published a notice requesting public comments on ''Navigation and Waterways Management Improvements, Providence River Regulated Navigation Area; Narragansett Bay, Rhode Island and Mount Hope Bay, MA'' (See 70 FR 70052). The Coast Guard invited comments on several specific questions regarding navigational safety within the Bays, and solicited any other comments regarding navigational safety concerns and potential impacts of any new navigational safety measures. Three comments were submitted.

Two of the three comments addressed navigational concerns related to the waterway configuration resulting from the proximity of the Old Brightman Street Bridge to the New Brightman Street Bridge that span the Taunton River between Somerset and Fall River, Massachusetts. Specifically, there is only 1100 feet between the bridges, the opening of the Old Brightman Street Bridge is only 98 feet while the opening of the New Brightman Street Bridge is 200 feet, and the openings of the two bridges are not aligned with each other. As noted previously, this configuration requires a vessel to transit through one opening, stop, be pushed transversely (sideways) by tugs for approximately 100 feet to align with the next bridge opening, and then proceed forward. Local marine pilots, working with vessel operators, have devised a method of transiting the two bridges that involves the use of a marine pilot, three tugs (in most cases), and navigating only within certain weather parameters. The Coast Guard proposes to codify those voluntary practices in this NPRM.

The first two comments are more aptly addressed via the mechanisms contemplated by 33 CFR part 116, ''Alterations of Unreasonably Obstructive Bridges.'' That part describes the procedures by which the Coast Guard determines a bridge to be an unreasonable obstruction to navigation. Consequently, the Commander, First Guard District (dpb) forwarded a letter on April 3, 2006, to Commandant (G–PWB), Coast Guard Headquarters, Washington, DC, to begin the 33 CFR part 116 process regarding the Old Brightman Street Bridge.

The third comment pertained specifically to the current RNA described at 33 CFR 165.122 and recommended:

- A reduction in several voice reporting requirements via VHF radio in Narragansett Bay and the Providence River;
- Removal of the one-way traffic restriction in the Providence River;
- Addition of a voice reporting requirement via VHF radio in Mount Hope Bay;
- Addition of an under-keel clearance requirement for deep draft vessels in both Narragansett Bay and Mount Hope Bay.

The recently-completed major dredging project by the USACE has reduced the need for voice reporting requirements in Narragansett Bay and the Providence River, and obviated the need for one-way traffic restrictions in the river. Consequently, the recommendations made with respect to a reduction in several voice reporting requirements via VHF radio in Narragansett Bay and the Providence River and a removal of the one-way traffic restriction in the Providence River, as described above, have already been incorporated and addressed in this proposed rule. Given the type and frequency of marine traffic in Mount Hope Bay and the Taunton River, combined with the location of three bridges in close proximity to each other (the Braga Bridge, the Old Brightman Street bridge, and the New Brightman Street Bridge (under construction)), the Coast Guard believes that voice reporting requirements are prudent and should enhance navigation safety, and those reporting requirements are also included in this proposed rule.

The recommendation for an under-keel clearance requirement was considered, but is not included as part of the proposed rule in this NPRM. The under-keel clearance is subject to many variables, such as wave height, squat, accuracy of tidal predictions, water density, etc., and is difficult, if not impossible, to enforce. Rather, we propose to revise the existing maximum draft restriction for the Providence River as described below in our proposed regulatory text.

Discussion of Proposed Rule

The proposed modifications to the current RNA at 33 CFR 165.122 would:

- Remove certain navigation restrictions and minimum visibility requirements in the Providence River, especially for vessels with drafts of 35 feet or greater;
- Remove the one-way-traffic restriction for vessels over 65 feet in length that currently exists in certain areas of the Providence River;
- Reduce the number of required Safety Signal (SECURITE) calls while transiting Narragansett Bay and the Providence River;
- Require a SECURITE call for certain vessels transiting Mount Hope Bay and the Taunton River;
- Define maximum draft allowances for vessels transiting within the RNA;
- Define certain weather parameters, and require a federally licensed pilot and assist tugs, for commercial vessels transiting through the Old and New Brightman Street bridges.

This proposed rule was prompted by the completion of a major dredging project in the Providence River. Navigation safety measures implemented to address the shoaling in that river are no longer required. Based upon the 2004 PAWSA report, however, the public response to the Coast Guard November 21, 2005 notice requesting comments (See 70 FR 70052), and recent Federal legislation that will result in both the Old and New Brightman Street bridges being retained, (Pub. L. 109–59, described above) there is a need for certain navigation safety measures to be implemented in order to better protect people, property, waterways users, the environment, and the economy from the adverse affects of a marine accident or incident.

Vessels or persons violating this section would be subject to the civil or criminal penalties set forth in 33 U.S.C. 1232.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The effect of this proposed rule would not be significant as it removes some previously imposed and more restrictive navigation safety measures, and modifies already-existing voice reporting requirements in the affected waterways. Navigating within certain weather parameters and requiring federally licensed pilots and assist tugs for commercial vessels transiting the Old and New Brightman Street bridges are already standard practices and will not be an additional economic burden. Should this proposed rule become final, it would be entered into the local notice to mariners, and maritime advisories will be broadcast.

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 65 feet in length or greater transiting the waterways of Narragansett Bay and Mount Hope Bay, including the Providence and Taunton rivers, respectively.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule only modifies current regulations and/or codifies current navigation practices. It does not impose new requirements which would affect vessels' schedules or their ability to transit the RNA, nor does it require the purchase of any new equipment or the hiring of any additional crew.

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** above) 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 Mr. Edward G. LeBlanc of U.S. Coast Guard Sector Southeastern New England at 401–435–2351. 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 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 rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34)(g), as it would change a Regulated Navigation Area. A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR 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. Revise § 165.122 to read as follows:

§ 165.122 Regulated Navigation Area: Narragansett Bay, RI and Mount Hope Bay, MA, Including the Providence River and Taunton River.

(a) *Description of the regulated navigation area.* The Regulated Navigation Area (RNA) encompasses all of the navigable waters of Narragansett Bay and Mount Hope Bay north of the COLREGS demarcation line defined in 33 CFR 80.155, and all of the navigable waters of the Providence River from Conimicut Point to the Providence hurricane barrier, and the Taunton River from Brayton Point northeast to Breeds Cove north of the New Brightman Street Bridge.

(b) *Regulations.* (1) The following restrictions apply:

(i) No vessel may transit the Providence River (the entire channel from Sandy Point to Fox Point Reach):

(A) With a draft greater than 37 feet, 6 inches (37′6″) when water depth is below mean low water.

(B) With a draft greater than 41 feet (41′) when water depth is below mean high water.

(ii) For the purposes of this section, water depth for the Providence River is the water depth at the time a vessel enters the river as recorded at the National Oceanic and Atmospheric Administration's (NOAA's) Physical Ocean Real Time System (PORTS) depth recording device located at Conimicut Point. If this device is not operating properly or its information cannot be obtained, water depth will be determined using NOAA-published tide tables.

(iii) No vessel may transit the Mount Hope Bay/Taunton River channel (the entire channel from Sandy Point to Breeds Cove north of the New Brightman Street Bridge):

(A) With a draft greater than 31 feet, 6 inches (32′6″) when water depth is below mean low water.

(B) With a draft greater than 34 feet, 6 inches (34′6″) when water depth is below mean high water.

(iv) For the purposes of this section, water depth for the Taunton River is the water depth at the time a vessel enters the river as recorded at the NOAA's Physical Ocean Real Time System (PORTS) depth recording device located at Borden Flats, Fall River. If this device is not operating properly or its information cannot be obtained, water depth will be determined using NOAA-published tide tables.

(v) No vessel may transit the Quonset Point/Davisville Channel (the entire channel from Sandy Point to Davisville):

(A) With a draft greater than 28 feet, 6 inches (28′6″) when water depth is below mean low water.

(B) With a draft greater than 30 feet (30′) when water depth is below mean high water.

(vi) For the purposes of this section, water depth for the Quonset Point/Davisville channel is the water depth at the time a vessel enters the channel as recorded at the NOAA's Physical Ocean Real Time System (PORTS) depth recording device located at Quonset Point. If this device is not operating properly or its information cannot be obtained, water depth will be determined using NOAA-published tide tables.

(2) All commercial vessels greater than 200 gross tons must:

(i) Have at least 1 mile of visibility to transit the Providence River between

Conimicut Light (LLNR 18305) and Channel Light 42 (LLNR 18580, Fuller Rock Light); and

(ii) Transit through the Old and New Brightman Street bridges only:

(A) During daylight;

(B) On a flood tide when outbound;

(C) When a federally licensed pilot is aboard;

(D) When winds are no greater than 15 knots; and

(E) Accompanied by at least three assist tugs, each of sufficient capability to push, tow, or stop the commercial vessel to avoid grounding, collision, or allision, except that:

(*i*) Only two assist tugs are required when the commercial vessel is equipped with a properly operating bow thruster of at least 1000 horsepower.

(*ii*) Only one assist tug is required when a barge is being pushed by a primary towing vessel. For the purposes of this regulation, ''primary towing vessel'' is as defined in 33 CFR 157.03.

(3) Vessels over 65 feet in length inbound for berths in the Providence River, are required to make Safety Signal (SECURITE) calls on both VHF channels 13 and 16 at the following geographic locations: Pilot Boarding Area, abeam of Castle Hill, abeam of Sandy Point, abeam of Conimicut Point Light (LLNR 18305), abeam of Sabin Point and upon mooring.

(4) Vessels over 65 feet in length inbound for berths in Mount Hope Bay or in the Taunton River, are required to make Safety Signal (SECURITE) calls on both VHF channels 13 and 16 at the Mount Hope Bay Junction Lighted Gong Buoy ''MH'' (LLNR 18790).

(5) Vessels over 65 feet in length outbound for sea down the Providence River Channel shall make SECURITE calls on VHF channels 13 and 16 at the following geographic locations:

(i) One-half hour prior to departure from the berth;

(ii) At departure from the berth;

(iii) Abeam of Sabin Point;

(iv) Abeam of Gaspee Point; and

(v) Abeam of Conimicut Light (LLNR 18305).

(6) Vessels over 65 feet in length outbound for sea down the Taunton River or Mount Hope Bay are required to make SECURITE calls on VHF channels 13 and 16 at the following geographic locations:

(i) One-half hour prior to departure from the berth;

(ii) At departure from the berth; and

(iii) At the Mount Hope Bay Junction Lighted Gong Buoy ''MH'' (LLNR 18790).

(7) Vessels 65 feet and under in length and all recreational vessels when meeting deep draft commercial vessel traffic in all locations within this RNA shall keep out of the way of the oncoming deep draft commercial vessel.

(8) The Captain of the Port, Southeastern New England, may authorize a deviation from these regulations.

(c) *Enforcement.* As stated in § 165.13(b), no person may cause or authorize the operation of a vessel in an RNA contrary to the regulations in this part. Violations of regulations in this section should be reported to the Captain of the Port, Southeastern New England, at 508–457–3211. Persons in violation of regulations in this section will be subject to civil or criminal penalties set forth in 33 U.S.C. 1232.

Dated: May 16, 2006.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. E6–8075 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–15–P

Notices

Federal Register
Vol. 71, No. 101
Thursday, May 25, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0072]

Availability of a Draft Pest Risk Assessment for Hass Avocados From Peru

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that a draft pest risk assessment has been prepared by the Animal and Plant Health Inspection Service relative to a proposed rule currently under consideration that would allow the importation into the continental United States of fresh Hass avocados from Peru. We are making this draft pest risk assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before July 24, 2006.

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

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2006–0072 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to APHIS–2006–0072, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to APHIS–2006–0072.

Reading Room: You may read any comments that we receive on the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Juan Roman, Import Specialist, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1237; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The Animal and Plant Health Inspection Service (APHIS) is considering amending the regulations to allow the importation of fresh Hass avocados from Peru into the continental United States. We have prepared a draft pest risk assessment entitled, ''Importation of 'Hass' Avocado (*Persea americana*) Fruit from Peru into the Continental United States'' (May 2006), in order to consider the pest risks associated with the importation of fresh Hass avocados from Peru into the continental United States. We are making the draft pest risk assessment available to the public for review and comment.

The draft pest risk assessment may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the draft pest risk assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the draft pest risk assessment when requesting copies.

This notice solicits public comments on the draft pest risk assessment. We will also make the draft pest risk assessment available for public comment during the comment period for any proposed rule related to the importation of Hass avocados from Peru.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 19th day of May 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–8074 Filed 5–24–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Federal Claims Collection Methods for Food Stamp Program Recipient Claims

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. This Notice of Proposed Information Collection announces the intent of the Food and Nutrition Service to revise and extend the information collection requirements associated with initiating and conducting Federal collection actions against households with delinquent food stamp recipient debts.

DATES: Written comments must be submitted on or before July 24, 2006 to be assured consideration.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have 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 to Jane Duffield, Chief, Payment Accuracy Branch, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 818, Alexandria, Virginia, 22302.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Leslie Byrd at (703) 305–2472.

SUPPLEMENTARY INFORMATION:

Title: Federal Claims Collection Methods for Food Stamp Program Recipient Claims.

OMB Number: 0584–0446.

Form Number: None.

Expiration Date: September 30, 2006.

Type of Request: Revision of a currently approved collection.

Abstract: Section 13(b) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2022(b)), and Food Stamp Program (FSP) regulations at 7 CFR 273.18 require State agencies to refer debtors for food stamp benefit over-issuance to the U.S. Department of the Treasury for collection. The Debt Collection Improvement Act of 1996, 31 U.S.C. 3701, *et seq.*, requires these debts to be referred to Treasury for collection when they are 180 days or more delinquent. Through the Treasury Offset Program (TOP), 31 CFR Part 285, payments such as Federal income tax refunds, Federal salaries and other Federal payments payable to these delinquent debtors will be offset and the amount applied to the delinquent debt. TOP places a burden on States agencies and/or former food stamp recipients who owe delinquent debts in three areas: 60-day notices from State agencies to debtors that their debt will be referred to TOP; State-level submissions; and automated data processing (ADP).

TOP 60-Day Notice Proposed Burden

The proposed burden associated with the 60-day notice involves both the debtors and the State agencies. The 60-day notice notifies the debtor of the proposed referral to TOP and provides the right for review and appeal. The State agency prepares and mails the notices as well as responds to inquiries and appeals. The debtor, in turn, receives and reads the notice and may make an inquiry or appeal the impending action. Based on an average of the number of records for claims the States proposed to send to TOP for calendar years 2003, 2004 and 2005, we estimate that State agencies will send out and that debtors will read 291,336 notices. In addition, we estimate that the debtors will submit and State agencies will respond to about 2,900 inquiries and appeals. The total number of responses being proposed for the 60-day notice portion of the proposed burden is 588,472 respondents (291,336 notices + 2,900 follow-up inquiries and appeals times 2) per year resulting in an annual reporting and recordkeeping burden of 41,745 hours. The existing burden for activity relating to the 60-day notice is 39,549 hours based on 558,132 respondents. The net increase of 2,196 hours is due to the fact that State agencies have increased the number of debts they are adding to TOP and this is increasing the number of 60 day notices sent to debtors.

TOP State-Level Submissions

Treasury prescribes specific processes and file formats for FNS to use to send debts to TOP. FNS provides guidance and file formats to State agencies and monitors their compliance with such. State agencies must submit specified documents and/or information to FNS and FNS sends required information to Treasury. The first such document is an annual letter to FNS certifying that all of the debts submitted by the State agency to TOP are valid and legally enforceable in the amount stated. The second document certifies that Internal Revenue Service (IRS) information is safeguarded in accordance with IRS instructions. Lastly, State agencies report TOP collections on the FNS–209 Status of Claims against Households report. (The burden for the remainder of the FNS–209 report is already covered under OMB burden number 0584–0069).

FNS estimates that it will take State agencies a total of 135 hours per year for these State submissions. There is no change in the number of hours required for these reports from the previous submission.

TOP ADP Proposed Burden

The proposed burden for ADP includes weekly file processing, monthly address requests and system maintenance. Weekly and monthly file processing includes requesting addresses to use to send out 60-day notices, adding and maintaining debts in TOP, correcting errors on unprocessable records, and posting weekly collection files. Much of this activity is completed using automation and involves an estimated 1.9 million records annually. FNS estimates that this activity takes 17,017 annual reporting and recordkeeping burden hours. This is an increase of 578 hours over the previous submission because of the increased number of records.

Summary of Estimated Burden

The net aggregate change from the existing to the proposed annual burden for this entire Proposed Collection is an increase of 2,773 hours over the previous submission. For the activity relating to the 60-day notice, we are increasing the estimated annual burden for State agencies and debtors from 39,549 hours to 41,745 hours to reflect an increase in the number of notices sent to debtors. The State-level submissions portion of the reporting and recordkeeping burden is estimated to require the same number of hours as the previous submission. The annual ADP portion of this burden package is being increased from 16,439 to 17,017 hours primarily to reflect the processing associated with the additional 60 day notices and associated records.

Affected Public: State and local government, and food stamp households.

Estimated Number of Respondents: 294,236.

Number of Responses per Respondent: 6.08.

Total Number of Annual Responses: 1,790,109.

Estimated Hours per Response: 0.03.

Estimated Total Annual Burden: 58,896 hours.

Dated: May 18, 2006.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. E6–8036 Filed 5–24–06; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold a meeting on June 2, 2006, in Quincy, CA. The purpose of the meeting is to review

final applications for the 6th and final cycle of funding under the Title 2 provisions of the Secure Rural Schools and Community Self-Determination Act of 2000. Selected projects will be recommended to the Plumas (PNF) or Lassen (LNF) National Forest Supervisor for funding.

DATES & ADDRESSES: The meeting will take place from 9–4 at the Mineral Building—Plumas/Sierra County Fairgrounds, 208 Fairgrounds Road, Quincy, CA.

FOR FURTHER INFORMATION CONTACT: Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA, 95971; (530) 283–7850; or by e-mail *eataylor@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items for the June 2 meeting include: (1) Forest Service Update; (2) Review final applications submitted for Cycle 6 funding consideration/select projects to be recommended to Forest Supervisors for funding consideration; and, (3) Review future meeting schedule and agenda. The meetings are open to the public and individuals may address the Committee after being recognized by the Chair. Other RAC information including previous meeting agendas and minutes may be obtained at *http://wwwnotes.fs.fed.us:81/r4/payments_to_states.*

Dated: May 18, 2006.

Fred J. Krueger,

Public Services Staff Officer.

[FR Doc. 06–4848 Filed 5–24–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Hood/Willamette Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Action of meeting.

SUMMARY: The Hood/Willamette Resource Advisory Committee (RAC) will meet on Friday, June 29, 2006. The meeting is scheduled to begin at 9 a.m. and will conclude at approximately 12 p.m. The meeting will be held at the Holiday Inn Express; 105 Opal Street, NE., Albany, Oregon; (541) 928–8820. The tentative agenda includes: (1) Recommendations on 2007 Projects; and (2) Public Forum.

The Public Forum is tentatively scheduled to begin at 9:15 a.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the June 29th meeting by sending them to Designated Federal Official Donna Short at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Donna Short; Sweet Home Ranger District; 4431 Highway 20; Sweet Home, Oregon 97386; (541) 367–3540.

Dated: May 17, 2006.

Scott G. Fitzwilliams,

Deputy Forest Supervisor.

[FR Doc. 06–4852 Filed 5–24–06; 8:45 am]

BILLING CODE 3410–11–M

ARCTIC RESEARCH COMMISSION

Invitation for the Public To Provide Recommendations to the U.S. Arctic Research Commission Regarding Future Goals for U.S. Arctic Research

AGENCY: Arctic Research Commission.

ACTION: Invitation for public comments and recommendations.

SUMMARY: The U.S. Arctic Research Commission is drafting its biennial report to the President an Congress on goals for the U.S. Arctic research program, due in January 2007. This notice is an invitation to the Arctic research community and the public at large to provide recommendations to the Commission for consideration in its ''Report on Goals and Objectives 2007.''

Arctic research is conducted by 15 agencies of the United States government and is coordinated by the Interagency Arctic Research Policy Committee (IARPC) chaired by the National Science Foundation. Recent focus of U.S. Arctic research spans a number of goals and objectives including the study of Arctic climate change, geophysics, health of Arctic ecosystems, health of Arctic residents, assessment of Arctic resources, and studies of Arctic infrastructure. Under the Arctic Research and Policy Act of 1984, the seven citizen members of the U.S. Arctic Research Commission provide goals for that program which, if approved by the President, are incorporated into the nation's five year Arctic Research Plan. In its last report in 2005, submitted to the President and Congress, the Commission sought five broad research objectives for programs integrated across Federal agencies. The Commission also made specific recommendations to Federal agencies for work within their own programs, for international coordination of research and for investment in Arctic research infrastructure.

The public is invited to participate in the Commission's formulation of its recommendations for the 2007 Goals Report. We invite your comments and recommendations regarding the future U.S. Arctic research program and the Arctic research priorities of the Federal agencies. Comments should be addressed to Kathy Farrow at the Commission offices by e-mail at *k.farrow@arctic.gov* (in the subject line please insert ''goals report'') or by fax 1–703–525–0114, and should be received at the Commission's Arlington, Virginia office by no later than 1 July 2006.

The Commission will meet to hear public comment and invited testimony regarding the future U.S. Arctic research program on the following dates:

Barrow, Alaska: 4 p.m. to 6 p.m., Tuesday, 27 June 2006 at the Inupiat Heritage Center.

Anchorage, Alaska: 2 p.m. to 4 p.m., Thursday, 29 June 2006 at the North Pacific Research Board, 1007 West 3rd Avenue, Suite 100, Anchorage.

Individuals wishing to address recommendations directly to the Commission while it is in session in Barrow or Anchorage should request a time slot from the Commission by e-mail or fax in advance of their desire to speak. They should include their name, address and telephone number. Speakers are limited to a maximum of five (5) minutes each. Written amplification of their public comments will be accepted at that time. Speaking period will be assigned on a first come, first served basis.

Copies of the ''Report on Goals and Objectives 2005'' and other documents of the Commission may be found at *http://www.arctic.gov.*

Any person planning to attend 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.

FOR FURTHER INFORMATION CONTACT: Kathy Farrow, U.S. Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

George B. Newton,

Chair, U.S. Arctic Research Commission.

[FR Doc. 06–4849 Filed 5–24–06; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

(A–122–840)

Carbon and Certain Alloy Steel Wire Rod from Canada: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review

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

EFFECTIVE DATE: May 25, 2006.

FOR FURTHER INFORMATION CONTACT: Damian Felton or Brandon Farlander, 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) 482–0133 or (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2005, the Department of Commerce (''the Department'') published an opportunity to request an administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Canada for the period October 1, 2004, to September 30, 2005. *See Antidumping or Countervailing Duty Order, Filing, or Suspended Investigation; Opportunity to Request an Administrative Review*, 70 FR 57558 (October 3, 2005). On October 31, 2005, respondent Ivaco Rolling Mills L.P. (now known as Ivaco Rolling Mills 2004 L.P.) (''IRM''), a producer and exporter of subject merchandise, and respondent Sivaco Ontario Processing (aka Sivaco Ontario, a division of Sivaco Wire Group 2004 L.P.), a processor and exporter of the subject merchandise, requested a review. No other interested parties requested a review. On December 1, 2005, the Department published its notice of initiation of an antidumping administrative review on carbon and certain alloy steel wire rod from Canada. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews*, 70 FR 72107 (December 1, 2005). The preliminary results of this administrative review are currently due July 3, 2006.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the specified time periods, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Completion of the preliminary results within the originally anticipated time limit, July 3, 2006, is impracticable because this review requires the Department to analyze complex issues regarding IRM's and Sivaco Ontario's corporate structures and their affiliations and corporate relationships. Because it is not practicable to complete the review within the time specified under the Act, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for completion of the preliminary results by 30 days to August 2, 2006. The deadline for the final results of this administrative review continues to be 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 19, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–8070 Filed 5–24–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–875

Non–Malleable Cast Iron Pipe Fittings from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (''the Department'') is conducting the second administrative review of the antidumping duty order on non–malleable cast iron pipe fittings (''NMP fittings'') from the People's Republic of China (''PRC'') covering the period April 1, 2004, through March 31, 2005. We have preliminarily determined that sales have been made below normal value (''NV''). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the period of review (''POR'') for which the importer–specific assessment rates are above *de minimis*.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: May 25, 2006.

FOR FURTHER INFORMATION CONTACT: Will Dickerson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1778.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2003, the Department published in the **Federal Register** the antidumping duty order on NMP fittings from the PRC. *See Antidumping Duty Order: Non–Malleable Cast Iron Pipe Filings From the People's Republic of China*, 68 FR 16765. On April 1, 2005, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on NMP fittings from the PRC for the period April 1, 2004, through March 31, 2005. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 70 FR 16799. On April 25, 2005, Myland Industrial Co., Ltd. (''Myland'') and Buxin Myland (Foundry) Ltd. (''Buxin'') requested an administrative review of their sales to the United States during the POR of merchandise produced by Buxin and exported by Myland. The petitioners did not request an administrative review of any parties. On May 27, 2005, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of NMP fittings from the PRC for the period April 1, 2004, through March 31, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 30694 (''*Initiation Notice*'').

On May 31, 2005, the Department issued its antidumping questionnaire to Myland. Myland submitted its Section A questionnaire response on June 20, 2005, and its Sections C and D responses on June 27, 2005. On December 2, 2005, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review until May

1, 2006. *See Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review: Non–Malleable Cast Iron Pipe Fittings from the People's Republic of China*, 70 FR 72295. From December 2005 to April 2005, the Department issued and Myland responded to four Section A–D supplemental questionnaires.

Period of Review

The POR is April 1, 2004, through March 31, 2005.

Scope of Order

The products covered by the order are finished and unfinished non–malleable cast iron pipe fittings with an inside diameter ranging from 1/4 inch to 6 inches, whether threaded or un–threaded, regardless of industry or proprietary specifications. The subject fittings include elbows, ells, tees, crosses, and reducers as well as flanged fittings. These pipe fittings are also known as ''cast iron pipe fittings'' or ''gray iron pipe fittings.'' These cast iron pipe fittings are normally produced to ASTM A–126 and ASME B.l6.4 specifications and are threaded to ASME B1.20.1 specifications. Most building codes require that these products are Underwriters Laboratories (UL) certified. The scope does not include cast iron soil pipe fittings or grooved fittings or grooved couplings.

Fittings that are made out of ductile iron that have the same physical characteristics as the gray or cast iron fittings subject to the scope above or which have the same physical characteristics and are produced to ASME B.16.3, ASME B.16.4, or ASTM A–395 specifications, threaded to ASME B1.20.1 specifications and UL certified, regardless of metallurgical differences between gray and ductile iron, are also included in the scope of the order. These ductile fittings do not include grooved fittings or grooved couplings. Ductile cast iron fittings with mechanical joint ends (MJ), or push on ends (PO), or flanged ends and produced to the American Water Works Association (AWWA) specifications AWWA C110 or AWWA C153 are not included.

Imports of subject merchandise are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7307.11.00.30, 7307.11.00.60, 7307.19.30.60 and 7307.19.30.85. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Nonmarket Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non–market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the the Tariff Act of 1930, as Amended (the ''Act''), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review* (December 18, 2003) (''*TRBs 2001–2002*''). None of the parties to this proceeding has contested such treatment. Therefore, we have treated the PRC as an NME country for purposes of these preliminary results.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production, valued in a surrogate market–economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market–economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values are discussed under the ''Normal Value'' section below and in *Preliminary Results of Review of the Order on Non–Malleable Cast Iron Pipe Fittings from the People's Republic of China: Factor Valuation, Memorandum from Will Dickerson, Case Analyst, through Robert Bolling, Program Manager, Office VIII to the File*, dated May 1, 2006 (''*Factor Valuation Memo*'').

On August 9, 2005, the Department determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See Memorandum from Ron Lorentzen, Acting Director, Office of Policy to Wendy Frankel, Director, China/NME Group, Office 8: Antidumping Duty Administrative Review of Certain Non–Malleable Cast Iron Pipe Fittings from the People's Republic of China (PRC): Request for a List of Surrogate Countries* (''*Office of Policy Surrogate Countries Memo*''), dated August 9, 2005. Once the countries that are economically comparable to the PRC have been identified, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing the factors of production are reliable, publicly available and contemporaneous. *See Policy Bulletin 04.1: Non–Market Economy Surrogate Country Selection Process* (March 1, 2004), (''*Policy Bulletin 04.1*''), available at http://ia.ita.doc.gov/policy/bull04–1.html.

On December 6, 2005, the Department requested that parties submit comments on surrogate country selection. On December 19, 2005, we received comments from Myland regarding the selection of a surrogate country. On December 20, 2005, we received comments regarding the selection of a surrogate country from Anvil International, Inc., and Ward Manufacturing, Inc. (collectively, ''Anvil''), domestic interested parties in this proceeding. Both Anvil and Myland argued that India is the appropriate surrogate country. In this case, we have found that India is a significant producer of comparable merchandise and provides contemporaneous publicly available data to value the factors of production. *See Memo to File through Wendy Frankel and Robert Bolling from Will Dickerson: Non–Malleable Cast Iron Pipe Fittings from the People's Republic of China: Selection of a Surrogate Country*, dated January 25, 2006 (''*Surrogate Country Memo*'').

Thus, the Department used India as a primary surrogate country, and, accordingly, has calculated NV using Indian prices to value Myland's factors of production, when available and appropriate. The sources of the surrogate factor values are discussed under the ''Normal Value'' section below and in the *Factor Valuation Memo*. We have obtained and relied upon publicly available information wherever possible. *See Factor Valuation Memo*.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value factors of production within 20 days after the date of publication of these preliminary results.

Separate Rates

In an NME proceeding, the Department presumes that all companies within the country are subject to government control and should be assigned a single antidumping duty rate unless the respondent demonstrates the absence of both *de jure* and *de facto* government control over its export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027–28 (April 30, 1996). Myland provided specific separate rates information and stated that it met the standards for the assignment of a separate rate. In determining whether companies should receive separate rates, the Department focuses its attention on the exporter rather than the manufacturer, as our concern is the manipulation of dumping margins. *See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China*, 60 FR 56045, 56046 (November 6, 1995). In the instant case, the Department considers Myland to be the only exporter of subject merchandise to the United States during the POR. *See* ''Export Price'' section, below. Consequently, the Department analyzed whether the exporter of the subject merchandise, Myland, should receive a separate rate.

The Department's separate rate test is not concerned, in general, with macroeconomic, border–type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision–making process at the individual firm level. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754, 61758 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government–control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (''*Sparklers*''), Comment 1 (May 6, 1991), as modified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585, 22586–87 (May 2, 1994) (''*Silicon Carbide*''). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* government control over export activities. *See Silicon Carbide*, 59 FR at 22586–87 and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544 (May 8, 1995).

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies. *See Sparklers* at Comment 1.

Myland has placed on the record statements and documents to demonstrate absence of *de jure* control. In its questionnaire responses, Myland reported that it is an independently owned corporation and does not have any relationship with national, provincial and local governments, including ministries or offices of these governments. *See* Myland's June 20, 2005, Section A questionnaire response (''AQR'') at page A–2. Myland also stated that it has complete independence with respect to its export activities. *See* AQR at page A–4. Myland submitted sections of the Company Law of the PRC to demonstrate that there is no centralized control over its export activities. *See* AQR at Exhibit A–2. Myland also reported that the subject merchandise is not subject to export quotas or export control licenses. *See* AQR at page A–6. Furthermore, Myland stated that the local Chamber of Commerce does not coordinate any of its export activities. *See* AQR at page A–7. Myland reported that it is required to obtain business licenses for itself and Buxin, which are issued by the Hong Kong Special Administrative Region and the Industrial and Commercial Administration Bureau of Nanhai District, Fushan City, respectively. *See* AQR at page A–4. Myland reported that both licenses need to be renewed annually. *See* AQR at page A–5. We examined the laws and business licenses which Myland provided in its questionnaire responses, and determined that these documents demonstrate the absence of *de jure* control over the export activities and provide evidence demonstrating the absence of government control associated with Myland's business license.

B. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide*, 59 FR at 22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *Id.*

In support of demonstrating an absence of *de facto* control, Myland has asserted the following: (1) Myland established its own export prices; (2) Myland negotiated contracts without guidance from any government entities or organizations; (3) Myland made its own personnel decisions; and (4) Myland retained the proceeds of its export sales and independently used profits according to its business needs. *See* AQR at pages A–6 to A–9. Myland's questionnaire responses also indicate that it does not coordinate with other exporters in setting prices. *See* AQR at page A–7. This information supports a preliminary finding that there is an absence of *de facto* government control of the export functions of Myland. Consequently, we preliminarily determine that Myland has met the criteria for the application of separate rates.

The evidence placed on the record of this administrative review by Myland demonstrates an absence of government control, both in law and in fact, with respect to its exports of the merchandise under review. As a result, for the purposes of these preliminary results, the Department is granting a separate, company–specific rate to Myland, the exporter which shipped the subject

merchandise to the United States during the POR.

Date of Sale

The Department's regulations state that ''[i]n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' *See* 19 CFR 351.401(i). After examining the questionnaire responses and the sales documentation placed on the record by Myland, we preliminarily determine that shipment date is the most appropriate date of sale for Myland. We made this determination based on evidence on the record which demonstrates that Myland's shipment date is the date on which the material terms of the sale are fixed. Thus, the evidence on the record rebuts the presumption that invoice date is the proper date of sale. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China*, 69 FR 42654, 42663 (July 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China*, 69 FR 70997 (December 8, 2004).

Normal Value Comparisons

To determine whether sales of NMP fittings to the United States by Myland were made at less than NV, we compared export price (''EP'') to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Export Price

Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act.

Myland purchases the subject merchandise from its PRC–based affiliated producer, Buxin, via a PRC trading company. Because Buxin is affiliated with Myland, the Department views the only function of the PRC trading company as that of facilitating the export of subject merchandise from the PRC. *See Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000), and accompanying *Issues and Decision Memorandum* at Comment 2. Thus, the ''resale'' from the PRC trading company to Myland does not form the proper basis for EP under section 772(a) of the Act. Accordingly, we based EP on Myland's sales to unaffiliated U.S. customers in accordance with section 772(a) of the Act. We used EP methodology for all of Myland's U.S. sales, in accordance with section 772(a) of the Act because the subject merchandise was sold directly to an unaffiliated customer in the United States prior to importation and because constructed export price was not otherwise indicated for those transactions.

We calculated EP for Myland based on the packed C.I.F. or ex–factory price to an unaffiliated purchaser in the United States. In order to accurately reflect all of Myland's costs and revenues associated with selling subject merchandise, we made adjustments to the U.S. sales price for only those sales delivered on a C.I.F. basis, in accordance with section 772(c) of the Act. For further explanation, see *Myland Industrial, Ltd. Program Analysis for the Preliminary Results of Review*, dated May 1, 2006 (''*Myland Analysis Memo*''). For certain sales made on a C.I.F. basis, we made additions to the U.S. sales price for ''less than full container'' surcharges. For C.I.F. sales, we made deductions to the U.S. sales price for movement expenses, in accordance with section 772(c)(2)(A) of the Act. These included domestic inland freight from the plant to the port of exportation, domestic brokerage and handling, ocean freight, and marine insurance.

Myland reported having received revenues and incurred expenses for additional U.S. inland freight activities arranged after the conclusion of the sale to the unaffiliated party. Based on the circumstances of the sales at issue, the Department, however, is only concerned with capturing the selling price to the C.I.F. location. We consider any extra freight costs in the United States to be a separate transaction under the circumstances in this case. Therefore, we did not make adjustments to the U.S. sales price for these separately transacted U.S. inland freight services. Due to the proprietary nature of this discussion, *see Myland Analysis Memo* for a complete explanation of how the Department is treating the additional U.S. inland freight activities that Myland reported.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors–of-production methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department will base NV on factors of production because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 772(c)(3) of the Act, factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used factors of production reported by respondents for materials, energy, labor and packing.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value factors of production, but when a producer sources an input from a market economy and pays for it in market–economy currency, the Department will normally value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *see also Lasko Metal Products, Inc. v. United States*, 43 F.3d 1442, 1445–1446 (Fed. Cir. 1994). However, when the Department has reason to believe or suspect that such prices may be distorted by subsidies, the Department will disregard the NME purchase prices and use surrogate values to determine the NV. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of the 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 1953 (January 10, 2001) (''*TRBs 1998–1999*''), and accompanying *Issues and Decision Memorandum* at Comment 1.

It is the Department's consistent practice that, where the facts developed in the United States or third–country countervailing duty findings include the existence of subsidies that appear to be used generally (in particular, broadly available, non–industry specific export subsidies), it is reasonable for the

Department to consider that it has particular and objective evidence to support a reason to believe or suspect that prices of the inputs from the country granting the subsidies may be subsidized. *See TRBs 1998–1999* and accompanying *Issues and Decision Memorandum* at Comment 1; *see also, Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 57420 (November 15, 2001) (''*TRBs 1999–2000*''), and accompanying *Issues and Decision Memorandum* at Comment 1; *see also China National Machinery Imp. & Exp. Corp. v. United States*, 293 F. Supp. 2d 1334, 1338–39 (CIT 2003) (''*China National*'').

With regard to the Indian import–based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See TRBs 1998–1999* and accompanying *Issues and Decision Memorandum* at Comment 1. We also interpret legislative history not to require that we conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100–576, at 590 (1988), *reprinted in* 1988 U.S.C.C.A.N. 1547, 1623–24. The Department bases its decision on information that is available to it at the time it makes its determination. *Id.* Therefore, we have not used prices from Indonesia, South Korea and Thailand in calculating the Indian import–based surrogate values.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by respondents for the POR. To calculate NV, we multiplied the reported per–unit factor quantities by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate (*i.e.*, where the sales terms for the market–economy inputs were not delivered to the factory). *See Sigma Corp. v. United States*, 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). For a detailed description of all surrogate values used to value Myland's reported factors of production, see *Factor Valuation Memo*.

Myland reported that all of Buxin's inputs to production were sourced from suppliers in NME countries and paid for in NME currency. *See Factor Valuation Memo* for a listing of these inputs. Therefore, we did not use respondents' actual prices for any raw materials purchases. In accordance with past practice, we used data from the Indian Import Statistics as published by the *World Trade Atlas*, from *Chemical Weekly*, or from the *2003/2004 Tata Energy Research Institute's Energy Data Directory & Yearbook* (''TERI Data'') in order to calculate surrogate values for Myland's direct and packing material inputs to production. *See Preliminary Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 70 FR 67412 (November 7, 2005); *see also Polyvinyl Alcohol from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 67434 (November 7, 2005). In selecting the best available information for valuing factors of production in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non–export average values, most contemporaneous with the POR, product–specific, and tax–exclusive. *See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

Where we could not obtain publicly available information contemporaneous with the POR with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index as published in the *International Financial Statistics* of the International Monetary Fund. *See Factor Valuation Memo; see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517, 2522 (January 17, 2006) (''*TRBs 2003–2004*'').

The Department used the Indian Import Statistics to value the following raw material inputs and packing materials that Buxin used to produce the subject merchandise during the POR: Pig Iron, Ductile Iron, Scrap Steel, Limestone, Ferro Silicon, Ferro Manganese, Nodulizer, Sand (for molds), Firewood, Riverbed Sand (for cores), Furan Resin, Varnish, Demolding Powder, Zinc, Vanillin, Wood Crates, Cardboard and Cartons. Also, the Department used *Chemical Weekly* to value Sodium Hydroxide (NaOH). *See Factor Valuation Memo*. The Department valued coking coal using TERI Data. Because the value was from June 2004, we adjusted the rate for inflation. *See Factor–Valuation Memo*.

For furnace labor, casting/mold labor, machining labor, varnishing/painting/drying labor, zinc plating labor and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression–based wage rate as reported on Import Administration's website, Import Library, Expected Wages of Selected NME Countries, revised in November 2005, *http://ia.ita.doc.gov/wages/index.html*. The source of these wage–rate data is the Yearbook of Labour Statistics 2002, ILO (Geneva: 2002), Chapter 5B: Wages in Manufacturing. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent. *See Factor Valuation Memo*.

The Department valued water using data from the Maharastra Industrial Development Corporation (www.midcindia.org) as it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003: 193 for the ''inside industrial areas'' usage category and 193 for the ''outside industrial areas'' usage category. *See TRBs 2003–2004*, 71 FR at 2522.

To value electricity and diesel, we used data from the International Energy Agency *Key World Energy Statistics* (2003 edition). Because the values for water, electricity and diesel were not contemporaneous with the POR, we adjusted the values for inflation. *See Factor Valuation Memo*.

We used Indian transport information in order to value the freight–in cost of the raw materials. The Department

determined the best available information for valuing truck freight to be from *www.infreight.com*. This source provides daily rates from six major points of origin to five destinations in India during the POR. The Department obtained a price quote on the first day of each month of the POR from each point of origin to each destination and averaged the data accordingly. *See Factor Valuation Memo*

To value factory overhead, selling, general, and administrative expenses (''SG&A''), and profit, we used the 2003 financial statements of Vishal Malleables Limited (''Vishal'') and the 2003–2004 financial statements of Ennore Foundries Limited (''Ennore'') and Bhagwati Autocast Limited (''Bhagwati''), all of which are Indian producers of comparable merchandise. From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy (''ML&E'') costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A. For further discussion, see *Factor Valuation Memo*.

Weighted–Average Dumping Margin

The weighted–average dumping margin is as follows:

Producer/Manufacturer/ Exporter	Weighted–Average Margin (Percent)
Myland	1.81 %

Disclosure

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). Further, parties submitting written comments should provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. Within 15 days of the completion of this review, the Department will instruct CBP to assess antidumping duties on all appropriate entries of subject merchandise. The Department will issue appropriate assessment instructions directly to CBP upon completion of this review. We divided the total dumping margins of Myland's reviewed sales to each importer by the total quantity of Myland's reviewed sales to that importer to calculate the per–kilogram assessment rate. If these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the entered customs value for the subject merchandise on each importer's/customer's entries during the POR.

Cash–Deposit Requirements

The following cash–deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Myland will be the rate listed in the final results of review (except if the rate for Myland is *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will be 75.50 percent, the current PRC–wide rate; and (4) the cash deposit rate for all non–PRC exporters will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b).

Dated: May 1, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–8071 Filed 5–24–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Designation of the Mission-Aransas National Estuarine Research Reserve in Texas

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration.

ACTION: Notice of Designation and availability of Notice of Record of Decision.

SUMMARY: Notice is hereby given that the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, has designated certain lands and waters of the Mission Aransas estuary in Texas as the Mission-Aransas National Estuarine Research Reserve

On May 3, 2006, Under Secretary of Commerce for Oceans and Atmosphere Vice Admiral Conrad C. Lautenbacher, Jr. USN (Ret.), signed a record of decision and a findings of designation for the Mission-Aransas National Estuarine Research Reserve in Texas pursuant to section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461, and its implementing regulations at 15 CFR part 921. The Reserve duly received certification from the State of Texas Coastal Coordination Council that Reserve designation is consistent to the maximum extent practicable with its program. A copy of the official Record of Decision is available for public review from NOAA's Office of Ocean and Coastal Resource Management at the address below.

FOR FURTHER INFORMATION CONTACT: Laurie McGilvray (301) 713–3155 x158, Estuarine Reserves Division, Office of

Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1305 East West Highway, N/ORM5, Silver Spring, MD 20910. A copy of the Record of Decision for each Reserve is available upon request.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves.

Dated: May 16, 2006.

Doug Brown,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 06–4858 Filed 5–24–06; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031606A]

Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Issuance of an Incidental Take Permit; Extension of Comment Period

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

ACTION: Notice; scoping meetings; extension of comment period.

SUMMARY: This document contains an extension to the comment period for a notice of intent to prepare an environmental impact statement for the proposed issuance of an incidental take and scoping meetings. The original notice was published May 17, 2006.

DATES: We must receive written comments on alternatives and issues to be addressed in the EIS by July 14, 2006. We will hold public scoping meetings on:

Tuesday, June 6, 2006, at East Portland Community Center, 740 SE 106th Avenue, Portland, OR from 5 p.m. to 7 p.m., and on Wednesday, June 7, 2006, at Portland City Hall, Lovejoy Room, 1221 SW 4th Avenue, Portland, OR from 5 p.m. to 7 p.m.. We will accept oral and written comments at these meetings.

FOR FURTHER INFORMATION CONTACT: Joe Zisa, USFWS, (360) 231–6961 or Ben Meyer, (NMFS), (503) 230–5425.

SUPPLEMENTARY INFORMATION: On May 17, 2006 (71 FR 28667), NMFS published a notice of scoping meetings. This document is extending the comment period through July 14, 2006. All other information contained in the document published May 17, 2006 has not been changed.

Dated: May 19, 2006.

Angela Somma,

Chief, Endangered Species Division Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–8048 Filed 5–24–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051806F]

Fisheries of the South Atlantic and Gulf of Mexico; South Atlantic Fishery Management Council (SAFMC) Scientific and Statistical Committee and Subcommittees.

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

ACTION: Notice of SAFMC Scientific and Statistical Committee (SSC) and SSC Biological Subcommittee and Socioeconomic Subcommittee meetings.

SUMMARY: The SAFMC will a meeting of its SSC, SSC Biological Subcommittee and Socioeconomic Subcommittee meeting to address federal fishery management issues. The meeting will be held in Coconut Grove, FL.

DATES: The meetings will take place on June 12–14, 2006. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Wyndham Grand Bay Hotel,2669 South Bayshore Drive, Coconut Grove, FL 33133; telephone: (800) 996–3426 or (305) 858–9600, fax: (305) 859–2026.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; e-mail: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Act, the SSC is the body responsible for reviewing the Council's scientific materials. The South Atlantic Fishery Management Council will hold meetings of its SSC, SSC Biological Subcommittee, and SSC Socioeconomic Subcommittee.

Items for discussion include: (1) Amendment 14 to the Snapper Grouper Fishery Management Plan (FMP) addressing the use of marine protected areas as a management tool for deepwater species, (2) Amendment 15 to the Snapper Grouper FMP addressing rebuilding schedules for snowy grouper, golden tilefish, black sea bass, and red porgy; recreational sale; permit issues (incorporation and 60-day renewal), size limits for queen triggerfish, and fishing year changes for golden tilefish, (3) Updated Red Porgy Southeast Data, Assessment, and Review (SEDAR) assessment, (4) Cooperative research and fishery-independent sampling, (5) King mackerel mixing issues, (6) Stock assessments for species like snowy grouper, and (7) SAFMC Fishery Ecosystem Plan (FEP) and FEP Comprehensive Amendment.

1. SSC Biological Subcommittee Meeting and SSC Socioeconomic Subcommittee Meeting (consecutive sessions), June 12, 2006, 3:15 p.m. - 6 p.m., June 13, 2006, 2:45 - 5 p.m., June 14, 2006, 8:30 a.m. - 11 a.m.

The SSC Biological Subcommittee and SSC Socioeconomic Subcommittee will meet in consecutive sessions to review and provide recommendations to the SSC on fishery management issues as described in the **SUPPLEMENTARY INFORMATION**.

2. Scientific and Statistical Committee Meeting, June 12, 2006, from 1:30 p.m. - 3 p.m., on June 13, 2006, from 8:30 a.m. - 12 noon and 5:15 p.m. - 7 p.m., June 14, 2006, 11:15 a.m. - 3 p.m.

The SSC will meet to review recommendations from its Biological Subcommittee and Socioeconomic Subcommittee on management issues as described in the **SUPPLEMENTARY INFORMATION**. The SSC will then provide recommendations for the SAFMC Snapper Grouper Committee, King and Spanish Mackerel Committee and Advisory Panel, and to the full Council.

These meetings will be held in conjunction with the SAFMC meeting June 12–16, 2006 at the same location.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be

directed to the Council office (see **ADDRESSES**) 3 days prior to the meetings.

Note: The times and sequence specified in this agenda are subject to change.

Dated: May 19, 2006.

James P. Burgess,

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

[FR Doc. E6–8001 Filed 5–24–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051706A]

Stock Assessment of Dusky Shark in the U.S. Atlantic and Gulf of Mexico

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

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of a stock assessment report on dusky sharks in the Atlantic and Gulf of Mexico, prepared by the NMFS Southeast Fisheries Science Center. The stock assessment summarizes the relevant biological data, discusses the fisheries affecting the species, and details the data and methods used to assess stock status. Some recommendations were also made regarding future avenues of research and issues to consider in future stock assessments.

ADDRESSES: Requests for copies of the report should be sent to Sarah McTee, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service (NMFS), 1315 East-West Highway, Silver Spring, MD 20910, or may be sent via facsimile (fax) to 301–713–1917 or phone 301–713–2347. Electronic copies of the stock assessment may also be obtained on the internet at: *http://www.sefscpanamalab.noaa.gov/shark/pdf/Dusky_Shark_Assessment.zip*.

FOR FURTHER INFORMATION CONTACT: For information on the methods, data, and results of the stock assessment, contact Enric Cortes by phone at (850) 234–6541 or by fax at (850) 235–3559.

SUPPLEMENTARY INFORMATION: The dusky shark (*Carcharhinus obscurus*) is one of 19 species for which retention is prohibited under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks implemented and amended in 1999 and 2003, respectively. Due to potential identification problems and catch data originating from a variety of sources, the magnitude of dusky shark catch has been difficult to ascertain. The dusky shark has not previously been individually assessed; however, low population growth rates, coupled with declines in both the catch per unit effort (CPUE) and size of individuals landed since the early 1990s, created concern that the dusky shark was being heavily exploited.

Using recent biological data on the growth and reproduction of dusky sharks, landing estimates from recreational and commercial fisheries, commercial bycatch estimates, four fishery-dependent and one fishery-independent relative abundance indices, a stock assessment was recently completed for the dusky shark. Results from the models used were very similar with all models showing the stock has been heavily exploited. The baseline analyses using surplus production models indicate that current depletions are over 80 percent of virgin biomass. The age-structured model provided the most optimistic results and indicated that the dusky shark population has been depleted by 62 to 80 percent of the unfished virgin biomass. The stock assessment summarizes the relevant biological data, discusses the fisheries affecting the species, and details the data and methods used to assess stock status. Some recommendations were also made regarding future avenues of research and issues to consider in future stock assessments.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: May 22, 2006.

James P. Burgess,

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

[FR Doc. E6–8049 Filed 5–24–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision for the Clinical and Biological Defense Program (CBDP) Final Programmatic Environmental Impact Statement (FPEIS)

AGENCY: U.S. Army Medical Research and Material Command (USAMRMC), Department of the Army, DoD.

ACTION: Notice of Availability.

SUMMARY: The U.S. Army, as executive agent for the CBDP, announces that a Record of Decision (ROD) has been signed documenting the decision to execute an integrated CBDP designed to protect our Soldiers, Sailors, Marines, and Airmen form the evolving chemical and biological (CB) threats they may encounter on the battlefield. The CBDP does not pursue effective CB weapon capability and its execution is in full compliance with both international and domestic law including, but not limited to, the *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction and the Biological Weapons Antiterrorism Act.* The FPEIS evaluates the potential environmental impacts associated with the execution of the DoD CBDP. The No Action Alternative, continuation of current CBDP operations, was also evaluated. No other alternatives were identified during the public scoping process. Neither the selected action nor the No Action Alternative would result in the occurrence of significant adverse environmental impacts.

ADDRESSES: Requests for copies of the ROD may be made to Ms. JoLane Souris, Command Environmental Coordinator, U.S. Army Medical Research and Material Command, Office of Surety, Safety, and Environmental, 504 Scott Street, Fort Detrick, MD 21702–5012 or by visiting the CBDP PEIS Web site at *http://chembioeis.detrick.army.mil.*

FOR FURTHER INFORMATION CONTACT: Ms. JoLane Souris, by calling (301) 619–2004; or by fax at (301) 619–6627.

SUPPLEMENTARY INFORMATION: Prior to 2003, the mission of the DoD CBDP was to provide CB defense capabilities to allow the military forces of the United States to survive and successfully complete their operational missions in battle space environments contaminated with CB warfare agents. Now this mission has expanded to cover military capability to operate in the face of threats in homeland security missions, as well as warfighter missions. If our military forces are not fully and adequately prepared to meet these threats, the consequences could be devastating. The CBDP to support this mission comprises research, development, and acquisition activities. Each of the Military Services, the Joint Program Executive Office for Chemical and Biological Defense, and the Defense Advanced Researched Projects Agency conduct CBDP activities. Some of these CBDP activities necessarily involve the use of hazardous chemicals or infectious disease agents for research, development, and production purposes. The controls on and the potential environmental consequences of such use for both the proposed action and the alternative were primary focuses of the

CBDP FPEIS that can be found at *http://chembioeis.detrick.army.mil.*

Although numerous environmental documents dating back to the Biological Defense Research and Development Program Final Programmatic Environmental Impact Statement (April 1989) have been prepared analyzing the potential environmental consequences of various elements of the CBDP, no one document analyzes the potential environmental impacts of the full range of CBDP activities. In keeping with the purposes of the National Environmental Policy Act, DoD prepared such a document in the form of the CBDP FPEIS. This document creates an overarching framework that will continue to ensure fully informed government decisionmaking within the CBDP and will provide a single, up-to-date information resource for the public.

Dated: May 19, 2006.

Addison D. Davis, IV

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I&E).

[FR Doc. 06–4859 Filed 5–24–06; 8:45 am]

BILLING CODE 371–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 24, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 19, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: Revision.

Title: National Evaluation of the Voluntary Public School Choice Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 967.

Burden Hours: 1,106.

Abstract: The Voluntary Public School Choice (VPSC) Program is helping selected school districts to establish or expand public school choice initiatives, to provide options for parents to secure a high quality education for their children, and especially options for students in low-performing schools to transfer to higher performing schools.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3081. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–8004 Filed 5–24–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–168–006]

Alliance Pipeline L.P.; Notice of Application

May 19, 2006.

Take notice that on May 9, 2006, Alliance Pipeline L.P. (Alliance), 6385 Old Shady Oak Road, Suite 150, Eden Prairie, Minnesota 55344, filed, in Docket No. CP97–168–006, an application pursuant to section 7 of the Natural Gas Act and Part 157 of the Commission's regulations requesting amended certificate authority to increase the maximum allowable operating pressure of its pipeline system, located in North Dakota, Minnesota, Iowa, and Illinois, without significantly increasing the capacity of the system, all as more fully set forth in the application which is on file with the Commission and open for public inspection. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Michael L. McGonagill, Vice President-U.S. Operations, Alliance Pipeline L.P., 6385 Old Shady Oak Road, Suite 150, Eden Prairie, Minnesota, at Phone: (952) 983–1003, or FAX: (952) 944–9167.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party

to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: June 9, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8021 Filed 5–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–48–003]

Central Kentucky Transmission Company; Notice of Compliance Filing

May 19, 2006.

Take notice that on May 16, 2006, Central Kentucky Transmission Company (Central Kentucky), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets with a proposed effective date of May 1, 2006:

First Revised Sheet No. 1
First Revised Sheet No. 23
First Revised Sheet No. 70
First Revised Sheet No. 72
First Revised Sheet No. 87

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 2, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8017 Filed 5–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–64–001]

Central New York Oil and Gas Company, LLC; Notice of Application

May 19, 2006.

On May 9, 2006, Central New York Oil and Gas Company, LLC, (CYNOG) Two Brush Creek Blvd., Suite 200, Kansas City, Missouri 64112, pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations, filed an amendment to their application filed on February 10, 2006, in Docket No. CP06–64–000, for a certificate of public convenience and necessity seeking authority to expand the existing Stagecoach Storage Facility, located in Tioga County, New York and Bradford County, Pennsylvania. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

The amendment to the Stagecoach Phase II Expansion Project application consists of updated and revised pipeline routes, a change from 24-inch diameter pipe to 20-inch diameter pipe for the North Lateral, and a decrease to 6-inch diameter pipe for the southwestern end of its gathering system.

Any questions regarding this application should be directed to William R. Moler, Vice President-Midstream Operations, CYNOG, Two Brush Creek Blvd., Suite 200, Kansas City, Missouri 64112, phone (816) 329–5344.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426,

a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: May 30, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8020 Filed 5–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC06–119–000]

Griffith Energy LLC; PPL Southwest Generation Holdings, LLC; PPI EnergyPlus, LLC; LSP Mohave, LLC (f/k/a/ Duke Energy Mohave, LLC); LS Power Generation II, LLC; Notice of Filing

May 19, 2006.

Take notice that on May 12, 2006, Griffith Energy LLC (Griffith), PPL Southwest Generation Holdings, LLC (PPL Southwest), PPL EnergyPlus, LLC (PPL EnergyPlus), LSP Mohave, LLC and LS Power Generation II, LLC (LSP Generation II) (collectively, Applicants) submitted an application pursuant to section 203 of the Federal Power Act seeking authorization from the Federal Energy Regulatory Commission for the transfer by PPL Southwest, and the acquisition by LSP Generation II, of PPL Southwest's indirect 50% ownership interest in Griffith.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 2, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8023 Filed 5–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–315–001]

Northern Natural Gas Company; Notice of Tariff Filing

May 19, 2006.

Take notice that on May 12, 2006, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Seventh Revised Sheet No. 154.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8031 Filed 5–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC06–118–000]

Reliant Energy Wholesale Generation, LLC and Orion Power Midwest, L.P.; Notice of Filing

May 19, 2006.

Take notice that on May 12, 2006, Reliant Energy Wholesale Generation, LLC (REWG) and Orion Power Midwest, L.P. (Orion Power) (collectively, Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities, whereby REWG is seeking to transfer to Orion Power the ownership and operation of a natural-gas fired electric generating facility located in Straban Township, Adams County, Pennsylvania (the Hunterstown Facility), along with the associated interconnection facilities, books and records, and any related contracts and agreements related to the Hunterstown Facility.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 2, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8022 Filed 5–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–200–005]

Rockies Express Pipeline LLC; Notice of Compliance Fiing and Negotiated Rate

May 19, 2006.

Take notice that on May 11, 2006, Rockies Express Pipeline LLC (REX) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 22, to be effective May 11, 2006.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8030 Filed 5–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–28–020]

Wyoming Interstate Company, Ltd.; Notice of Filing

May 19, 2006.

Take notice that on May 16, 2006, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No 2, the following tariff sheets, to become effective June 15, 2006:

Seventh Revised Sheet No. 1
Fourth Revised Sheet No. 105
Fifth Revised Sheet No. 113
Fourth Revised Sheet No. 114

WIC states that copies of its filing have been served to all firm customers, interruptible customers and affected state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8015 Filed 5–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–383–000]

Algonquin Gas Transmission, LLC; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Northeast Gateway Project and Notice of Public Comment Meetings

May 19, 2006.

The staff of the Federal Energy Regulatory Commission (Commission or FERC) has cooperated in the preparation of the Draft Environmental Impact Statement (EIS) on the liquefied natural gas (LNG) facilities proposed by Algonquin Gas Transmission, LLC in the above-referenced docket. The Maritime Administration (MARAD) and the U. S. Coast Guard, as the lead Federal agencies, have issued a Notice in the **Federal Register** indicating the availability of the DEIS and requesting comments by July 3, 2006.

The U.S. Coast Guard will also hold public hearings in Gloucester, MA on June 14, 2006 and in Salem, MA on June 15, 2006. Both hearings will be from 6 p.m. to 8 p.m. (EST) and will be preceded by an informational open house from 4:30 p.m. to 6 p.m. The public meeting in Gloucester will be held at the Gloucester High School Auditorium, 32 Leslie O. Johnson Road, Gloucester, MA, telephone: 617–635–4100. The public meeting in Salem will be at the Salem State College Library, Charlotte Forten Hall, 360 Lafayette Street, Salem, MA, telephone: 978–542–7192.

The U.S. Coast Guard has mailed copies of the DEIS to Federal, state, and local government agencies; elected officials; Native American tribes; local libraries and newspapers; intervenors in the FERC's proceeding; individuals who provided scoping comments; and affected landowners and individuals. A copy of this DEIS, the application, and associated documentation are currently available for viewing at the DOT's Docket Management System Web site: *http://dms.dot.gov* under docket number 22219.

During preparation of the DEIS, the following FERC staff recommendations were inadvertently left out of section 4.12 of the DEIS:

1. Algonquin should not begin construction activities until:

a. FERC staff receives comments from the National Marine Fisheries Service (NMFS) regarding the proposed action;

b. the staff completes formal consultation with the NMFS, if required; and

c. Algonquin has received written notification from the Director of the Office of Energy Projects (OEP) that construction or use of mitigation may begin.

2. Prior to construction, Northeast Gateway (NEG) should provide to the U.S. Coast Guard (USCG) staff for review and approval a full air quality analysis identifying all mitigation requirements required to demonstrate conformity and submit detailed information documenting how the project would demonstrate conformance with the applicable SIP in accordance with Title 40 CFR 51.858. The documentation should address each regulatory criteria listed in part 51.858; provide a detailed explanation as to whether or not the project would meet each requirement; and for each criteria being satisfied, provide all supporting information on how the project would comply. Should any element of the project change substantially, NEG should resubmit the aforementioned information so that USCG staff may determine the Conformity of the revised action. In addition, FERC staff recommends that:

Prior to construction, Algonquin file documentation with the Secretary of the Commission that confirms USCG staff's review and approval of the project's air quality analysis and identifies all mitigation requirements required to demonstrate conformity with Title 40 CFR 51.858.

3. Algonquin should not begin construction of the project until it files with the Secretary of the Commission a copy of the determination of consistency with the Coastal Zone Management Plan issued by the Massachusetts Office of Coastal Zone Management.

4. Algonquin should prepare as-built construction plans for the Pipeline Lateral that include the details of where the pipeline would be laid on the ocean floor and protected with concrete mats. To minimize the potential for the pipeline to become an obstacle for ground fishing gear, these plans should be made available to the USCG and other jurisdictional agencies for dissemination to the commercial fishing industry.

5. Algonquin should file with the Secretary of the Commission, prior to construction, a detailed program to monitor the burial and backfilling of the Pipeline Lateral. Include documentation of all consultation with jurisdictional resource management agencies to determine the appropriate depth and cover criteria as well as any measures to minimize impacts to migrating lobsters from pipeline trenching and backfilling activities.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8032 Filed 5–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–420–000]

Bayou Casotte Energy, LLC; Notice of Availability of the Draft Environmental Impact Statement for the Casotte Landing LNG Project

May 19, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this draft Environmental Impact Statement (EIS) for the construction and operation of the liquefied natural gas (LNG) import terminal and natural gas pipeline facilities, referred to as the Casotte

Landing LNG Project, as proposed by Bayou Casotte Energy, LLC in the above-referenced docket.

This draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the Casotte Landing LNG Project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The draft EIS evaluates alternatives to the proposal, including system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives. The draft EIS also contains our Essential Fish Habitat Assessment.

The general purpose of the Casotte Landing LNG Project is to provide up to 1.6 billion cubic feet per day of natural gas to markets in the United States.

The draft EIS addresses the potential environmental effects of construction and operation of the following facilities near the City of Pascagoula in Jackson County, Mississippi:

- A ship unloading facility with a single berth capable of receiving LNG ships with cargo capacities of up to 200,000 cubic meters (m^3);
- Three 160,000 m^3 (net capacity) full containment LNG storage tanks;
- A closed-loop intermediate fluid vaporizer system utilizing cooling water from the adjacent Chevron Pascagoula Refinery as a heat source, sized for a normal sendout of 1.3 Bcfd;
- Various ancillary buildings and facilities;
- Five pipeline interconnects originating from a 1.5-mile-long, 36-inch-diameter spur;
- Associated pipeline support facilities, including two meter stations at interconnects with the existing pipeline systems; and
- Integrally related nonjurisdictional facilities would include a natural gas liquid (NGL) extraction system and pipeline, electric transmission lines, an electric substation, a waste heat water circulation system, and the relocation of two of the Chevron Pascagoula Refinery crude oil tanker berths.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS may do so. To expedite the FERC's receipt and consideration of your comments, electronic submission of comments is strongly encouraged. See 18 Code of Federal Regulations (CFR) 385.2001(a)(1)(iii) and the instructions on the FERC's Internet Web site (*http://www.ferc.gov*) under the eFiling link and the link to the User's Guide. Before you can submit comments, you will need to create a free account by clicking on ''Sign-up'' under ''New User.'' You will be asked to select the type of submission you are making. This type of submission is considered a ''Comment on Filing.'' Comments submitted electronically must be submitted by July 10, 2006.

If you wish to mail comments on the draft EIS, please mail your comments so that they will be received in Washington, DC on or before July 10, 2006 and carefully follow these instructions:

Send an original and two copies of your comments to:

- Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.
- Reference Docket Nos. CP05–420–000 on the original and both copies;
- Label one copy of your comments for the attention of Gas Branch 2, PJ11.2; and
- Mail your comments so that they will be received in Washington, DC on or before July 10, 2006.

In lieu of or in addition to sending written comments, we invite you to attend the public comment meeting the FERC will conduct in the project area to receive comments on the draft EIS. The public comment meeting will be conducted jointly to also receive comments on the draft EIS prepared for the Clean Energy LNG Project. The meeting is scheduled as follows: Thursday, June 22, 2006, 7 p.m. (CDT), Pascagoula High School cafeteria, 1716 Tucker Avenue, Pascagoula, MS 39567. Telephone: (228) 938–6451.

The public comment meeting will be posted on the FERC's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx.* Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS. A transcript of the meeting will be prepared.

After the written comments and comments from the public meeting are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS, a final EIS will be published and distributed by the staff. The final EIS will contain the staff's responses to timely comments received on the draft EIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

The draft EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426. (202) 502–8371.

A limited number of copies of the draft EIS are available from the Public Reference and Files Maintenance Branch identified above. In addition, CD copies of the draft EIS have been mailed to Federal, state, and local agencies; elected officials; public interest groups; individuals and affected landowners; libraries; newspapers; and parties to these proceedings.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet website (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at: *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY at (202) 502–8659. The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to the eSubscription link on the FERC Internet Web site.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8016 Filed 5–24–06; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP06–12–000 and CP06–13–000]

Gulf LNG Energy, LLC; Gulf LNG Pipeline, LLC; Notice of Availability of the Draft Environmental Impact Statement for the LNG Clean Energy Project

May 19, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this draft Environmental Impact Statement (EIS) for the construction and operation of the liquefied natural gas (LNG) import terminal and natural gas pipeline facilities, referred to as the LNG Clean Energy Project, as proposed by Gulf LNG Energy, LLC and Gulf LNG Pipeline, LLC (collectively referred to as Gulf LNG) in the above-referenced dockets.

This draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the LNG Clean Energy Project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The draft EIS evaluates alternatives to the proposal, including system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives. The draft EIS also contains our Essential Fish Habitat Assessment.

The general purpose of the LNG Clean Energy Project is to provide up to 1.5 billion cubic feet per day of natural gas to markets in the United States.

The draft EIS addresses the potential environmental effects of construction and operation of the following facilities near the City of Pascagoula in Jackson County, Mississippi:

- A ship berth and unloading facilities (i.e., marine facilities) capable of accommodating one LNG ship;
- LNG transfer systems;
- Two 160,000 cubic meter full containment LNG storage tanks;
- 10 high-pressure submerged combustion vaporizers;
- Vapor handling systems;
- Hazard detection and response equipment, ancillary utilities, buildings, and service facilities;
- A 5.0-mile-long, 36-inch-diameter natural gas sendout pipeline; and
- Associated pipeline support facilities, including one meter station, three interconnects, one pig launcher, and one pig receiver.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS may do so. To expedite the FERC's receipt and consideration of your comments, electronic submission of comments is strongly encouraged. See 18 Code of Federal Regulations (CFR) 385.2001(a)(1)(iii) and the instructions on the FERC's Internet Web site (*http://www.ferc.gov*) under the eFiling link and the link to the User's Guide. Before you can submit comments, you will need to create a free account by clicking on ''Sign-up'' under ''New User.'' You will be asked to select the type of submission you are making. This type of submission is considered a ''Comment on Filing.'' Comments submitted electronically must be submitted by July 10, 2006.

If you wish to mail comments on the draft EIS, please mail your comments so that they will be received in Washington, DC on or before July 10, 2006 and carefully follow these instructions:

Send an original and two copies of your comments to:

- Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.
- Reference Docket Nos. CP06–12–000, *et al.* on the original and both copies;
- Label one copy of your comments for the attention of Gas Branch 2, PJ11.2; and
- Mail your comments so that they will be received in Washington, DC on or before July 10, 2006.

In lieu of or in addition to sending written comments, we invite you to attend the public comment meeting the FERC will conduct in the project area to receive comments on the draft EIS. The meeting is scheduled as follows: Thursday, June 22, 2006, 7 p.m. (CDT), Pascagoula High School cafeteria, 1716 Tucker Avenue, Pascagoula, MS 39567, telephone: (228) 938–6451.

The public comment meeting will be posted on the FERC's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx.* Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS. A transcript of the meeting will be prepared.

After the written comments and comments from the public meeting are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS, a final EIS will be published and distributed by the staff. The final EIS will contain the staff's responses to timely comments received on the draft EIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

The draft EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies of the draft EIS are available from the Public Reference and Files Maintenance Branch identified above. In addition, CD copies of the draft EIS have been mailed to Federal, state, and local agencies; elected officials; public interest groups; individuals and affected landowners; libraries; newspapers; and parties to these proceedings.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at: *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY at (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

service, go to the eSubscription link on the FERC Internet Web site.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8019 Filed 5–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1390–040–CA]

Southern California Edison Company; Notice of Availability of Environmental Assessment

May 19, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the Offer of Settlement (Settlement) filed on February 4, 2005, including proposed amended license conditions for the Lundy Hydroelectric Project, located on Mill Creek in Mono County, near the town of Lee Vining and has prepared an Environmental Assessment (EA) for the proposed amendment.

The EA contains our analysis of the potential effects of the existing project and concludes that amending the project license in accordance with the Settlement as modified by staff would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection at the Commission in the Public Reference Room. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Lundy Hydroelectric Project No. 1390'' to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. For further information, contact John Smith at (202) 502–8972 or by e-mail at *john.smith@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–8025 Filed 5–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF06–21–000]

Guardian Pipeline, L.L.C.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Guardian Expansion/Extension Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings

May 19, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will address the environmental impacts of the Guardian Expansion/Extension Project (G–II) proposed by Guardian Pipeline L.L.C (Guardian). The Commission will use the EIS in its decision-making process to determine whether or not to authorize the project. This notice explains the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help us determine the issues that need to be evaluated in the EIS. Please note that the scoping period will close on June 23, 2006.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of sending written comments, we invite you to attend the public scoping meetings we have scheduled as follows:

Date and time	Location
Monday, June 12, 2006 7 p.m. to 10 p.m. (CDT)	Radisson Hotel and Conference Center of Green Bay 2040 Airport Drive Green Bay, WI US (920) 405–6404.
Tuesday, June 13, 2006 7 p.m. to 10 p.m. (CDT)	Ramada Plaza Hotel 1 North Main Street Fond Du Lac, WI 54935 (920) 923–3000.
Wednesday, June 14, 2006 7 p.m. to 10 p.m. (CDT)	Olympia Conference Center 1350 Royale Mile Road Oconomowoc, WI 53066 (262) 369–4969.

This notice is being sent to affected landowners; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a Guardian representative about the acquisition of an easement to construct, operate, and maintain the proposed project facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the FERC, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the FERC's proceedings.

Summary of the Proposed Project

Guardian proposes to construct, own, operate, and maintain:

- Approximately 105.8 miles of new natural gas pipeline; about 79.2 miles of which consist of 30-inch-diameter pipeline, and the remaining 26.6 miles would consist of 20-inch-diameter pipeline. The proposed pipeline would originate at Ixonia in northeastern Jefferson County, Wisconsin and travel

in a general north-northeast direction through Dodge, Fond du Lac, Calumet, Brown, and Outagamie Counties, Wisconsin, terminating at a point just west of Green Bay. The six proposed meter stations would be located along the proposed expansion route in Jefferson, Dodge, Fond du Lac, Calumet, Brown, and Outagamie Counties, Wisconsin.

• One new 39,000-horsepower (hp) compressor station near Sycamore Illinois; the proposed compressor station would be located along the existing Guardian pipeline route in De Kalb County, Illinois.

• One new 39,000-hp compressor station in Walworth, Wisconsin. The proposed compressor station would be located along the proposed G-II pipeline route in Walworth County, Wisconsin.

• Six new meter stations, and associated pipeline facilities including pig launcher/receivers and five mainline valves.

Guardian states that the project would provide about 537,200 decatherms per day of additional natural gas capacity to Guardian's existing pipeline system. Guardian indicates that the proposed additional capacity would facilitate the transport of natural gas to customers within the state of Wisconsin and provide those customers with the necessary infrastructure to support growth, choice, and competition within the natural gas marketplace. Guardian proposes to have the project constructed and operational by November 2008.

The general location of the proposed pipeline and associated facilities are shown in the figure included as Appendix 1.[1]

Nonjurisdictional Facilities

In addition to the facilities proposed by Guardian, the proposed project has associated facilities that do not come under the jurisdiction of the Commission. These related ''nonjurisdictional'' facilities include:

• The Wisconsin Public Service Corporation (WPSC) proposes to construct three lateral pipelines to interconnect with the G-II pipeline expansion segment and conduct modifications to WPSC's existing West Green Bay Line including a tie-in to an existing WPSC 12-inch feeder pipeline and the addition of flow controls. The three proposed laterals include the following:

—Sheboygan/Plymouth Lateral—consisting of approximately 32 miles of 16- and 12-inch-diameter pipeline.
—Chilton Lateral—consisting of approximately 1 mile of 4-inch-diameter pipeline.
—Denmark Lateral—consisting of approximately 14 miles of 12-inch-diameter pipeline.

• We-Energies proposes to construct two lateral pipelines to interconnect with the G-II pipeline expansion segment. The proposed laterals include the following:

—Hartford/West Bend Lateral—consisting of approximately 12.7 miles of 8-inch-diameter pipeline.
—Fox Valley Lateral—consisting of approximately 12.6 total miles of 20-, 16-, 12-, and 8-inch-diameter pipeline.

• Commonwealth Editions Power Company (ComEd) proposes to construct approximately 2.4 miles of transmission line to bring power from an existing 138-kilovolt (kV) ComEd transmission line to Guardian's proposed Sycamore Compressor Station in De Kalb, Illinois.

• We-Energies proposes to construct up to 2 miles of transmission line to bring power from an existing 138-kV We-Energies transmission line to Guardian's proposed Bluff Creek Compressor Station in Walworth, Wisconsin.

The WPSC and We-Energies laterals and electric transmission line facilities and the ComEd electric transmission line facility will be under the jurisdiction of the Wisconsin Public Service Commission (WIPSC) and the Illinois Commerce Commission, respectively.We[2] have determined that these nonjurisdictional facilities will be discussed in the EIS. At this time, the WIPSC and the Wisconsin Department of Natural Resources have agreed to participate as participating agencies in the EIS process.

Land Requirements for Construction

As proposed, the typical construction right-of-way for the project pipeline would be between 80 to 110 feet wide. An 80-foot right-of-way is proposed for the 26.6 miles of 20-inch pipe and a 110-foot right-of-way is proposed for the 79.2 miles of 30-inch pipe. Following construction, Guardian would retain a 50-foot-wide permanent right-of-way for operation of the project. Additional, temporary extra workspaces beyond the typical construction right-of-way limits would be required at certain feature crossings (e.g., roads, railroads, wetlands, or waterbodies), in areas with steep side slopes, or in association with special construction techniques.

Based on preliminary information, construction of the proposed project facilities would affect a total of about 1336.9 acres of land (including construction right-of-ways and aboveground facilities). This does not include land that would be disturbed by temporary work spaces and lay down areas, which is still being determined. Following construction, about 641.2 acres would be maintained as permanent right-of-way, and about 23 acres of land would be maintained as new aboveground facility sites. The remaining 672.7 acres of temporary construction rights-of-way and any other additional areas required for extra workspaces, pipe storage or contractor yards would be restored and allowed to revert to its former use.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action when it considers whether or not an interstate natural gas pipeline should be approved. The FERC will use the EIS to consider the environmental impact that could result if Guardian's G–II Project is authorized under section 7 of the Natural Gas Act. NEPA also requires us to discover and address concerns the public may have about proposals to be considered by the Commission. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. With this Notice of Intent, the Commission staff is requesting public comments on the scope of the issues to be addressed in the EIS. All comments received will be considered during preparation of the EIS.

Our independent analysis of the issues will be included in a draft EIS. We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on affected resources.

The draft EIS will be mailed to Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; commentors; other

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the Public Participation section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Guardian.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. We will consider all comments on the final EIS before we make our recommendations to the Commission. To ensure that your comments are considered, please follow the instructions in the Public Participation section of this notice.

Although no formal application has been filed, the FERC staff has already initiated its NEPA review under its Pre-filing Process. The purpose of the Pre-filing Process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC.

With this notice, we are asking Federal, state, and local governmental agencies with jurisdiction and/or special expertise with respect to environmental issues, to express their interest in becoming cooperating agencies for the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below (see *Public Participation*).

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified several issues that we think deserve attention based on a preliminary review of the project site and the facility information provided by Guardian. This preliminary list of issues may be changed based on your comments and our analysis.

- Potential effects on prime farmland soils and soils with a high potential for compaction.
- Potential effects on waterbodies designated under federal and/or state programs.
- Evaluation of temporary and permanent impacts on wetlands and development of appropriate mitigation.
- Native American and tribal concerns, including crossing of the Oneida Nation Indian Reservation.
- Potential impacts to fish and wildlife habitat, including waterbird nesting areas along major river crossings.
- Potential effect on federally and state-listed species.
- Potential impacts to existing land uses, including agricultural, certified organic farms, and managed forested lands.
- Potential visual effects of the aboveground facilities on surrounding areas.
- Potential impacts and potential benefits of construction workforce on local housing, infrastructure, public services, and economy.
- Potential impacts to local air and noise quality associated with construction and operation.
- Alternative alignments for the pipeline route and alternative sites for the compressor stations.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposed project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. Your comments should focus on the potential environmental effects, reasonable alternatives (including alternative facility sites and pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of your comments for the attention of Gas Branch 1.
- Reference Docket No. PF06–21–000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC on or before June 23, 2006.

The Commission strongly encourages electronic filing of any comments in response to this Notice of Intent. For information on electronically filing comments, please see the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide, as well as information in 18 CFR 385.2001(a)(1)(iii). Before you can submit comments you will need to create a free account, which can be created on-line.

The public scoping meetings (dates, times, and locations are listed above) are designed to provide another opportunity to offer comments on the proposed project. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of each meeting will be generated so that your comments will be accurately recorded.

Once Guardian formally files its application with the Commission, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you received this notice, you are on the environmental mailing list for this project. If you do not want to send comments at this time, but still want to remain on our mailing list, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be removed from the Commission's environmental mailing list.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary link.'' Click on the eLibrary link, select ''General Search'' and enter the project docket number excluding the last three digits (*i.e.*, PF06–21) in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission,

such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm.*

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, Guardian has established an Internet website for this project at *http://www.guardianpipeline.com/.* The Web site includes a description of the project, a map of the proposed pipeline route, and answers to frequently asked questions. You can also request additional information or provide comments directly to Guardian at 1–866–608–7300 or *mjames@landservicecompany.com.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–8028 Filed 5–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–102–000]

Trunkline LNG Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Infrastructure Enhancement Project and Request for Comments on Environmental Issues

May 19, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Infrastructure Enhancement Project (IEP) involving construction and operation of facilities by Trunkline LNG Company, LLC's (Trunkline LNG) in Lake Charles, Calcasieu Parish, Louisiana.[1] Trunkline LNG would construct and operate Ambient Air Vaporization (AAV) facilities at its existing liquefied natural gas import terminal in Calcasieu Parish, Louisiana. These facilities would consist of system that uses ambient heat in the air to reduce the use of fuel gas in the vaporization of liquefied natural gas (LNG). Additionally, Trunkline LNG would add natural gas liquids (NGL) processing facilities for LNG conditioning and British thermal unit (Btu) control. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Trunkline LNG provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Trunkline LNG's IEP would provide alternative vaporization using a supplemental heat source to reduce the fuel gas requirements for vaporization. Reducing the amount of fuel gas consumed for the vaporization process allows more of the natural gas from the LNG to be delivered to customers. Trunkline LNG seeks authority to construct and operate the following:

- 64 Potassium Formate (KF)-Air heaters (64 forced convection, three-fan air exchangers, 17.9 million Btu per hour (MMBtu/hr)/Air Heater;
- Four KF–LNG Vaporizers (525 million standard cubic feet per day [MMscf/d]);
- One NGL Recovery Unit, sized for a maximum capacity of 1,050 MMscf/d;
- 1,160 feet of 12-inch-diameter ethane product piping;
- 1,160 feet of 12-inch-diameter propane product piping;
- Two propylene glycol heaters (150 MMBtu/hr each);
- Glycol storage and circulation System;
- Two electrical switchgear buildings;
- One remote instrumentation building, designed as Equipment Room 2; and
- Foam Building No. 4.

The nonjurisdictional facilities include the expansion of the existing electric substation, a meter station, and the construction of two 18 mile-long (each) take away NGL product pipelines. British Gas (BG) has contracted PetoLogistics, LLC to design, permit, and operate the meter station and take away pipelines. The pipelines would consist of a 10-inch-diameter ethane (approximately 1,800 gallons per minute [gpm]) pipeline and a 6-inch-diameter propane (approximately 1,250 gpm) pipeline. The pipelines would be constructed from the meter station to PetroLogistics' storage facility in Sulfur, Louisiana.

The location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 33.1 acres of land of which 20 acres are currently covered with grass. Following construction, about 13.6 acres of the 20 acres would be returned to grass and 6.4 acres would be covered with asphalt, concrete or gravel. Included in the 33.1 acres is approximately 0.6 acre of land that would be temporarily affected by the construction of the NGL product pipeline and nonjurisdictional meter station.

In addition, a nonjurisdictional 0.5 acre electric-power substation expansion site developed and operated by Entergy would remain gravel covered with concrete equipment foundations for the new electrical equipment. Further, the 18-mile-long nonjurisdictional take away NGL products pipelines would require about 130.9 acres of land during construction and 87.3 acres as permanent right-of-way based on a 60-foot-wide construction right-of-way and a 40-foot-wide permanent right-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental

[1] Trunkline LNGs application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we [3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Hazardous waste.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 5.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Trunkline LNG. This preliminary list of issues may be changed based on your comments and our analysis.

- The project would generate water from condensation and would decrease water temperature and water salinity during discharge which may impact aquatic species.
- The project may have air and noise impacts.

Also, we have made a preliminary decision to not address the impacts of BG's 18-mile-long NGL takeaway pipelines. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A,Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP06–102–000.
- Mail your comments so that they will be received in Washington, DC on or before June 19, 2006.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or ''intervenor''. To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov.* Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with email addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*)

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202)502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8018 Filed 5–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

May 19, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12670–000.

c. *Date Filed:* April 17, 2006.

d. *Applicant:* Massachusetts Tidal Energy Company.

e. *Name of Project:* Cape and Islands Tidal Energy Hydroelectric Project.

f. *Location:* The project would be located in a section of the Vineyard Sound in Barnstable and Dukes Counties, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contacts:* Joseph A. Cannon, Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037, phone: (202) 663–8000, and Charles B. Cooper, TRC Environmental, Boott Mills South, 116 John St., Lowell, MA 01852, phone: (978) 656–3567.

i. *FERC Contact:* Chris Yeakel, (202) 502–8132.

j. *Deadline for Filing Comments, Protests, and Motions to Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* Description of Project: The proposed project would consist of: (1) 50 to 150 Tidal In Stream Energy Conversion (TISEC) devices consisting of, (2) rotating propeller blades, (3) integrated generators with a capacity of 0.5 to 2.0 MW, (4) anchoring systems, (5) mooring lines; and (6) interconnection transmission lines. The project is estimated to have an annual generation of 8.76 gigawatt-hours per-unit per-year, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR

385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'',''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8024 Filed 5–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

May 19, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2206–031.

c. *Date filed:* March 14, 2006.

d. *Applicant:* Progress Energy Carolinas, Inc.

e. *Name of Project:* Yadkin-Pee Dee Project.

f. *Location:* The project is located on the Pee Dee River in Stanly, Montgomery, Anson, and Richmond Counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r) and 799 and 801.

h. *Applicant Contact:* Larry Mann, Progress Energy Carolinas, Inc., 179 Tillery Dam Road, Mt. Gilead, NC 27306, (910) 439–5211.

i. *FERC Contact:* Rebecca Martin at 202–502–6012, or e-mail Rebecca.martin@ferc.gov.

j. *Deadline for filing comments and or motions:* June 19, 2006.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2206–031) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Application:* The licensee requests Commission approval of a permit application, filed by the Carolina Forest Marina, to expand their existing marina by constructing three docks to support 30 additional boat slips. The docks will extend from 90 to 100 feet into Lake Tillery. A trash deflector is proposed to be constructed upstream of the northern most pier.

l. *Location of Application:* The filing is available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online support at *FERCOnlineSupport@ferc.gov* or toll free (866) 208–3676 or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8026 Filed 5–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 19, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Non-Capacity Amendment of License.

b. *Project No:* 4885–056.

c. *Date Filed:* April 10, 2006.

d. *Applicant:* Twin Falls Hydro Associates, L.P.

e. *Name of Project:* Twin Falls Hydroelectric Project.

f. *Location:* South Fork Snoqualmie River, King County, Washington.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Kevin Webb, Twin Falls Hydro Associates, L.P., c/o

Enel North American, Inc., One Tech Drive, Suite 220, Andover, MA 01810. (978) 681–1900.

i. *FERC Contact:* John K. Novak, *john.novak@ferc.gov*, (202) 502–6076.

j. *Deadline for Filing Comments, Motions to Intervene and Protest:* June 19, 2006.

k. *Description of Application:* The licensee is requesting an amendment of license regarding the minimum flow requirements for the bypassed reach as specified in Article 35. Currently, Article 35 requires the release of 75 cubic feet per second (cfs) or inflow whichever is less August 1 through April 30 and 150 cfs or inflow whichever is less May 1 through July 31. The licensee is requesting that it be allowed to release 75 cfs or inflow whichever is less year round. The results of studies conducted by the licensee indicate that 75 cfs provides adequate protection for the aquatic resources in the bypassed reach. Implementation of the Aquatic Mitigation Plan under Article 37 may no longer be necessary with any release of a permanent 75 cfs year round flow. The licensee has filed an application to amend the Water Quality Certificate with the Washington Department of Ecology.

l. *Location of the Application:* The filing is available for inspection and review at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426 or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (excluding the last three digits) into the ''Docket Number'' field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (P–4885–056). All documents (including an original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the licensee specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comment on the described filing. A copy of the filing may be obtained by agencies directly from the licensee. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the licensee's representatives.

q. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fov under e-Filing link.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–8027 Filed 5–24–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8174–8]

EPA Science Advisory Board Staff Office; Request for Nominations of Candidates for a Panel To Review EPA's Draft Technical Document for the Report on the Environment 2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB or the Board) Staff Office is soliciting nominations of nationally recognized scientists for consideration of membership on an SAB Panel to review the Draft Technical Document for EPA's Report on the Environment 2007.

DATES: Nominations should be submitted by June 15, 2006 per the instructions below.

FOR FURTHER INFORMATION CONTACT: For information regarding this Request for Nominations, please contact Dr. Thomas Armitage, Designated Federal Officer (DFO), EPA Science Advisory Board Staff, at armitage.thomas@epa.gov or (202) 343–9995. General information concerning the SAB can be found on the EPA Web site at: *http://www.epa.gov/sab.* For information on the Draft Technical Document for EPA's Report on the Environment, please contact Dr. Denice Shaw in the EPA Office of Research and Development at: *shaw.denice@epa.gov* or (202) 564–3234.

SUPPLEMENTARY INFORMATION:

Background: EPA issued a draft Report on the Environment 2003 describing the status of and trends in the environment and human health. This report was reviewed by the SAB (see *http://www.epa.gov/sab/pdf/sab_05_004.pdf*). EPA has now prepared a new draft Report on the Environment Technical Document 2007 (ROE 2007) that addresses previous SAB recommendations. EPA(s Office of Research and Development (ORD) has requested that the SAB review the latest draft of the ROE 2007. This draft Report on the Environment Technical Document updates information to answer key questions concerning the status of and trends in the environment and human health and contains new indicators as previously suggested by the SAB. National and some regional environmental trends are described along with indicator limitations and gaps. The SAB has been asked to: (1) Assess the adequacy of the approaches, processes, or frameworks used in the ROE 2007 to answer specified questions; (2) assess the adequacy of the technical content of the indicators provided in major theme areas in the ROE 2007 with regard to completeness of the technical data used and the relevance of indicators to the areas of concern; and (3) evaluate the appropriateness of the conclusions in the ROE 2007. This notice specifically requests nominations for candidates to serve on a new SAB panel that will critically review ROE 2007.

The SAB (42 U.S.C. 4365) is a chartered Federal Advisory Committee that provides independent scientific and technical peer review, advice, consultation, and recommendations to

the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. C) and related regulations. Generally, SAB meetings are announced in the **Federal Register**, conducted in public view, and provide opportunities for public input during deliberations. Additional information about the SAB and its committees can be obtained on the SAB Web site at: *http://www.epa.gov/sab.*

Expertise Sought: The SAB Staff Office requests nominations of engineers, ecologists, public health and biomedical scientists, and chemical and physical scientists to be considered for appointment to the expert panel described above. The Staff Office is interested in nominees who are nationally recognized experts with experience and expertise in designing, implementing, and applying indicator information and data at regional and national scales to evaluate the condition of air, water, and land environments, human health, and ecological condition as covered in ROE 2007. These include: (1) Air (e.g., outdoor or indoor air quality, greenhouse gases, etc.); (2) water (e.g., water and watersheds, drinking water, recreation in and on water, consumption of fish and shellfish, etc.); (3) land (e.g., land use, land cover, chemicals in the landscape, waste contaminated lands, etc.); (4) human health (e.g., pollution and disease, health and disease status and trends, epidemiology, exposure to environmental pollution, etc.); and (5) ecological condition (e.g., stressors and outcomes for aquatic, terrestrial, near-coastal, coastal, and ocean systems, etc.).

How to Submit Nominations: Any interested person or organization may nominate qualified individuals to be considered for appointment on this SAB Panel. Candidates may also nominate themselves. Nominations should be submitted in electronic format (which is preferred over hard copy) through the Form for Nominating Individuals to Panels of the EPA Science Advisory Board provided on the SAB Web site. The form can be accessed through the SAB Nomination Form link on the blue navigational bar on the SAB Web site at: *http://www.epa.gov/sab.* To receive full consideration, nominations should include all of the information requested on that form.

The nominating form requests contact information about: The person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position; educational background; research activities; and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Dr. Thomas Armitage, DFO, at the contact information provided above in this notice. Non-electronic submissions must follow the same format and contain the same information as the electronic.

The SAB Staff Office will acknowledge receipt of the nomination and inform nominees of the panel for which they have been nominated. From the nominees identified by respondents to this **Federal Register** notice (termed the *Widecast*) and other sources, the SAB Staff Office will develop a smaller subset (known as the *Short List* for more detailed consideration. The Short List will be posted on the SAB Web site at: *http://www.epa.gov/sab*, and will include, for each candidate, the nominee's name and biosketch. Public comments on the Short List will be accepted for 21 calendar days. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates for the Panels.

For the SAB, a balanced panel is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the panels, along with information provided by candidates and information gathered by SAB Staff independently of the background of each candidate (e.g., financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluation of an individual Panel member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Short List candidates will be required to fill-out the *Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency* (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110–48.pdf.*

Dated: May 18, 2006.

Anthony F. Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. E6–8043 Filed 5–24–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act; Notice of Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Thursday, May 25, 2006 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Advisory Opinion 2006–19: Los Angeles County Democratic Party Central Committee. Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 06–4901 Filed 5–23–06; 3:18 pm]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on June 22–23, 2006

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics (Edmund D. Pellegrino, MD, Chairman) will hold its twenty-fifth meeting, at which, among other things,

it will hear presentations on and discuss issues in two broad areas (1) organ transplantation and procurement and (2) newborn screening for genetic disorders. The discussions in both areas are continuations of previous Council discussions. Subjects discussed at past Council meetings (although not on the agenda for the June 2006 meeting) include: human dignity, therapeutic and reproductive cloning, assisted reproduction, reproductive genetics, neuroscience, aging retardation, and lifespan-extension. Publications issued by the Council to date include: *Human Cloning and Human Dignity: An Ethical Inquiry* (July 2002); *Beyond Therapy: Biotechnology and the Pursuit of Happiness* (October 2003); *Being Human: Readings from the President's Council on Bioethics* (December 2003); *Monitoring Stem Cell Research* (January 2004), *Reproduction and Responsibility: The Regulation of New Biotechnologies* (March 2004), *Alternative Sources of Human Pluripotent Stem Cells: A White Paper* (May 2005), and *Taking Care: Ethical Caregiving in Our Aging Society* (September 2005).

DATES: The meeting will take place Thursday, June 22, 2006, from 9:00 am to 5:15 pm, ET; and Friday, June 23, 2006, from 8:30 am to 12 noon, ET.

ADDRESSES: St. Regis Hotel, 923 16th and K Streets, NW., Washington, DC 20006. Phone 202–638–2626.

Agenda: The meeting agenda will be posted at *http://www.bioethics.gov.*

Public Comments: The Council encourages public input, either in person or in writing. At this meeting, interested members of the public may address the Council, beginning at 11:45 am, on Friday, June 23. Comments are limited to no more than five minutes per speaker or organization. As a courtesy, please inform Ms. Diane Gianelli, Director of Communications, in advance of your intention to make a public statement, and give your name and affiliation. To submit a written statement, mail or e-mail it to Ms. Gianelli at one of the addresses given below.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Gianelli, Director of Communications, The President's Council on Bioethics, Suite 700, 1801 Pennsylvania Avenue, NW., Washington, DC 20006. Telephone: 202/296–4669. E-mail: *info@bioethics.gov*. Web site: *http://www.bioethics.gov.*

Dated: May 15, 2006.

F. Daniel Davis,

Executive Director, The President's Council on Bioethics.

[FR Doc. E6–8069 Filed 5–24–06; 8:45 am]

BILLING CODE 4154–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Availability of Funding Opportunity Announcement

Funding Opportunity Title/Program Name: Aging and Disability Resource Center Initiative: Building Upon Success.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2006–AoA–DR–0605.

Statutory Authority: The Older Americans Act, Public Law 106–501.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.048, Title IV and Title II, Discretionary Projects.

Dates: The deadline date for the submission of applications is July 21, 2006.

I. Funding Opportunity Description

In FY 2003, the Administration on Aging (AoA) and the Centers for Medicare & Medicaid Services (CMS) formed a historic partnership to launch the Aging and Disability Resource Center (ADRC) demonstration grant initiative. The goal of the ADRC program is to empower individuals to make informed choices and to streamline access to long term support services. AoA and CMS share a vision to have Resource Centers in every community serving as highly visible and trusted places where people of all ages can turn for information on the full range of long term support options and a single point of entry to public long term support programs and benefits. ADRCs are a resource for both public and private-pay individuals. They serve older adults, younger individuals with disabilities, family caregivers, as well as persons planning for future long term support needs. ADRCs are also a resource for health and long term support professionals and others who provide services to older adults and to people with disabilities. Since FY 2003, 43 states have received three year grants from AoA and CMS to design and implement ADRC demonstrations serving the elderly and at least one other target population of adults with disabilities in at least one community. An ADRC Program Announcement published in FY 2003 resulted in the funding of twelve states that year with an additional twelve states funded to develop ADRC programs in FY 2004. Nineteen additional states were funded to develop ADRC programs based on a Program Announcement published in FY 2005. To view the Program Announcements published in FY 2003 and FY 2005 go to *http://www.aoa.gov/prof/aging_dis/background.asp.* For more information on the 43 funded ADRC projects go to *www.adrc-tae.org*.

This announcement seeks proposals for competitive grants to assist states funded to develop ADRCs in FY 2003 to significantly expand their existing Resource Center programs. Building on current efforts, state Resource Center programs funded under this Program Announcement will be:

(1) Expanded to provide services to additional communities, and/or;

(2) Positioned to assume the role as the only entry point to publicly funded long-term support systems, and/or;

(3) Enhanced to provide more efficient and effective access services.

A detailed description of the funding opportunity may be found at *http://www.aoa.gov/doingbus/fundopp/fundopp.asp*.

II. Award Information

1. Funding Instrument Type

These new grants will be issued as cooperative agreements because AoA, in cooperation with CMS, anticipates having substantial involvement with the recipients during performance of funded activities. This involvement may include collaboration, participation, or intervention in the funded activities. AoA, in cooperation with CMS, will also be involved in the development and implementation of the funded projects by way of conducting a review of the applications and providing technical assistance, training, guidance, and oversight throughout the two-year project period. Grantees will be expected to keep in contact with their Federal project officer on a regular basis. Grantees will also be expected to share all significant products that result from their projects with AoA.

2. Anticipated Total Priority Area Funding Per Budget Period

The total amount of Federal funds available for this funding opportunity is $4 million. AoA anticipates funding 10 projects nationwide for a period of up to 2 years. The maximum Federal award for the entire 2-year project period is approximately $400,000. Applicants are encouraged to develop project budgets that reflect annual Federal funding of approximately $200,000 for each project year.

III. Eligibility Criteria and Other Requirements

1. Eligible Applicants

Only states that received an AoA and CMS Aging and Disability Resource Center Grant in FY 2003 are eligible to apply. These states are Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, Pennsylvania, Rhode Island, South Carolina, and West Virginia.

Only the state agency that was the ADRC applicant in FY 2003, or a state agency with a Memorandum of Agreement with the existing ADRC grantee (e.g. the Single State Agency on Aging, Single State Medicaid Agency or State Agency serving the target populations of people with disabilities) may apply for this Resource Center grant. The applicant agency must have the documented support, in the form of a Memorandum of Understanding and active participation by the Single State Agency on Aging, the Single State Medicaid Agency and the State Agency(s) serving the target population(s) of people with disabilities specified in the applicant's proposal.

A letter of support from the Governor indicating high-level state executive support and designating the lead agency is also required. Only one application per state will be accepted. ''State'' refers to the definition provided under 45 CFR 74.2. Executive Order 12372 is not applicable to these grant applications.

2. Cost Sharing or Matching

Grantees are required to make a non-financial or cash recipient contribution (match) of a minimum of five percent (5%) of the total grant award.

3. DUNS Number

All grant applicants must obtain a D–U–N–S number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D–U–N–S number is free and easy to obtain from *http://www.dnb.com/US/duns_update/.*

4. Intergovernmental Review

Executive Order 12372, Intergovernmental Review of Federal Programs, is not applicable to these grant applications.

IV. Application and Submission Information

1. Address To Request Application Package

Application materials can be obtained from *http://www.grants.gov or http://www.aoa.gov/doingbus/fundopp/fundopp.asp.* Application materials are also available by writing to: U.S. Department of Health and Human Services, Administration on Aging, John Murphy, Center for Planning and Policy Development, Washington, DC 20201. Or by calling: 202–357–0136. Or e-mailing: *john.murphy@aoa.hhs.gov.*

2. Address for Application Submission

Electronic submissions must be sent to: *http://www.grants.gov.*

Applicants unable to submit their application via *www.grants.gov* may request permission to submit a hard copy from the AoA Project Officer: Greg Case: *greg.case@aoa.hhs.gov.* (202) 357–3442.

If you mail or hand delivers your application, you must submit one original application and two copies, plus a completed application checklist to AoA. The application deadline for applications sent by U.S. Postal Service must be post-marked by midnight July 21, 2006 or hand-delivered by 5 p.m. Eastern Time on July 21, 2006.

Submissions using the regular, U.S. Postal Service must be addressed to:Department of Health and Human Services, Administration on Aging, Grants Management Division, Washington, DC 20201. Attention: Stephen Daniels.

Submissions by courier, overnight delivery, delivered in person, etc. should be addressed to: Department of Health and Human Services, Administration on Aging, Grants Management Division, One Massachusetts Avenue, NW., Room 4604, Washington, DC 20001. Attention: Stephen Daniels.

3. Submission Dates and Times

To receive consideration, applications must be received by the deadline listed in the **DATES** section of this Notice.

V. Responsiveness Criteria

Each application submitted will be screened to determine whether it was received by the closing date and time.

Applications received by the closing date and time will be screened for completeness and conformity with the requirements outlined in Sections III and IV of this Notice and the Program Announcement. Only complete applications that meet these requirements will be reviewed and evaluated competitively.

VI. Application Review Information

Eligible applications in response to this announcement will be reviewed according to the following evaluation criteria:

- Accomplishments and Problem Statement—Weight: 30 points
- Approach, Work Plan and Activities—Weight: 40 points
- Project Outcomes and Evaluation—Weight: 15 points
- Level of Effort (Organization and Management; Budget and Resources)—Weight: 15 points

VII. Agency Contacts

Direct inquiries regarding programmatic issues to U.S. Department of Health and Human Services, Administration on Aging, Center for Planning and Policy Development, Attention: Greg Case, Washington, DC 20201. Telephone: (202) 357–3442.

Dated: May 22, 2006.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. E6–8047 Filed 5–24–06; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Head Start Program Grant Application and Budget Instrument.

OMB No.: 0970–0207.

Description: The Head Start Bureau is proposing to renew, without changes, the Head Start Grant Application and Budget Instrument, which standardizes the grant application information that is requested from all Head Start and Early Head Start grantees applying for continuation grants. The application and budget forms are available on a data diskette and on the Web at *http://www.acfgabi.com.* Completed applications can be transmitted electronically to Regional and Central Offices. The Administration on Children, Youth and Families believes that this application document makes the process of applying for Head Start program grants more efficient for applicants.

Respondents: Head Start and Early Head Start grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
HS Grant and Budget Instrument	1,600	1	33	52,800

Estimated Total Annual Burden Hours: 52,800.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 18, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–4851 Filed 5–24–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0211]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Submitting and Reviewing Complete Responses to Clinical Holds

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information contained in a guidance for industry entitled ''Submitting and Reviewing Complete Responses to Clinical Holds.'' The guidance describes how to submit a complete response if an investigational new drug (IND) application is placed on clinical hold by FDA.

DATES: Submit written or electronic comments on the collection of information by July 24, 2006.

ADDRESSES: Submit electronic comments on the collection to: *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061 Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301– 827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry: Submitting and Reviewing Complete Responses to Clinical Holds (OMB Control Number 0910–0445)—Extension

Section 117 of the Food and Drug Administration Modernization Act (Public Law 105–115), signed into law by the President on November 21, 1997, provides that a written request to FDA from the applicant of an investigation that a clinical hold be removed shall receive a decision in writing, specifying the reasons for that decision, within 30 days after receipt of such request. A clinical hold is an order issued by FDA to the applicant to delay a proposed clinical investigation or to suspend an

ongoing investigation for a drug or biologic. An applicant may respond to a clinical hold.

Under section 505(i)(3)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), any written request to FDA from the sponsor of an investigation that a clinical hold be removed must receive a decision, in writing and specifying the reasons, within 30 days after receipt of the request. The request must include sufficient information to support the removal of the clinical hold.

In the **Federal Register** of May 14, 1998 (63 FR 26809), FDA published a notice of availability of a guidance that described how applicants should submit responses to clinical holds so that they may be identified as complete responses and the agency can track the time to respond.

FDA issued a revised guidance in October 2000 which states that FDA will respond in writing within 30 calendar days of receipt of a sponsor's request to release a clinical hold and a complete response to the issue(s) that led to the clinical hold. An applicant's complete response to an IND clinical hold is a response in which all clinical hold issues identified in the clinical hold letter have been addressed.

The guidance requests that applicants type ''Clinical Hold Complete Response'' in large, bold letters at the top of the cover letter of the complete response to expedite review of the response. The guidance also requests that applicants submit the complete response letter in triplicate to the IND, and that they fax a copy of the cover letter to FDA's contact listed in the clinical hold letter who is responsible for the IND. The guidance requests more than an original and two copies of the cover letter in order to ensure that the submission is received and handled in a timely manner.

Based on data concerning the number of complete responses to clinical holds received by the Center for Drug Evaluation and Research (CDER) in 2004 and 2005, CDER estimates that approximately 88 responses are submitted annually from approximately 67 applicants, and that it takes approximately 284 hours to prepare and submit to CDER each response.

Based on data concerning the number of complete responses to clinical holds received by the Center for Biologics Evaluation and Research (CBER) in 2004 and 2005, CBER estimates that approximately 92 responses are submitted annually from approximately 60 applicants, and that it takes approximately 284 hours to prepare and submit to CBER each response.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Complete Responses to Clinical Holds	No. of Respondents	No. of Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Hours
CDER	67	.76	88	284	24,992
CBER	60	1.53	92	284	26,128
Total					51,120

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 18, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–7983 Filed 5–24–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0080]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by June 26, 2006.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition—21 CFR 201.323—(OMB Control Number 0910–0439)—Extension

FDA is requesting OMB approval under the PRA (44 U.S.C. 3501–3520), for the labeling requirements for aluminum content in large volume parenterals (LVPs), small volume parenterals (SVPs), and pharmacy bulk packages (PBPs) used in total parenteral nutrition (TPN). As explained in the final rule on aluminum content labeling requirements published in the **Federal Register** of January 26, 2000 (65 FR 4103) (the January 2000 final rule), aluminum content in parenteral drug products could result in a toxic accumulation of aluminum in the tissues of individuals receiving TPN therapy. Research indicates that neonates and patient populations with impaired kidney function may be at high risk of exposure to unsafe amounts of aluminum. Studies show that aluminum may accumulate in the bone, urine, and plasma of infants receiving TPN. Many drug products used routinely in parenteral therapy may contain levels of aluminum sufficiently

high to cause clinical manifestations. Generally, when medication and nutrition are administered orally, the gastrointestinal tract acts as an efficient barrier to the absorption of aluminum, and relatively little ingested aluminum actually reaches body tissues. However, parenterally administered drug products containing aluminum bypass the protective mechanism of the gastrointestinal tract and aluminum circulates and is deposited in human tissues.

Aluminum toxicity is difficult to identify in infants because few reliable techniques are available to evaluate bone metabolism in premature infants. Techniques used to evaluate the effects of aluminum on bone in adults cannot be used in premature infants. Although aluminum toxicity is not commonly detected clinically, it can be serious in selected patient populations, such as neonates, and may be more common than is recognized.

FDA amended its regulations to add labeling requirements for aluminum content in LVPs, SVPs, and PBPs used in TPN. FDA specified an upper limit of aluminum permitted in LVPs and required applicants to submit to FDA validated assay methods for determining aluminum content in parenteral drug products. The agency added these requirements because of evidence linking the use of parenteral drug products containing aluminum to morbidity and mortality among patients on TPN therapy, especially among premature neonates and patients with impaired kidney function.

The information collection reporting requirements are as follows:

Section 201.323(b) (21 CFR 201.323(b)) requires that the package insert of all LVPs used in TPN therapy state that the drug product contains no more than 25 micrograms (μg)/liter (L). This information must be contained in the ''Precautions'' section of the labeling of all LVPs used in TPN therapy.

Section 201.323(c) (21 CFR 201.323(c)) requires that the maximum level of aluminum present at expiry be stated on the immediate container label of all SVP drug products and PBPs used in the preparation of TPN solutions. The aluminum content must be stated as prescribed in the regulation. The immediate container label of all SVP drug products and PBPs that are lyophilized powders used in the preparation of TPN solutions must contain the statement prescribed in the regulation.

Section 201.323(d) (21 CFR 201.323(d)) requires that the package insert for all LVPs, SVPs, and PBPs used in TPN contain a warning statement, prescribed in the regulation, intended for patients with impaired kidney function and for neonates receiving TPN therapy. This information must be contained in the ''Warnings'' section of the labeling.

Section 201.323(e) (21 CFR 201.323(e)) requires that applicants and manufacturers must use validated assay methods to determine the aluminum content in parenteral drug products. The assay methods must comply with current good manufacturing practice requirements. Applicants must submit to FDA both validation of the method used and release data for several batches. Manufacturers of parenteral drug products not subject to an approved application must make assay methodology available to FDA during inspections. Holders of pending applications must submit an amendment to the application.

Compliance with the information collection burdens under § 201.323(b), (c), and (d) consists of submitting application supplements to FDA containing the revised labeling for each product, and analytical method validation must be submitted under § 201.323(e). During the period since the publication of the January 2000 final rule, FDA has received approximately 100 supplements and analytical method validation from approximately four respondents. Because the final rule was effective on July 26, 2004, FDA expects to receive fewer submissions per year. FDA estimates that it will take approximately 14 hours to prepare and submit to FDA each submission.

In the **Federal Register** of February 27, 2006 (71 FR 9829), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
201.323(b), (c), and (d)	4	1.25	5	14	70
201.323(e)	4	1.25	5	14	70
Total					140

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 18, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–7984 Filed 5–24–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0203]

Agency Information Collection Activities; Proposed Collection; Comment Request; User Fee Cover Sheet; Form FDA 3397

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on User Fee Cover Sheet; Form FDA 3397 that must be submitted along with

certain drug and biologic product applications and supplements.

DATES: Submit written or electronic comments on the collection of information by July 24, 2006.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

User Fee Cover Sheet; Form FDA 3397—(OMB Control Number 0910–0297)—Extension

Under sections 735 and 736 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g and 379h), the Prescription Drug User Fee Act of 1992 (PDUFA) (Public Law 102–571), as amended by the Food and Drug Administration Modernization Act of 1997 (Public Law 105–115), and the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, which includes the Prescription Drug User Fee Amendments of 2002 (Public Law 107–188), FDA has the authority to assess and collect user fees for certain drug and biologics license applications and supplements. Under this authority, pharmaceutical companies pay a fee for certain new human drug applications, biologics license applications, or supplements submitted to FDA for review. Because the submission of user fees concurrently with applications and supplements is required, review of an application by FDA cannot begin until the fee is submitted. Form FDA 3397, the user fee cover sheet, is designed to provide the minimum necessary information to determine whether a fee is required for review of an application, to determine the amount of the fee required, and to account for and track user fees. The form provides a cross-reference of the fee submitted for an application with the actual application by using a unique number tracking system. The information collected is used by FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) to initiate the administrative screening of new drug applications, biologics license applications, and supplemental applications.

Respondents to this collection of information are new drug and biologics manufacturers. Based on FDA's database system for fiscal year (FY) 2005, there are an estimated 243 manufacturers of products subject to PDUFA. However, not all manufacturers will have any submissions, and some may have multiple submissions in a given year. The total number of annual responses is based on the number of submissions received by FDA in FY 2005. CDER estimates 3,085 annual responses that include the following submissions: 101 new drug applications; 3 biologics license applications; 1,915 manufacturing supplements; 921 labeling supplements; and 145 efficacy supplements. CBER estimates 676 annual responses that include the following submissions: 6 biologics license applications, 614 manufacturing supplements, 46 labeling supplements, and 10 efficacy supplements. Based on previous estimates, the rate of submissions is not expected to change significantly in the next few years. The estimated hours per response are based on past FDA experience with the various submissions, and range from 5 to 30 minutes. The hours per response are based on the average of these estimates.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 3397	243	15.48	3,761	0.30	1,128

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 18, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–7985 Filed 5–24–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0296]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Financial Disclosure by Clinical Investigators

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Financial Disclosure by Clinical Investigators'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 10, 2006 (71 FR 7051), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0396. The approval expires on April 30, 2009. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: May 18, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–7987 Filed 5–24–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0500]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Requirements for Collection of Data Relating to the Prevention of Medical Gas Mixups at Health Care Facilities—Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 26, 2006.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Requirements for Collection of Data Relating to the Prevention of Medical Gas Mixups at Healthcare Facilities—Survey (OMB Control Number 0910–0548)—Extension

FDA has received four reports of medical gas mixups occurring during the past 7 years. These reports were received from hospitals and nursing homes and involved 7 deaths and 15 injuries to patients who were thought to be receiving medical grade oxygen, but who were actually receiving a different gas (e.g., nitrogen, argon) that had been mistakenly connected to the facility's oxygen supply system. In 2001, FDA published guidance making recommendations to help hospitals, nursing homes, and other health care facilities avoid the tragedies that result from medical gas mixups and alerting these facilities to the hazards. This survey is intended to assess the degree of facilities' compliance with safety measures to prevent mixups and to determine if further steps are warranted to ensure the safety of patients.

In the **Federal Register** of January 3, 2006 (71 FR 122), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
210 and 211	285	1	285	.25	71.25
Total	285	1	285	.25	71.25

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 18, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–7988 Filed 5–24–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0427]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Filing Objections and Requests for a Hearing on a Regulation or Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Filing Objections and Requests for a Hearing on a Regulation or Order'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 3, 2006 (71 FR 10977), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0184. The approval expires on May 31, 2009. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: May 18, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–7991 Filed 5–24–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5041–N–18]

Notice of Proposed Information Collection: Comment Request; Neighborhood Networks Management and Tracking Data Collection Instruments

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 24, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Lillian_Deitzer@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Delores A. Pruden, Director, Neighborhood Networks, Office of Housing Assistance and Grant Administration, Multifamily Housing Programs, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–4135 x2496 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 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: Neighborhood Networks Data Collection Management and Tracking Data Collection Instruments.

OMB Control Number, if applicable: 2502–0553.

Description of the need for the information and proposed use: Updated business plan data and current Center profiles are necessary to provide quantifiable demographic information as a basis for ongoing technical assistance to Neighborhood Networks Center Directors and HUD Coordinators. Center classification data will ensure effectiveness in creating programs and services that promote self-sufficiency among residents of HUD Multifamily Housing Properties.

The current data collection will be used to update the Neighborhood Networks contact database and HUD's *Directory of Neighborhood Networks Centers.* The information collection will continue to inform HUD, and support Neighborhood Networks Center Directors and staff in making informed decisions, documenting the outcomes of their Center, and assessing overall Center performance.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents is 1,200 providing 3,754 responses annually; the frequency of response is annually, quarterly, and on occasion; the total estimated time for data collection is 2,902, and the estimated time to prepare varies from .07 to 6 hours per response.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 18, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E6–7992 Filed 5–24–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5041–N–17]

Notice of Proposed Information Collection: Comment Request; Single Family Housing Lead Disclosure Requirements and Addendum Format

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 24, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Lillian_Deitzer@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Ivery Himes, Division Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0614 x5628 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 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: Lead Disclosure Rule Compliance Procedures for HUD-Owned Single Family Properties.

OMB Control Number, if applicable: 2502–New.

Description of the need for the information and proposed use: HUD, its M&M contractors, and the selling brokers working with the Department in the sale of HUD-owned properties must fully comply with the requirements of the Lead Disclosure rule (24 CFR part 35, subpart A) with respect to the sale of all properties constructed before 1978. This rule requires that the disclosure form provide a lead warning statement, as well as Seller, Purchaser, and Broker acknowledgements and signatures. Due to the Lead Safe Housing Rule requiring stabilization of FHA insured properties, another item on the form indicates the financing and subsequent requirements.

Agency form numbers, if applicable: HUD–9545–Y and HUD–9545–Z.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 23,284. The number of respondents is 137,077 submitting 137,077 responses annually, the frequency of response is on occasion, and the burden per response varies from six to twelve minutes.

Status of the proposed information collection: This is a new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 18, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E6–7994 Filed 5–24–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5030–C–1A]

Notice of HUD's Fiscal Year (FY) 2006 Notice of Funding Availability, Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD Discretionary Grant Programs; Correction.

SUMMARY: On March 8, 2006, HUD published its Fiscal Year (FY) 2006 SuperNOFA (SuperNOFA), for HUD's Discretionary Grant Programs. This document makes corrections to the Resident Opportunity and Self-Sufficiency (ROSS) Elderly/Persons with Disabilities Program, ROSS Family and Homeownership Program, the Public Housing Neighborhood Networks, and the Public and Indian Housing Family Self-Sufficiency Program Coordinators Under Resident Opportunities and Self-Sufficiency (Public Housing Family Self-Sufficiency) Program. The technical correction published today announces the addition of funds available for the above listed NOFAs for FY2006 from previously unobligated FY2004 and FY2005 funds. As a result of this additional funding, today's notice also increases the maximum grant amount available for ROSS Elderly/Persons with Disabilities, ROSS Family and Homeownership, and Public Housing Neighborhood Networks programs. Today's notice also makes a number other minor clarifications and corrections to these programs as published in the March 8, 2006, SuperNOFA. These changes affect the NOFAs listed and the corresponding Instruction Downloads on Grants.gov, but do not affect the application packages.

DATES: The application submission date for the Public and Indian Housing Family Self-Sufficiency Program Coordinators Under Resident Opportunities and Self-Sufficiency (ROSS) Program is extended to June 28, 2006. The application submission date for the Public Housing Neighborhood Networks is extended to July 21, 2006. The application dates for the other programs corrected by this document remain the same. Please see the individual program NOFAs for the applicable deadline date as published in the SuperNOFA on March 8, 2006.

FOR FURTHER INFORMATION CONTACT: For the programs listed in this notice, please contact the office or individual listed under Section VII of the individual program sections of the SuperNOFA, published on March 8, 2006.

SUPPLEMENTARY INFORMATION: On March 8, 2006 (71 FR 11712), HUD published its Notice of HUD's Fiscal Year (FY) 2006, SuperNOFA for HUD's Discretionary Grant Programs. The FY2006 SuperNOFA announced the availability of approximately $2.2 billion in HUD assistance. This notice

published in today's **Federal Register** makes technical corrections to the ROSS Elderly/Persons with Disabilities Program, the ROSS Family and Homeownership Program, Public Housing Neighborhood Networks Program, and the Public and Indian Housing Family Self-Sufficiency Program Coordinators Under ROSS Program.

Today's notice announces the availability of additional funds for the ROSS Elderly/Persons with Disabilities Program, the ROSS Family and Homeownership Program, the Public Housing Neighborhood Networks Programs, and the Public and Indian Housing Family Self-Sufficiency Program Coordinators Under ROSS Program. Today's notice also announces increases to the maximum grant amounts for the ROSS Elderly/Persons with Disabilities, ROSS Family and Homeownership and Public Housing Neighborhood Networks programs.

HUD has determined that FY2004 and FY2005 funding remains unobligated for the ROSS Elderly/Persons with Disabilities, ROSS Family and Homeownership, Public Housing Neighborhood Networks and Public Housing Family Self Sufficiency programs. As a result, HUD is adding these unobligated funds to its FY2006 ROSS competitions. Specifically, HUD will add approximately $25 million funds to the ROSS Family and Homeownership Program, making a total of approximately $43 million available for this program's FY2006 competition. HUD will also add approximately $6 million its ROSS Elderly/Persons with Disabilities Program, making approximately $16 million available for this program in FY2006. In its Public Housing Neighborhood Networks program, HUD will add approximately $9.5 million to the $7.5 million made available by the SuperNOFA published on March 8, 2006, for a new total of $17 million. Finally, HUD will add approximately $3 million of unobligated funds to the approximately $10 million available through this year's Public Housing Family Self Sufficiency program, for a total of $13 million.

HUD has determined that this unobligated funding resulted from a number of factors. For example, HUD was unable to award grant funds because approximately 30 percent of applicants for assistance under the ROSS RSDM Elderly/Persons with Disabilities Program, the ROSS RSDM Family Program, ROSS Homeownership Supportive Services Program, and the Public Housing Neighborhood Networks Program failed to meet the statutorily required 25 percent match threshold. Applicants produced letters describing the match that they secured, but did not meet the NOFA requirements that required that they be on official letterhead, signed, and dated within two months of the deadline. Applicants also failed to delineate the value of the services that would be provided or proposed activities that were ineligible to qualify as match. To address this issue, HUD committed a significant portion of its outreach and webcasts to ensure that applicants understand the requirements. In addition, HUD has clarified and expanded the section of this year's NOFAs pertaining to the eligible and ineligible match activities, especially in the ROSS Elderly/Persons with Disabilities Program, to ensure that partnerships that make a program more comprehensive are able to be counted toward the required match.

Significant funds remained from last year's Homeownership Supportive Services (HSS) Program, which has been combined this year with the Family Program to create the ROSS Family and Homeownership NOFA. Approximately 45 percent of HSS applicants failed to meet the threshold requirement of committing vouchers and/or voucher program slots for the proper number of participants. Applicants submitting an application that fails to meet a threshold requirement are ineligible to receive a grant. In order to increase the likelihood of awarding these funds to deserving applicants HUD eliminated this requirement for the ROSS Family and Homeownership NOFA. Instead, HUD will award points for this element to those applicants who show a commitment connect their residents to homeownership opportunities. HUD believes that the combined ROSS Family and Homeownership NOFA will increase the likelihood of awarding available funds.

These funds are being made available for FY2006 in the amounts indicated below for each grant program. Since the available funding has increased, the award amounts available have been returned to FY2005 levels.

Summary of Technical Corrections

Summaries of the technical corrections made by this document follow. The page number shown in brackets identifies where the individual funding availability announcement that is being corrected can be found in the March 8, 2006, SuperNOFA. The technical correction described in today's **Federal Register** will also be reflected in the application instructions located on Grants.gov/Apply. Applicants must read the instruction download located on Grants.gov/Apply prior to submitting their application in order to receive all parts of the application.

Resident Opportunity and Self-Sufficiency (ROSS) Elderly/Persons with Disabilities Program [11913]

On page 11914, Overview Information, section G.2., second column, HUD is correcting the funding amount available. A total of approximately $16 million, comprised of $10 million in FY2006 and $6 million in FY2004 and FY2005 funding, is available for ROSS Elderly/Persons with Disabilities Program.

On page 11914, Overview Information, section G.6., first column and third column, HUD is correcting this section to correct the funding amount available, to reflect revised maximum funding amounts, and to modify the portion of grant funds that can be used for the salaries and fringe benefits of a Project Coordinator.

On page 11916, section II.B.1.a., second column, HUD is correcting the total funding amount announced by this NOFA. The correct amount is $16 million.

On page 11916, section II.B.1., second column, chart, HUD is correcting the maximum funding available to applicants, which depends on the number of conventional units occupied by Elderly and Persons with Disabilities.

On page 11916, section II.B.1.b, second column, HUD is correcting the maximum grant award for each Resident Association (RA). The maximum grant award for each RA is $125,000.

On page 11916, section II.B.1.c., second column into third column, HUD is correcting the amount of funding a nonprofit organization can receive in FY2006 ROSS Elderly/Disabled grant funding. A nonprofit organization receiving support from an RA is limited to $125,000 for each RA and may submit a single application for no more than three different RAs from the same PHA. The maximum amount of funding a nonprofit organization can be awarded is $375,000.

On page 11918, section III.C.2.c., second column, HUD is changing its policy regarding Contract Administrator Partnership Agreements. This paragraph is being revised to allow incomplete agreements to be treated as a technical deficiency rather than a failure to meet a threshold requirement, resulting in the application not receiving further consideration for funding.

On page 11921, section IV.E.2.b., first column, HUD is correcting this paragraph to increase the amount of assistance that may be used to pay the annual salary and fringe benefits of the

project coordinator. HUD also clarifies that if a project coordinator receives a salary that is lower than the maximum ($65,000), the difference may be used for other eligible activities.

On page 11921, section IV.E.4, second column, HUD is clarifying the subsection.

On page 11923, section V.A.1.b.(2), first column, HUD is correcting the amount of funding that may be used to pay the annual salary and fringe benefits to a Project Coordinator, raising the amount from $50,000 to $65,000. Also, HUD is deleting the following language from this subsection, ''As indicated in the chart at the beginning of the NOFA, applicants must not propose to use more than the specified amount of funds for delivery of services.''

On page 11923, section V.A.1.c.(1)(c), third column, HUD is adding a new subsection (iv), which reminds applicants that the budget form HUD–424CBW requires that a separate 424–CBW form be submitted for each sub-grant or contract that is 10% or more of the total amount requested. If the separate 424–CBW form is not included in the application applicants risk losing all points for ''Budget Appropriateness/Efficient Use of Grant'' and if the sub-grants or contract is for 50% or more of the grant awards applicants would lose all points for Rating Factor 3, Soundness of Approach.

Resident Opportunity and Self-Sufficiency (ROSS) Family and Homeownership Program [11927]

On page 11928, Overview Information, section G.2., second column, HUD is correcting the funding amount available. A total of approximately $43 million is available for ROSS in FY2006, which is comprised of $18 in FY2006 funds and $25 million from previously unobligated funds.

On page 11928, Overview Information, section G.3., second column, HUD is correcting the range of award amounts available to applicants. Awards, depending on the grant category, unit count, and type of grantee will range from $250,000 to $1,000,000.

On page 11928, Overview Information, section G.6., third column entitled, ''Grant Term'', HUD is correcting the chart to reflect the changes in the amount of funding available and the maximum grant amount possible, which depends on the unit count and type of grantee.

On page 11930, section II.A.5., second column into third column, HUD is correcting subsection 5, Total Funding, in its entirety. Each component of subsection 5 and both charts are being revised to reflect the additional funding that is being made available under this program.

On page 11933, section III.C.2.c., second column, HUD is changing its policy regarding Contract Administrator Partnership Agreements. This paragraph is being revised to allow incomplete agreements to be treated as a technical deficiency rather than a failure to meet a threshold requirement, resulting in the application not receiving further consideration for funding.

On page 11936, section IV.E.6, second column, HUD is clarifying the subsection explaining funding requests that are in excess of the maximum grant amount. If a grant is awarded, a HUD Field Office will work with the grantee to re-apportion the grant funds for only eligible activities that were proposed in the original application, as long as it does not impact the basis on which points were awarded.

On page 11938, section V.A.1.c.(1)(c), second column, HUD is adding a new subsection (iii), which reminds applicants that the budget form HUD–424CBW requires that a separate 424-CBW form be submitted for each sub-grant or contract that is 10% or more of the total amount requested. If the separate 424-CBW form is not included in the application applicants risk losing all points for ''Budget Appropriateness/Efficient Use of Grant'' and if the sub-grants or contract is for 50% or more of the grant awards applicants would lose all points for Rating Factor 3, Soundness of Approach.

Public Housing Neighborhood Networks Program [11942]

On page 11943, Overview Information, section F., second column, HUD is extending the application deadline date to July 21, 2006.

On page 11943, Overview Information, section G.2., second column into third column, HUD is correcting the funding amount available. A total of approximately $17 million is available for Neighborhood Networks program in FY2006, which is comprised of approximately $7.5 in FY2006 funds and approximately $9.5 in previously unobligated funds.

On page 11943, Overview Information, section G.3., third column, HUD is correcting the range of award amounts available to applicants. Awards will range from $150,000 to $600,000.

On page 11943, Overview Information, section G.6., third column, HUD is correcting the chart to reflect the changes in the amount of funding available and the maximum grant amount possible, depending on the grant category, unit count, and type of grantee.

On page 11944, section II.A., Introduction, third column, HUD is correcting the amount of total funding available.

On page 11945, section II.A.2.a. and b., first column, HUD is correcting the Funding Levels for Existing and New Centers to reflect the increase in funding available.

On page 11946, section III.C.1.c., first column, HUD is changing its policy regarding Contract Administrator Partnership Agreements. This paragraph is being revised to allow incomplete agreements to be treated as a technical deficiency rather than a failure to meet a threshold requirement, resulting in the application not receiving further consideration for funding.

On page 11946, section III.C.4., third column, HUD is correcting the subsection dealing with eligible participants to make it consistent with the 2006 Appropriations Act.

On page 11947, section IV.C.1., second column into third column, HUD is extending the application deadline date to July 21, 2006.

On pages 11947 and 11948, section IV.E.3, third column into first column of the next page, HUD is clarifying the subsection explaining funding requests that are in excess of the maximum grant amount. If a grant is awarded, a HUD Field Office will work with the grantee to re-apportion the grant funds for only eligible activities that were proposed in the original application, as long as it does not impact the basis on which points were awarded.

On page 11950, section V.A.1.c.(1)(c), second column, HUD is adding a new subsection (iii), which reminds applicants that the budget form HUD–424CBW requires that a separate 424–CBW form be submitted for each sub-grant or contract that is 10% or more of the total amount requested. If the separate 424–CBW form is not included in the application applicants would lose all points for ''Budget Appropriateness/Efficient Use of Grant'' and if the sub-grants or contract is for 50% or more of the grant awards applicants would lose all points for Rating Factor 3, Soundness of Approach.

Public and Indian Housing Family Self-Sufficiency Program Coordinators Under Resident Opportunities and Self-Sufficiency (ROSS) Program [11954]

On page 11955, Overview Information, section F., first column, HUD is correcting the application deadline date. The new application deadline date is June 28, 2006.

On page 11955, Overview Information, section G.2., first column, HUD is correcting the funding amount available. A total of approximately $13 million is available for the Public and Indian Housing Family Self-Sufficiency Program Coordinators Under Resident Opportunities and Self-Sufficiency (ROSS) program in FY2006, which is comprised of $10 million in FY2006 funds and $3 million from previously unobligated funds.

On page 11956, section II.A., second column, HUD is correcting the first sentence of the paragraph to reflect the additional funding that is available. The NOFA is announcing the availability of approximately $13 million in FY2006 to employ Family Self-Sufficiency program coordinators for the Public and Indian Housing Family Self-Sufficiency Program Coordinators Under Resident Opportunities and Self-Sufficiency (ROSS) program.

On page 11957, section III.C.2.d., second column, HUD is changing its policy regarding Contract Administrator Partnership Agreements. This paragraph is being revised to allow incomplete agreements to be treated as a technical deficiency rather than a failure to meet a threshold requirement, resulting in the application not receiving further consideration for funding.

HUD is taking advantage of the opportunity provided this technical correction to advise applicants that form HUD–52767 has been modified so that it is consistent with the NOFA. The NOFA defines ''The Number of PH FSS Program Participants'' as ''The total number of families shown in HUD's PIC data system as enrolled in the applicant's PH FSS program on the *publication date* of this NOFA, plus the number of families that successfully completed their PH FSS contracts in the applicant's program between October 1, 2000 and the *publication date* of this NOFA.'' However, the form HUD–52767 question 9b defines it as ''The total number of families shown in HUD's PIC data system as enrolled in the applicant's PH FSS program on the *application due date* of this NOFA, plus the number of families that successfully completed their PH FSS contracts in the applicant's program between October 1, 2000 and the *application due date* of this NOFA.'' Applicants must follow the definition contained in the NOFA. Form HUD–52767, as modified, is available for re-download in the Instructions Download on grants.gov.

Accordingly, in the Notice of HUD's Fiscal Year (FY) 2006, Notice of Funding Availability (NOFA), Policy Requirements to the SuperNOFA for HUD's Discretionary Grant Programs, beginning at 71 FR 11712, in the issue of March 8, 2006, the following corrections are made.

1. *Resident Opportunity and Self-Sufficiency (ROSS) Elderly/Persons With Disabilities Program, beginning on page 11913:*

On page 11914, Overview Information, section G.2., second column, is corrected to read as follows:

2. *Funding Available.* A total of approximately $16 million is available for ROSS Elderly/Persons with Disabilities grants in fiscal year 2006. The funding available includes approximately $10 million from this year's appropriations and approximately $6 million from previously unobligated funds.

On page 11914, Overview Information, section G.3., second column into third column, is corrected to read as follows:

3. *Award Amounts.* Awards, depending on the grant category, unit count, and type of grantee, will range from $125,000 to $450,000. Grant awards must be used in two ways: One portion for the salaries and fringe benefits of a Project Coordinator; and one portion for direct delivery of a supportive service to the targeted elderly/disabled resident population. Please see the funding breakdown chart below.

On page 11914, Overview Information, section G.6., third column, is corrected to read as follows:

6. *Grant term.* The grant term is three years from the execution date of the grant agreement.

Grant program	Total funding	Eligible applicants	Maximum grant amount (units refers to the number of units occupied by elderly/disabled as indicated on ROSS Fact Sheet (HUD–52751))
ROSS Elderly/Persons with Disabilities.	$16 million	PHAs	$250,000 for with 1–217 units. $350,000 for PHAs with 218–1,155 units. $450,000 for PHAs with 1,156 or more units.
		Resident Associations	$125,000
		Non-profit entities	$125,000 per RA; maximum award is 375,000.
		Tribes/TDHEs	$250,000 for Tribes/TDHEs with 1–217 units. $350,000 for Tribes/TDHEs with 218–1,155 units. $450,000 for Tribes/TDHEs with 1,156 or more units.

Grant awards must be used in two ways: One portion for the salaries and fringe benefits of a Project Coordinator; and one portion for direct delivery of high priority supportive services to the targeted elderly/disabled resident population. The applicant may use up to $65,000 maximum per year and in accordance with local wage standards (see Funding Restrictions) for the salary and fringe benefits of a Project Coordinator. Additionally, the applicant may use funds for delivery of services. The application must demonstrate (in rating factor 2) that these services are of a high priority for the targeted elderly/disabled residents and that another funding source is not available, therefore meriting funding under this grant.

On page 11916, section II.B.1., Total Funding, second and third columns, is corrected to read as follows:

1. *Total Funding.* The Department expects to award $16,000,000 under this funding category of ROSS.

Awards will be made as follows:

a. PHAs must use the number of conventional public housing units occupied by elderly and disabled residents as of September 30, 2005, per their budget to determine the maximum grant amount they are eligible for in accordance with the categories listed below. PHAs should clearly indicate the number of conventional public housing units occupied by elderly and disabled residents under their Annual Contributions Contract on the Fact Sheet.

Number of conventional units occupied by elderly and persons with disabilities	Maximum funding
1–217 units	$250,000
217–1,155 units	350,000
1,156 or more units	450,000

b. The maximum grant award is $125,000 for each RA.

c. Nonprofits are eligible applicants if they are representing or acting at the

behest of an RA. Accordingly, nonprofit applicants must show support from that RA. Nonprofit organizations that have support from an RA are limited to $125,000 for each RA. A nonprofit organization may submit a single application for no more than three different RAs from the same PHA. A nonprofit organization may not receive more than $375,000 in FY 2006 ROSS Elderly/Disabled grant funding. Nonprofit organizations may submit more than one application provided they target residents of distinct PHAs or tribes/TDHEs. In cases where nonprofit applicants are not able to obtain support from RAs, they must obtain letters of support from PHAs and/or tribes/TDHEs and they may also submit a letter of support from one or more of the following: Resident Advisory Boards (RABs), local civic organizations, or units of local government.

Note: All nonprofit applicants that do not include a letter of support from an RA must include a letter of support from a PHAs or tribes/TDHEs. Please see Threshold Requirements for more information Support letters must indicate the developments to be served by the nonprofit organization. Funding for nonprofit applicants that do not receive letters of support from RAs will be determined as follows. Support letters must indicate the developments to be served by the nonprofit organization as well as the number of conventional public housing units occupied by elderly and persons with disabilities.

Number of conventional units occupied by elderly and persons with disabilities	Maximum funding
1–217 units	$250,000
217–1,155 units	350,000
1,156 or more units	450,000

Applicants should see the General Section of the SuperNOFA for instruction on submitting support letter and other documentation with their electronic application.

d. Tribes/TDHEs should use the number of units occupied by elderly and persons with disabilities counted as Formula Current Assisted Stock for Fiscal Year 2005 as defined in 24 CFR 1000.316. Tribes/TDHEs are eligible for the same amounts as PHAs within each category in (a) above. Tribes that have not previously received funds from the Department under the 1937 Housing Act should count housing units under management that are owned and operated by the Tribe, identified in their housing inventory as of September 30, 2005, and occupied by elderly/disabled residents. Tribes should clearly indicate the number of units under management occupied by elderly/disabled residents in their Fact Sheet.

On page 11918, section III.C.2.c., second column, is corrected to read as follows:

c. *Contract Administrator Partnership Agreement.* All nonprofit applicants, all RAs, and troubled PHAs (troubled as of the application deadline) are required to submit a signed Contract Administrator Partnership Agreement. The agreement must be for the entire grant term. If an applicant that is required to have a Contract Administrator Partnership Agreement submits an incomplete Agreement this will be treated as a technical deficiency. See the General Section for more information on Corrections to Deficient Applications. See the Definitions, and Program Requirements Sections of this NOFA for more information on Contact Administrators. See the General Section for instructions on submitting the information electronically.

Troubled PHAs are not eligible to be contract administrators. Grant writers who assist applicants in preparing their ROSS applications are also ineligible to be contract administrators.

On page 11921, section IV.E.2.b., first column, is corrected to read as follows:

b. *Project Coordinator.* All applicants may propose to hire a qualified Project Coordinator to run the grant program. The ROSS-Elderly/Persons with Disabilities program will fund up to $65,000 in combined annual salary and fringe benefits for a full-time Project Coordinator. Applicants may propose a part-time Project Coordinator at a lesser salary. For audit purposes, applicants must have documentation on file demonstrating that the salary and fringe benefits of the Project Coordinator are comparable to similar professions in their local area.

On page 11921, section IV.E.4., second column, is corrected to read as follows:

4. *Funding Requests in Excess of Maximum Grant Amount.* Applicants that request funding in excess of the maximum grant amount which they are eligible to receive will be given consideration only for the maximum grant for which they are eligible. If awarded a grant, the grantee will work with the Field Office to re-apportion the grant funds for eligible activities proposed in the original application, as long as it does not impact the basis on which points were awarded.

On page 11923, section V.A.1.b.(2), first column, is corrected to read as follows:

(2) *Demonstrated Link Between Proposed Activities and Local Need* (15 points). Applicants' narrative must demonstrate a clear relationship between proposed activities, community needs, and the purpose of the program funding in order for points to be awarded for this factor. Grant awards must be used in two ways: One portion for the salaries and fringe benefits of a Project Coordinator; and one portion for direct delivery of high priority supportive services to the targeted elderly/disabled resident population. The applicant must, in the narrative for this rating factor, describe the service needs of the target residents, show which service needs are already being met by local resources and which service needs the applicant is unable to meet using existing resources, and demonstrate that these services are of a high priority for the targeted elderly/disabled residents and that another funding source is not available, thereby meriting funding under this program. The applicant may also indicate a need for a Project Coordinator, which it may pay up to $65,000 maximum per year from grant funds for salary and fringe benefits in accordance with local wage standards (*see* Funding Restrictions).

On page 11923, section V.A.1.c.(1)(c)(iv), third column, add the following new paragraph:

(iv) Please note that the budget form HUD–424CBW requires that a separate 424–CBW form be submitted for each sub-grant or contract of 10% or more of the requested grant amount. If an applicant proposes to sub-grant or contract 10% or more of the requested grant amount and does not include a separate 424–CBW for each 10% or more sub-grant or contract, all points for Budget Appropriateness/Efficient Use of Grant will be lost. If 424–CBW for sub-grants or contracts for 50% or more of the requested grant amount are not included, the application will lose all points for Rating Factor 3, Soundness of Approach.

2. Resident Opportunity and Self-Sufficiency (ROSS) Family and Homeownership Program, beginning on page 11927:

On page 11928, Overview Information, section G.2., second column, is corrected to read as follows:

2. *Funding Available:* A total of approximately $43 million is available for ROSS in fiscal year 2006. The funding available includes approximately $18 million from this year's appropriations and approximately $25 million from previous unobligated funds.

On page 11928, Overview Information, section G.3., second column, is corrected to read as follows:

3. *Award Amounts:* Awards, depending on the unit count and type

of grantee, will range from $250,000 to $1,000,000. Please see the program description for more specific information about funding amounts.

On page 11928, Overview Information, section G.6., third column entitled, ''Grant term'', is corrected to read as follows:

6. *Grant term.* The grant term for each funding category is three years from the execution of the grant agreement.

Grant program	Total funding	Eligible applicants	Maximum grant amount (units refers to the number of units occupied by elderly/disabled as indicated on ROSS Fact Sheet (HUD–52751))
ROSS Family and Home-ownership.	$43 million	PHAs/Tribes/TDHEs	$250,000 for 1–780 units. $350,000 for 781–2,500 units. $500,000 for 2,501–7,300. $1,000,000 for 7,301 or more units.
		Resident Associations	$125,000
		Non-profit entities	$125,000 per RA; maximum award is $375,000.

On page 11930, section II.A.5., second column into third column, is corrected to read as follows:

5. *Total Funding.* The Department expects to award approximately $43,000,000 under this funding category of ROSS. Awards are to be made as follows:

a. PHAs must use the number of occupied conventional family public housing units as of September 30, 2005, per their budget to determine the maximum grant amount they are eligible for in accordance with the categories listed below. (Use HUD–51751 ROSS Fact Sheet.) Applicants should clearly indicate on the Fact Sheet the number of eligible units under their Annual Contributions Contract.

Number of occupied family conventional units	Maximum funding for PHAs/Tribes/TDHEs
1–780 units	$250,000
781–2,500 units	350,000
2,500–7,301 units	500,000
7,301 or more units	1,000,000

b. The maximum grant award is $125,000 for each RA.

c. Nonprofit organizations that have resident support or the support of tribes or RAs are limited to $125,000 for each RA. A nonprofit organization may submit a single application for no more than three different RAs from the same PHA for a maximum grant award of $375,000. Nonprofit organizations may submit more than one application provided they target residents of distinct PHAs or tribes/TDHEs. The maximum funds that may be awarded to any nonprofit applicant is $375,000 overall. In cases where nonprofit applicants are not able to obtain support from RAs, they must obtain letters of support from PHAs or tribes/TDHEs and they may also submit letters from one or more of the following: Resident Advisory Boards (RABs), local civic organizations, or units of local government. **Note:** All nonprofit applicants that do not include letters of support from RAs must include a letter of support from PHAs or tribes/TDHEs. (Please see Threshold Requirements for more information.) Support letters must indicate the developments to be served by the nonprofit organization.

Funding for nonprofit applicants that do not receive letters of support from RAs will be determined as follows (support letters from PHAs must indicate the developments to be served by the nonprofit organization as well as the number of occupied conventional family public housing in those developments):

Number of conventional units	Maximum funding for non-profits with support letters from PHAs (not RAs)
1–2,500 units	$125,000
2,500–7,300 units	250,000
7,301 or more units	375,000

Applicants should see the General Section for instructions on submitting support letters and other documentation with their electronic application.

d. Tribes/TDHEs should use the number of units counted as Formula Current Assisted Stock for Fiscal Year 2005 as defined in 24 CFR part 1000.316. Tribes/TDHEs are eligible for the same amounts as PHAs within each category in (a) above. Tribes that have not previously received funds from the Department under the U.S. Housing Act of 1937 should count housing units under management that are owned and operated by the Tribe and are identified in their housing inventory as of September 30, 2005, for family units. Tribes should clearly indicate the number of units under management occupied by elderly/disabled residents in their Fact Sheet.

On page 11933, section III.C.2.c., second column, is corrected to read as follows:

c. *Contract Administrator Partnership Agreement.* All nonprofit applicants, all RAs, and troubled PHAs (troubled as of the application publication date) are required to submit a signed Contract Administrator Partnership Agreement. The agreement must be for the entire grant term. If an applicant that is required to have a Contract Administrator Partnership Agreement submits an incomplete Agreement this will be treated as a technical deficiency. See the General Section for more information on Corrections to Deficient Applications. See the Definitions and Program Requirements Sections of this NOFA for more information on Contract Administrators. See the General Section for instructions on submitting the information with your electronic application.

Troubled PHAs are not eligible to be contract administrators. Grant writers who assist applicants in preparing their ROSS applications are also ineligible to be contract administrators.

On page 11936, section IV.E.6, second column, is corrected to read as follows:

6. *Funding Requests in Excess of Maximum Grant Amount.* Applicants that request funding in excess of the maximum grant amount which they are eligible to receive will be given consideration only for the maximum grant for which they are eligible. If awarded a grant, the grantee will work with the Field Office or Area ONAP to re-apportion the grant funds for eligible activities proposed in the original application, as long as it does not impact the basis on which points were awarded.

On page 11938, section V.A.1.c.(1)(c)(iii), second column, add the following new paragraph:

(iii) Please note that the budget form HUD–424CBW requires that a separate 424–CBW form be submitted for each sub-grant or contract of 10% or more of the requested grant amount. If an applicant proposes to sub-grant or contract 10% or more of the requested grant amount and does not include a

separate 424–CBW for each 10% or more sub-grant or contract, all points for Budget Appropriateness/Efficient Use of Grant will be lost. If 424–CBW for sub-grants or contracts for 50% or more of the requested grant amount are not included, the application will lose all points for Rating Factor 3, Soundness of Approach.

3. Public Housing Neighborhood Networks Program, beginning on page 11942:

On page 11943, Overview Information, section F., second column, delete ''June 23, 2006'' and replace with ''July 21, 2006.''

On page 11943, Overview Information, section G.2., second column into third column, is corrected to read as follows:

2. *Funding Available:* The Department plans to award approximately $17,000,000 under the Neighborhood Networks program in Fiscal Year 2006. The funding available includes approximately $7.5 million from this year's appropriations and approximately $9.5 million from previous unobligated funds.

On page 11943, Overview Information, section G.3., third column, is corrected to read as follows:

3. *Award Amounts:* Awards will range from $150,000 to $600,000. Please see the program description for more specific information about funding amounts.

On page 11943, Overview Information, section G.6., entitled, ''Grant term'', third column, is corrected to read as follows:

6. *Grant term.* The grant term is three years from the execution date of the grant agreement.

Grant program	Total funding	Eligible applicants	Maximum grant amount
Neighborhood Networks	$17 million	PHAs—existing centers	$150,000 for 1–780 units. $200,000 for 781–2,500 units. $250,000 for 2,501–7,300 units. $300,000 for 7,301 or more units.
		PHAs—new centers	$300,000 for 1–780 units. $400,000 for 781–2,500 units. $500,000 for 2,501–7,300 units. $600,000 for 7,301 or more units.

On page 11944, Section II.A., Introduction, is corrected to read as follows:

A. Total Funding

The Department expects to award approximately a total of $17,000,000 under the Neighborhood Networks program for Fiscal Year 2006. Awards will be made as follows:

On page 11945, section II.A.2.a., is corrected to read as follows:

a. *Funding Levels for Existing Centers:*

Number of conventional units	Maximum funding
1–780 units	$150,000
780–2,500 units	200,000
2,501–7,300 units	250,000
7,301 or more units	300,000

On page 11945, section II.A.2.b., is corrected to read as follows:

b. *Funding Levels for New Centers:*

Number of conventional units	Maximum funding
1–780 units	$300,000
780–2,500 units	400,000
2,501–7,300 units	500,000
7,301 or more units	600,000

On page 11946, section III.C.2.c., first column, is corrected to read as follows:

c. *Contract Administrator Partnership Agreement.* PHAs that are troubled at the time of application are required to submit a signed Contract Administrator Partnership Agreement. The agreement must be for the entire grant term. Grant awards must have a signed Contract Administrator Partnership Agreement included in the application. If an applicant that is required to have a Contract Administrator Partnership Agreement submits an incomplete Agreement this will be treated as a technical deficiency. See the General Section for more information on Corrections to Deficient Applications.

Troubled PHAs are not eligible to be contract administrators. Grant writers who assist applicants in preparing their Neighborhood Networks applications are also ineligible to be contract administrators. Please see the General Section, Definitions Section, and Program Requirements Section for instructions for more information.

On page 11946, section III.C.4., third column, is corrected to read as follows:

4. Eligible Participants

All program participants must be residents of public housing or residents of other housing assisted with funding made available under the 2006 Appropriations Act or any other Act (*e.g.,* residents receiving tenant-based or project-based voucher assistance, as well as elderly and disabled residents).

On page 11947, section IV.C.1., second column into third column, delete ''June 23, 2006'' and replace with ''July 21, 2006.''

On pages 11947 and 11948, section IV.E.3, third column into first column of the next page, is corrected to read as follows:

3. *Funding Requests in Excess of Maximum Grant Amount.* Applicants that request funding in excess of the maximum grant amount which they are eligible to receive will be given consideration only for the maximum grant for which they are eligible. If awarded a grant, the grantee will work with the Field Office to re-apportion the grant funds for eligible activities proposed in the original application, as long as it does not impact the basis on which points were awarded.

On page 11950, section V.A.1.c.(1)(c)(iii), first column, is corrected to read as follows: (iii) Please note that the budget form HUD–424CBW requires that a separate 424–CBW form be submitted for each sub-grant or contract of 10% or more of the requested grant amount. If an applicant proposes to sub-grant or contract 10% or more of the requested grant amount and does not include a separate 424–CBW for each 10% or more sub-grant or contract, all points for Budget Appropriateness/Efficient Use of Grant will be lost. If 424–CBW for sub-grants or contracts for 50% or more of the requested grant amount are not included, the application will lose all points for Rating Factor 3, Soundness of Approach.

4. *Public and Indian Housing Family Self-Sufficiency Program Coordinators Under Resident Opportunities and Self-Sufficiency (ROSS) Program, beginning at page 11954:*

On page 11955, Overview Information, section F., first column, delete ''June 8, 2006'' and replace with ''June 28, 2006.''

On page 11955, Overview Information, section G.2., first column, is corrected to read as follows:

2. Funding Available

The Department expects to award a total of approximately $13 million in FY2006. The funding available includes approximately $10 million from this year's appropriations and approximately $3 million from previously unobligated funds.

On page 11956, section II.A., second column, the first sentence is corrected to read as follows:

This NOFA announces the availability of approximately $13 million in FY2006 to employ FSS program coordinators for the PH FSS program.

On page 11957, section III.C.2.d., second column, is corrected to read as follows:

d. Troubled PHAs—Contract Administrator Partnership Agreement. PHAs that are troubled at the time of application are required to submit a signed Contact Administrator Partnership Agreement. The agreement must be for the entire grant term. The grant award shall be contingent upon having a signed Partnership Agreement included in the application. If an applicant that is required to have a Contract Administrator Partnership Agreement fails to submit one, this will be treated as a technical deficiency. See the General Section for more information on Corrections to Deficient Applications. The Contract Administrator must ensure that the financial management system and procurement procedures that will be in place during the grant term will fully comply with 24 CFR part 85. Troubled PHAs are not eligible to be contract administrator. Grant writers who assist applicants to prepare their FSS application are ineligible to be Contact Administrators.

Dated: May 19,2006.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 06–4864 Filed 5–22–06; 2:42 pm]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5030–C–1C]

Notice of HUD's Fiscal Year (FY) 2006 Notice of Funding Availability, Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Reopening for Additional Eligible Activity for Hispanic-Serving Institutions Assisting Communities (HSIAC) Program

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD Discretionary Grant Programs; Reopening for Additional Eligible Activity for Hispanic-Serving Institutions Assisting Communities (HSIAC) Program.

SUMMARY: On March 8, 2006, HUD published its Fiscal Year (FY) 2006 SuperNOFA (SuperNOFA), for HUD's Discretionary Grant Programs. This document modifies the HSIAC Program. The notice published today announces that ''Construction, renovation, expansion of an institution's own facilities'' is an eligible activity. As a result, HUD is reopening the competition for available funds. The application deadline date is now June 29, 2006. Applicants who have already submitted applications may submit new and complete applications to reflect this change. These changes do not affect the application package for the HSIAC Program NOFA on Grants.gov.

DATES: The application submission date for the HSIAC Program is June 29, 2006.

FOR FURTHER INFORMATION CONTACT: The HSIAC NOFA identifies the applicable agency contacts for each program. Questions regarding today's Notice should be directed to the agency contacts identified in the program NOFA.

SUPPLEMENTARY INFORMATION: On March 8, 2006 (71 FR 11712), HUD published its Notice of HUD's Fiscal Year (FY) 2006, SuperNOFA for HUD's Discretionary Grant Programs. The FY2006 SuperNOFA announced the availability of approximately $2.2 billion in HUD assistance. This notice published in today's **Federal Register** modifies the HSIAC Program NOFA. HUD had inadvertently included among the ineligible activities an activity that is eligible for funding under this NOFA. Construction, renovation, and expansion of an institution's facilities are eligible activities for funding. In order to provide applicants will adequate time to prepare and complete their application in light of this change, the application submission period has been reopened. The deadline date for applications is now June 29, 2006. Applicants who previously submitted applications may resubmit a new and complete applications in response to the change made today. The remainder of the HSIAC Program NOFA is unchanged. Applicants should refer to the HSIAC Program NOFA published as part of HUD's Fiscal Year (FY) 2006, SuperNOFA for HUD's Discretionary Grant Programs on March 8, 2006 and HUD's Fiscal Year 2006 Notice of Funding Availability Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs on January 20, 2006 (71 FR 3382) for all application requirements and procedures.

Summary of Changes to the HSIAC NOFA

Summaries of the changes made by this document follow. The page number shown in brackets identifies where the individual funding availability announcement that is being modified can be found in the March 8, 2006, SuperNOFA. The notice in today's **Federal Register** will also be reflected in the application instructions located on Grants.gov/Apply. Applicants must read the instruction download located on Grants.gov/Apply prior to submitting their application in order to receive all parts of the application.

Hispanic-Serving Institutions Assisting Communities (HSIAC) Program [11756]

On page 11757, Overview Information, section F., first column, HUD is reopening the competition and establishing an application deadline date of June 29, 2006.

On page 11758, section III.C.a., second column, HUD is modifying the list of eligible activities by adding paragraph (12), which includes construction, renovation, and expansion of an institution's own facilities as eligible activities.

On page 11761, section IV.C., first column, HUD is reopening the competition and establishing an application deadline date of June 29, 2006.

On page 11761, section IV.E.e., first column, HUD is removing, ''e. Construction renovation, expansion of an institution's own facilities'' from the list of ineligible CDBG activities. HUD had inadvertently included these activities as ineligible when in fact they are eligible activities under this NOFA.

Accordingly, in the Notice of HUD's Fiscal Year (FY) 2006, Notice of Funding Availability (NOFA), Policy Requirements to the SuperNOFA for HUD's Discretionary Grant Programs, beginning at 71 FR 11712, in the issue of March 8, 2006, the following changes are made.

1. Hispanic-Serving Institutions Assisting Communities (HSIAC) Program, beginning on page 11756:

On page 11757, Overview Information, section F., delete ''May 22, 2006'' and replace with ''June 29, 2006.''

On page 11758, section III.C.a., second column, add paragraph (12) to read as follows:

(12) Construction, renovation, expansion of an institution's own facilities; and

On page 11761, section IV.C., first column, delete ''May 22, 2006'' and replace with ''June 29, 2006.''

On page 11761, section IV.E.e., first column, delete ''Construction, renovation, expansion of an institution's own facilities.''

Dated: May 19, 2006.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

[FR Doc. 06–4865 Filed 5–22–06; 2:42 pm]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Assessment (EA) for ''Guidelines for Living With Florida Panthers and the Interagency Florida Panther Response Plan'' and Notice of Receipt of an Application for Amendment to an Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability; receipt of application.

SUMMARY: The Florida panther (*Puma concolor coryi*) is one of the rarest large mammals in the United States. The panther is protected as an endangered species under the Endangered Species Act (Act) and Florida statutes. Due to the panther's potential for extinction, conflicts with humans raise issues that require careful consideration and action such that the intent and ability to conserve the species is unaltered while the safety of the public remains paramount. We announce the availability of an Environmental Assessment (EA) that considers alternatives for managing panther-human conflicts. The alternatives are intended to result in nonsignificant impacts to panthers, humans and the environment.

The public is also invited to comment on an application for amendment to a permit to conduct certain activities with endangered and threatened species. This notice is provided under section 10(c) of the Act.

DATES: Written comments on the EA should be sent to the Service's Field or Regional Office (see **ADDRESSES**) and should be received on or before July 24, 2006.

Written comments and/or data must be received on the application for amendment to the Endangered Species Permit at the address given below, by July 24, 2006.

ADDRESSES: Layne Hamilton, Refuge Manager, Florida Panther and Ten Thousand Islands National Wildlife Refuges, 3860 Tollgate Blvd., Suite 300, Naples, Florida 34114, or Southeast Regional Office, Fish and Wildlife Service, 1875 Century Boulevard, Suite 420, Atlanta, Georgia 30345 (Attn: Elizabeth Souheaver). Persons wishing to review the Environmental Assessment may obtain a copy on the Internet at *http://www.fws.gov/verobeach.* They may also obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia (see **ADDRESSES**.) Please reference the Environmental Assessment associated with an interagency-developed management guidelines in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office (see **ADDRESSES**.) If you wish to comment, you may submit comments by any one of several methods. Please reference the Environmental Assessment associated with an interagency-developed management guidelines in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via electronic mail (e-mail) to *pantherresponseplan@fws.gov.* Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed under **FOR FURTHER INFORMATION CONTACT**. Finally, you may hand deliver comments to either Service office listed under **ADDRESSES**. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their names and home address from the administrative record. We will honor such requests to the extent allowed by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

If you wish to comment on the application for amendment to the permit to conduct certain activities with endangered and threatened species, you may submit comments by any one of the following methods. You may mail comments to the Service's Southeast Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia or via electronic mail (e-mail) to *victoria_davis@fws.gov.* Please include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at the telephone number listed below. Finally, you may hand deliver comments to the Service office listed above (see **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Ms. Layne Hamilton, Refuge Manager, Florida Panther and Ten Thousand Islands National Wildlife Refuges, (see **ADDRESSES**), telephone: 239/353–8442 extension 227; or Ms. Elizabeth Souheaver, Area IV Supervisor (see **ADDRESSES**), telephone: 404/679–7163, facsimile: 404/679–4082. Amendment to the Endangered Species Permit contact: Victoria Davis, Endangered Species Biologist (see **ADDRESSES**), telephone 404–679–4176; facsimile 404–679–7081.

SUPPLEMENTARY INFORMATION: Florida panthers occur primarily in southern Florida, and most individuals reside south of Lake Okeechobee. Recovery actions over the past 25 years, particularly genetic augmentation initiated in 1995, enabled the population to grow from 30–50 animals to 80–100 animals in 2005. During this same period, the Florida human

population has grown 223 percent, from about 5 million to over 16 million people. Because of increases in numbers of people and panthers, urban/suburban areas now interface with panther habitat, increasing the possibility of panther-human interactions. Management guidelines are needed to provide more definitive guidance to respond and manage panther and human interactions and to educate the public about appropriate behavior when living and recreating in panther habitat.

Three alternatives were analyzed. Alternative A (Preferred Action) proposes managing panther-human interactions with an interagency response team and an established plan that prioritizes public safety and evaluates each situation by analyzing panther behavior and human activity. Alternative B does not utilize an interagency team or a response plan, but responds to panther-human interactions on a case-by-case basis without established protocols or guidelines. Alternative C includes a response team and plan that differs from Alternative A by providing rigid protocols based on frequency of panther sightings and proximity to human-occupied structures, without considering panther behavior or influences of human activity on panther behavior. In accordance with mandates established under the National Environmental Policy Act, the Fish and Wildlife Service and the National Park Service are required to consider a full range of reasonable alternatives for addressing and responding to major public issues, management concerns, and resource conservation opportunities associated with issues arising from panther-human interactions.

The Service has made a preliminary determination that the preferred management plan is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act. This preliminary information may be revised due to public comments received in response to this notice and is based on information contained in the Environmental Assessment.

The Service will evaluate the comments submitted thereon to determine whether the Environmental Assessment meets the issuance criteria requirements of section 10(a)(1)(B) of the Act (16 U.S.C. 1531 *et seq.*). By conducting an intra-Service section 7 consultation, the Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP would comply with section 7 of the Act. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITPs.

Application for Amendment to an Endangered Species Permit

Applicant: Florida Fish and Wildlife Conservation Commission, TE051553–3

The applicant requests authorization to take (capture, harass, remove) the Florida panther (*Puma* (=*Felis*) *concolor coryi*) while implementing the ''Guidelines for Living with Florida Panthers and the Interagency Florida Panther Response Plan.'' The proposed activities would occur throughout the species' range in Florida.

Public Comments

Authority: This notice is provided pursuant to Section 10 of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Dated: May 19, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E6–8013 Filed 5–24–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTEROR

Bureau of Land Management

[NV–055–5853–EU]

Notice of Realty Action; Modified Competitive Sale of Public Lands in Clark County, NV, N–79694

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell public lands within the City of North Las Vegas in Clark County, Nevada. These lands, consisting of 20.42 acres more or less (10.42 acres considered developable) have been authorized for disposal under the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2343), as amended by the Clark County Conservation of Public Land and Natural Resources Act of 2002 (116 Stat. 1994) (hereinafter ''SNPLMA''). The land will be offered for sale utilizing modified competitive bidding procedures in accordance with the applicable provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1713 and 1719), respectively, its implementing regulations, and in accordance with 43 CFR 2711.3–2, and BLM land sale and mineral conveyance regulations at 43 CFR Parts 2710 and 2720.

DATES: Comments regarding the proposed sale must be received by the BLM on or before July 10, 2006. Comments regarding the environmental assessment (EA) must be received by the BLM on or before July 10, 2006. Sealed bids must be received by July 24, 2006.

ADDRESSES: Comments regarding the proposed sale or EA should be addressed to: Field Manager, Las Vegas Field Office, Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89103.

More detailed information regarding the proposed sale and the land involved may be reviewed during normal business hours (7:30 a.m. to 4:30 p.m.) at the Las Vegas Field Office (LVFO).

FOR FURTHER INFORMATION CONTACT: You may contact Anna Wharton, Supervisory Realty Specialist at (702) 515–5082 or by e-mail at *anna_wharton@nv.blm.gov*. You may also call (702) 515–5000 and ask to have your call directed to a member of the Sales Team.

SUPPLEMENTARY INFORMATION: 43 CFR 2711.3–2(a) states in part that ''public lands may be offered for sale utilizing modified competitive bidding procedures when the authorized officer determines it is necessary to assure equitable distribution of land among purchasers or to recognize equitable considerations or public policies.

(1) Modified competitive bidding includes, but is not limited to:

(i) Offering to designated bidders the right to meet the highest bid. Refusal or failure to meet the highest bid shall constitute a waiver of such bidding provisions; or

(ii) A limitation of persons permitted to bid on a specific tract of land offered for sale; or

(iii) Offering to designated bidders the right of first refusal to purchase the lands at fair market value. Failure to accept an offer to purchase the offered lands within the time specified by the authorized officer shall constitute a waiver of this preference consideration.

(2) Factors that shall be considered in determining when modified competitive bidding procedures shall be used, include but are not limited to: Needs of State and/or local government, adjoining landowners, historical users, and other needs for the tract * * *.''

The City of North Las Vegas (CNLV) has proposed that the 20.42 acre parcel be sold to assist in addressing critical transportation needs adjacent to the Las Vegas Beltway and a major project of public importance on adjoining private land. This small BLM parcel is vital to the CNLV's transportation and public planning efforts. The adjoining

ownership, restricted access, and the substantial impact of the Las Vegas Beltway easement preclude any development opportunities for the subject parcel other than those associated with the major project on the adjacent 120 acres of private land owned by PJ & CB LLC.

As a result of restrictions imposed by the Las Vegas Beltway and the Beltway exit to Losee Road, and transportation planning by the CNLV which prohibits ingress and egress from Lawrence Street, access to the subject parcel is controlled by PJ & CB LLC. However, PJ & CB LLC is willing to enter into appropriate transportation and access agreements with the CNLV to allow access through their adjoining private land as part of development of the major project. The size of the parcel, its isolated nature, substantial encumbrances by the Las Vegas Beltway and Losee Road (and the resulting unusual dimensions of net usable property), as well as the restricted access severely limit uses not associated with the major project.

At the CNLV's request, PJ & CB LLC is willing to purchase the parcel at not less than fair market value subject to modified competitive bidding procedures. The CNLV is concerned that open bidding, without allowing PJ & CB LLC the right to meet the highest bid, would preclude the opportunity to advance the major project in an integrated manner. Speculative bidding would jeopardize the CNLV's ability to work together with PJ & CB LLC and would impact development of the adjacent private land to the economic detriment of the CNLV.

On consideration of the factors described above, which include the transportation and development needs of local government, the ownership and access control by the adjoining land owner, and the absence of identified needs for the tract other than those proposed by the CNLV, the authorized officer has determined that the request by the CNLV meets the criteria in 43 CFR 2711.3–2 and that a modified competitive sale best serves the public interest. The authorized officer has determined that the method of sale will be to offer to the designated bidder the right to meet the highest bid in accordance with 43 CFR 2711.3–2(a)(1)(i), and CFR 2711.3–2(a)(2) as described above. This notice designates PJ & CB LLC as the one bidder with the right to meet the highest bid.

The proposed sale is consistent with the BLM Las Vegas Resource Management Plan and would serve important public objectives which cannot be achieved prudently or feasibly elsewhere. The land contains no other known public values. The subject parcel has not been identified for transfer to the State or any other local government or nonprofit organization. A map and approved appraisal report covering the proposed sale are available for review at the BLM, Las Vegas Field Office, Las Vegas, Nevada (LVFO). Sealed bids must be received by the LVFO, at the address listed above, not later than 60 days after publication of this notice in the **Federal Register**.

Sealed bids must be contained in an envelope marked ''Sealed bid for Parcel N–79694''. All bidders must submit, with their sealed bid, a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management in an amount not less than 10% and not more then 30% of the appraised fair market value (FMV), which has been determined to be $11,775,000. If 2 or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by supplemental sealed biddings. Bids will be opened at the LVFO at the address listed above within 70 days from the publication of this Notice.

Land Proposed for Sale

Mount Diablo Meridian, Nevada

T. 19 S., R. 61 E.,
Sec. 23, Lot 12

A part of Clark County Tax Parcel No. 124–23–501–001

The lands described above contain 20.42 acres; however approximately 10 acres are encumbered with road rights-of-way, so only 10.42 acres may be considered useable.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of the offer to purchase will constitute BLM's acceptance of an application for conveyance of those mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50.00 non-refundable filing fee for conveyance of the available mineral interests.

Terms and Conditions of Sale

The BLM sale parcel will be offered for sale via written sealed bid and is subject to the following:

1. Based upon receipt of valid bids, BLM will offer to PJ & CB LLC the right to meet the highest bid and purchase the lands at an amount equal to the highest bid price, which must be not less than the fair market value as determined by the Secretary. If PJ & CB LLC declines this offer, the bidder with the highest sealed bid price will be declared the high bidder. Upon acceptance by BLM of the offer to purchase, the declared high bidder must submit 20% of the offered bid by cash, personal check, bank draft, money order or any combination of the aforementioned forms of payment made payable to the BLM, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89103. The deposit included with the sealed bid may be applied to the 20% payment at the buyer's discretion. Failure to submit at least 20% of the offered bid within this time frame may result in default and the BLM may retain the deposit submitted with the sealed bid and the sale may be cancelled. Prior to expiration of 180 days from the land sale offer date, the buyer must remit the balance of the accepted full bid price to BLM in the form of a certified check, money order, bank draft, or cashier's check made payable to the order of the Bureau of Land Management. Personal checks will not be accepted. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the entire 20% deposit to be forfeited to the BLM.

2. All discretionary leaseable and saleable mineral deposits are reserved; and permittees, licensees, and lessees retain the right to prospect for, mine, and remove such minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

3. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

4. The sale is subject to valid existing rights. The parcel may be subject to applications received prior to publication of this Notice if processing the application would have no adverse effect on the federally approved Fair Market Value (FMV). Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

5. The parcel is subject to reservations for road, public utilities, and flood control purposes in accordance with the local governing entities' Transportation Plans.

6. No warranty of any kind, express or implied, is given by the United States as

to the title, physical condition, or potential uses of the parcel of land proposed for sale, and the conveyance of this parcel will not be subject to any contingencies not contained in the Terms and Conditions section of this Notice. However, to the extent required by law, this parcel is subject to the requirements of section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act, as amended (CERCLA) (42 U.S.C. 9620(h)).

7. All purchasers/patentees, by accepting a patent, covenant and agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees or their employees, agents, contractors, or lessees, or any third party, in connection with the patentees' use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentees and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, state, and local laws and regulations that are now, or may in the future become, applicable to the real property and/or applicable to the use, occupancy, and or operations therein; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), pollutant(s) or contaminant(s), and/or petroleum product or derivative of a petroleum product, as defined by Federal or state environmental laws, off, on, into or under land, property and other interests of the United States; (5) Activities by which solid waste or hazardous substances or waste and/or hazardous substance(s), pollutant(s) or contaminant(s), and/or petroleum products or derivative of a petroleum product, as defined by Federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and state law. Patentee shall stipulate that it will be solely responsible for compliance with all applicable Federal, state and local environmental and regulatory provisions, throughout the life of the facility, including any closure and/or post-closure requirements that may be imposed with respect to any physical plant and/or facility upon the real property under any Federal, state or local environmental laws or regulatory provisions. This covenant shall be construed as running with the parcels of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction.

8. Maps delineating the individual proposed sale parcel are available for public review at the BLM LVFO along with the appraisal.

9. The BLM may accept or reject any or all offers, or withdraw the parcel of land or interest therein from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws or would not be in the public interest. If not sold, the parcel may be identified for sale at a later date without further legal notice.

10. Federal law requires bidders to be U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property, or an entity including, but not limited to, associations or partnerships capable of holding property or interests therein under the laws of the State of Nevada. Certification of qualification, whether of citizenship or corporate or partnership status, must accompany the bid deposit.

Additional Information

In order to determine the value, through appraisal, of the parcel of land proposed to be sold, certain extraordinary assumptions may have been made of the attributes and limitations of the land and potential effects of local regulations and policies on potential future land uses. Through publication of this NORA, the BLM gives notice that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable local government policies, laws, and regulations that would affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or projected use of nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals will be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Public Comments

The BLM field Manager, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89103 will receive the comments of the general public and interested parties up to 45 days after publication of this Notice in the **Federal Register**. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action in whole or in part. Any comments received during this process, as well as the commentor's name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish to have your name and/or address made available to the public. Any determination by the BLM to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A request from a commentor to have their name and/or address withheld from public release will be honored to the extent permissible by law.

Dated: May 2, 2006.

Sharon DiPinto,

Assistant Field Manager.

[FR Doc. E6–8046 Filed 5–24–06; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, modified, discontinued, or completed since the last publication of this notice on February 23, 2006. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939.

Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Sandra L. Simons, Manager, Contract Services Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2902.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939 and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

The February 23, 2006, notice should be used as a reference point to identify changes. The numbering system in this notice corresponds with the numbering system in the February 23, 2006, notice.

Definitions of Abbreviations Used in This Document

BCP—Boulder Canyon Project
Reclamation—Bureau of Reclamation
CAP—Central Arizona Project
CVP—Central Valley Project
CRSP—Colorado River Storage Project
FR—Federal Register
IDD—Irrigation and Drainage District
ID—Irrigation District
M&I—Municipal and Industrial
*NMIS*C—New Mexico Interstate Stream Commission
O&M—Operation and Maintenance
P–SMBP—Pick-Sloan Missouri Basin Program
PPR—Present Perfected Right
RRA—Reclamation Reform Act of 1982
SOD—Safety of Dams
SRPA—Small Reclamation Projects Act of 1956
WD—Water District

Pacific Northwest Region

Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

New Contract Actions

18. Three irrigation water user entities, Boise Project, Idaho: Amendatory repayment contract with New Union Ditch Company to reduce contract by 500 acre-feet of Lucky Peak storage space and new contracts with Wilderness Ranch Owners' Association for 200 acre-feet and Osprey Subdivision Project Owners' Association for 300 acre-feet of Lucky Peak storage space.

19. Stanfield ID, Umatilla Project, Oregon: Contract for long-term boundary expansion to include lands outside of federally recognized district boundaries.

Modified Contract Actions

15. Twenty-one irrigation districts of the Arrowrock Division, Boise Project, Idaho: Repayment agreements with districts with spaceholder contracts for repayment, per legislation, of reimbursable share of costs to rehabilitate Arrowrock Dam Outlet Gates under the O&M program.

16. Five irrigation water user entities, Boise Project, Idaho: Long-term renewal and/or conversion of five irrigation water service contracts for supplemental irrigation use of up to 7,518 acre-feet of storage space in Lucky Peak Reservoir, a Corps of Engineers' project on the Boise River, Idaho.

Mid-Pacific Region

Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New Contract Actions

40. City of Tracy, Sacramento Municipal Utility District, Santa Clara Valley WD, and San Benito County Water Agency; all CVP; California: Amend existing water service contracts to conform to current Reclamation law.

41. San Luis WD and Marvin Meyers/Meyers Farm, San Luis/Delta Division, CVP, California: Negotiation of a long-term exchange contract.

Lower Colorado Region

Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8081.

New Contract Actions

36. Chacha AZ, LLC, BCP, Arizona: Contract for 2,100 acre-feet per year of fourth-priority Arizona water for agricultural purposes.

37. Cibola Valley IDD, BCP, Arizona: Assign 60 acre-feet per year of the district's entitlement to Arizona fourth-priority water to Cibola Resources, LLC, for agricultural purposes.

38. All-American Canal, BCP, California: Agreement among Reclamation, the Department of the Interior, the Imperial ID, and the San Diego County Water Authority for construction of the All-American Canal Lining Project pursuant to Title II of Pub. L. 100–675.

39. City of Yuma, BCP, Arizona: Supplemental and amendatory contract to provide for additional point of delivery for a new pump station to be constructed on the Gila Gravity Main Canal, with initial intake capacity of 20 million gallons per day, building up to 40 million gallons per day at full design.

40. The Metropolitan WD of Southern California, BCP, California: Contract to implement a demonstration program to create intentionally created surplus through extraordinary conservation in 2006 and 2007 and store this water in Lake Mead.

Completed Contract Actions

4. Beattie Farms SW, BCP, Arizona: Contract for 1,110 acre-feet per year of fourth priority water for agricultural purposes. Contract executed February 17, 2006.

20. City of Somerton, BCP, Arizona: Contract for the annual delivery of up to 750 acre-feet of Colorado River water per year for domestic use as recommended by the Arizona Department of Water Resources. Contract executed February 8, 2006.

38. All-American Canal, BCP, California: Agreement among Reclamation, the Department of the Interior, the Imperial ID, and the San Diego County Water Authority for construction of the All-American Canal Lining Project pursuant to Title II of Pub. L. 100–675. Contract executed January 13, 2006.

Discontinued Contract Action

12. Canyon Forest Village II Corporation, BCP, Arizona: Colorado River water delivery contract for up to 400 acre-feet per year of unused Arizona apportionment or surplus apportionment for domestic use.

Upper Colorado Region

Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

New Contract Actions

1.(f) GW Spore Family Minor Subdivision, Aspinall Storage Unit, CRSP: GW Spore has requested a 40-year water service contract for 1 acre-foot of water out of Blue Mesa Reservoir. They have submitted their augmentation plan to Water District 4, case No. 05 CW 220.

1.(g) Arlo Cox, Aspinall Storage Unit, CRSP: Mr. Cox has requested a 40-year water service contract for 1 acre-foot of water out of Blue Mesa Reservoir. He has submitted his augmentation plan to Water District 4, case number pending.

31. Jensen Unit, Central Utah Project, Utah: The Uintah Water Conservancy District has requested a contract with provision to prepay at a discounted rate, for the remaining 3,300 acre-feet of unmarketed project M&I water.

32. Emery County Project, Utah: The Huntington Cleveland Irrigation Company has requested a contract for carriage of up to 6,754 acre-feet of nonproject water; utilizing Huntington North Reservoir as a regulating feature associated with their Salinity Control Project.

Modified Contract Actions

22. Public Service Company of New Mexico, Reclamation, and the U.S. Fish and Wildlife Service; San Juan River Basin Recovery Implementation Program: The agreement identifies that Reclamation may provide cost-share funding for the recovery monitoring and research, and O&M of the constructed fish passage at the Public Service Company's site pursuant to Public Law 106–392, dated October 30, 2000, 114 Stat. 1062.

30. Navajo Nation, San Juan River Dineh Water Users, Reclamation, and the U.S. Fish and Wildlife Service; San Juan River Basin Recovery Implementation Program: The agreement identifies that Reclamation may provide cost-share funding for the recovery monitoring and research, and O&M of the constructed fish passage at the Hogback Diversion Dam pursuant to Public Law 106–392, dated October 30, 2000, 114 Stat. 1602.

Completed Contract Actions

1.(c) Joseph Foran, Aspinall Storage Unit, CRSP: Mr. Foran has requested a 40-year water service contract for 25 acre-feet of water out of Blue Mesa Reservoir. Mr. Foran has submitted an augmentation plan to Water District 4, case number pending. Contract was executed February 17, 2006

1.(d) Farnsworth Construction and Gravel Company, Aspinall Storage Unit, CRSP: The Company has requested a 40-year water service contract for 1 acre-foot of water out of Blue Mesa Reservoir. The Company has submitted an augmentation plan to Water District 4, Case No. 04–CW–204. Contract was executed February 17, 2006.

1.(e) Double Tree Ranch East, LLC, Aspinall Storage Unit, CRSP: Double Tree has requested a 40-year water service contract for 1 acre-foot of water out of Blue Mesa Reservoir. Double Tree has submitted an augmentation plan to Water District 4, case number pending. Contract was executed January 23, 2006.

29. North Fork Water Conservancy District and Ragged Mountain Water Users Association, Paonia Project, Colorado: The district and the association have requested a contract for supplemental water from the Paonia Project. Their existing contract expired on December 31, 2005. This contract will include irrigation and municipal uses. Contract was executed January 23, 2006, for irrigation water use only.

Great Plains Region

Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7752.

New Contract Actions

43. Frenchman Cambridge ID; Meeker-Driftwood, Red Willow, and Cambridge Units; Frenchman Division, P–SMBP; Cambridge, Nebraska: Legislation is pending for equalization of the construction obligation payments over the remaining years of the water supply repayment obligation period, and to delay the increase in the reserve fund payments.

44. Kansas-Bostwick ID No. 2; Courtland Unit, Bostwick Division, P–SMBP; Courtland, Kansas: Legislation is pending for equalization of the construction obligation payments over the remaining years of the water supply repayment obligation period, and to delay the increase in the reserve fund payments.

45. Bostwick ID; Superior-Courtland and Franklin Units, Bostwick Division, P–SMBP; Red Cloud, Nebraska: Legislation is pending for equalization of the construction obligation payments over the remaining years of the water supply repayment obligation period, and to delay the increase in the reserve fund payments.

46. Webster ID; Webster Unit, Solomon Division, P–SMBP; Gaylord, Kansas: Legislation is pending for equalization of the construction obligation payments over the remaining years of the water supply repayment obligation period, and to delay the increase in the reserve fund payments.

Modified Contract Actions

19. Clark Canyon Water Supply Company, East Bench Unit, P–SMBP, Montana: Negotiating renewal of contract No. 14–06–600–3592 which was amended to expire March 31, 2006. Current contract may be amended again to extend the term not to exceed an additional 2 years pursuant to Section 208 of the 2005 Consolidated Appropriations Act if necessary and agreed to by both parties.

20. East Bench ID, East Bench Unit, P–SMBP, Montana: Negotiating renewal of contract No. 14–06–600–3593 which was amended to expire March 31, 2006. Current contract may be amended again to extend the term not to exceed an additional 2 years pursuant to Section 208 of the 2005 Consolidated Appropriations Act if necessary and agreed to by both parties.

27. Hill County WD, Milk River Project, Montana: Drafting contracts for renewal of municipal water supply contract No. 14–06–600–8954 which expires August 1, 2006. The proposal includes splitting the contract between Hill County WD and North Havre County WD which both receive their full water supply under the current contract.

Dated: March 28, 2006.

Roseann Gonzales,

Director, Office of Program and Policy Services.

[FR Doc. E6–8005 Filed 5–24–06; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on May 4, 2006, a proposed Consent Decree in *United States* v. *Browning-Ferris, Inc., et al.,* Civil Action No. 06–1134, was lodged with the United States District Court for the District of Maryland.

The proposed consent decree in *United States* v. *Browning-Ferris, Inc., et al.,* resolves the claims of the United States and Maryland under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, at the Kane and Lombard Site, located in Baltimore, Maryland (the ''Site''). This consent decree obligates four defendants to perform the remedy that EPA selected for the second operable unit at the Site. Also included in the decree are fourteen parties that are contributing financially to the clean-up through payments to the defendants, but who will not be performing the work nor directly reimbursing the Federal or state past response costs. EPA estimates that the work to be performed pursuant to this consent decree will be approximately $7,345,000.

The Department of Justice will receive comments relating to this Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, attention: Nancy Flickinger, and should refer to *United States* v. *Browning-Ferris, Inc., et al.,* Civil Action No. 06–1134, and DOJ # 90–11–2–299/1.

The Consent Decree may be examined at the Office of the United States Attorney for the District of Maryland, 36 S. Charles Street, Baltimore, MD 21201, and at U.S. EPA Region III's Office, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site, *http//www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of 25 cents per page reproduction cost for a full copy of the consent decree, payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–4832 Filed 5–24–06; 8:45am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Resource Conservation and Recovery Act

Notice is hereby given that on May 11, 2006, a proposed Consent Decree (''CD'') in *United States, et al.,* v. *FMB—First Michigan Bank, or its successor, as Trustee of the Mary A. Windolph Trust*, Civil Action No. 1:88–cv–00097 was lodged with the United States District Court for the Western District of Michigan, Southern Division.

In this action, the United States sought on behalf of the United States Environmental Protection Agency the imposition of civil penalties and permanent injunctive relief at the KHI, Inc. facility in Holland, Michigan, formerly known as Kent-Holland Die Casting & Plating, Inc. (the ''KHI Facility'') owned by the Mary A. Windolph Trust, pursuant to Section 3008 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6928. The CD resolves claims that the Mary A. Windolph Trust, as current owner of the KHI Facility, failed to comply with RCRA permitting requirements for hazardous waste treatment, storage, and disposal facilities. The CD builds upon a March 17, 1988 Stipulation in which the Defendant, FMB—First Michigan Bank, or its successor, as Trustee for the Mary A. Windolph Trust, agreed to perform the closure and post-closure activities at the KHI Facility. The Defendant has completed closure requirements. Under the CD, the Defendant must continue to comply with on-going post-closure plans, pay a civil penalty of $10,000, and place a minimum of $113,000 and a maximum of $350,000 in an environmental escrow to fund its remaining obligations. Additionally, the Defendant agrees to continue to provide EPA with access to the KHI Facility during the post-closure work. Further, upon payment of the civil penalty, the United States convenants not to sue the Defendant pursuant to 40 CFR Part 265 Subpart G and Sections 3008 and 7003 of RCRA, 42 U.S.C. 6928 and 6973, and Part 111 of the Michigan's Natural Resources and Environmental Protection Act (''NREPA'') for closure and corrective action related obligations at the KHI Facility, and Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and Part 201 of NREPA with respect to Existing Contamination at the KHI Facility. Additionally, this CD includes a prospective purchaser agreement, attached to the CD as Appendix C, entitled ''Agreement and Covenant Not to Sue.'' The United States convenants

not to sue the prospective purchaser of the KHI facility, ADW, L.L.C., pursuant to Sections 3008 and 7003 of RCRA, 42 U.S.C. 6928 and 6973, Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and Parts 111 and 201 of NREPA with respect to Existing Contamination at the KHI Facility.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the CD. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.,* v. *FMB—First Michigan Bank, or its successor, as Trustee of the Mary A. Windolph Trust*, D.J. Ref. 90–7–1–433. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The CD may be examined at the Office of the United States Attorney, Western District of Michigan, Southern Division, 330 Ionia Ave., NW., Suite 501, Grand Rapids, Michigan 49501–0208. During this public comment period, the CD may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the CD may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $26.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 06–4834 Filed 5–24–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under the policy set out at 28 CFR 50.7, notice is hereby given that on May 8, 2006, the United States lodged with the United States District Court for the Eastern District of Virginia a proposed amended consent decree (''Amended Consent Decree'') in the case of *United States, et al.* v. *Mirant Potomac River, LLC, et al.,* Civ. A. No. 1:04CV1136.

The Amended Consent Decree settles claims by the United States, the State of Maryland and the Commonwealth of Virginia, pursuant to section 113(a) and (b) of the Clean Air Act, 42 U.S.C. 7413(a) and (b), against Mirant Potomac River, LLC and Mirant Mid-Atlantic, LLC (''Mirant'') regarding its Potomac River Generating Station—a coal-fired utility plant in Alexandria, Virginia. A complaint filed with the original decree, lodged with the same Federal court in September 2004, alleged that Mirant violated the ozone season limitation for nitrogen oxide (''NO_X'') emissions set forth in the 2003 operating permit for the Potomac River plan.

The Amended Consent Decree retains the key elements of the original decree. Mirant agrees to a declining schedule of system-wide limits on the NO_X emissions from its four plants located in the mid-Atlantic region: The Chalk Point Generating Plant in Prince George's County, Maryland; the Dickerson Generating Plant in Montgomery County, Maryland; the Morgantown Generating Plant in Charles County, Maryland; and the Potomac River plant. To achieve these reductions and meet the declining NO_X caps, Mirant agrees to install and operate NO_X pollution control equipment, including two Selective Catalytic Reduction devices, at its Morgantown plant, and Separated Over-Fire Air technology at its Potomac River plant. Mirant also agrees to pay a $500,000 civil penalty, to be divided equally between Virginia and the United States, and to undertake nine projects designed to reduce particulate matter and fugitive dust emissions from its Potomac River plant.

The Amended Consent Decree modifies the original consent decree in several respects, as a result of public comments received on the original decree. First, under the Amended Consent Decree, Mirant agrees to meet annual NO_X tonnage limitations for the Potomac River plant in addition to the tonnage limitations that apply only during the ozone season. Second, the Amended Consent Decree addresses the possibility that at some future point Mirant could reject, sever or otherwise lose its ownership interest in, and thereby cease to operate, the Morgantown and/or Dickerson plants. If such a contingency occurs, Mirant agrees to seek a new owner or operator of those plants to become subject to the terms of the decree and, failing that, to install an alternate suite of pollution control technologies on the two plants remaining in the Mirant system, i.e., the Chalk Point and Potomac River plants.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Amended Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.* v. *Mirant Potomac River, LLC, et al.,* DOJ Ref. No. 90–5–2–1–07829.

The Amended Consent Decree may be examined at the offices of the United States Attorney, Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, VA 22314, and at the offices of U.S. EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103.

During the public comment period, the Amended Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Amended Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of 25 dollars (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–4835 Filed 5–24–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act

Under 28 CFR 50.7, notice is hereby given that on May 11, 2006, a proposed Consent Decree in *United States of America* v. *Rohm and Haas Texas Inc.*, 4:06–cv–01622, was lodged with the United States District Court for the Southern District of Texas.

The United States alleges that Rohm and Haas Texas Inc. (''Rohm and Haas'') violated Clean Water Act Section 301, 33 U.S.C. 1311, by discharging pollutants in excess of permit effluent limits; violated Clean Air Act Section

112(d), 42 U.S.C. 7412(d), by failing to comply with the requirements of the national emission standards for hazardous air pollutants (''NESHAPS'') 40 CFR Part 63; and violated the Resource Conservation and Recovery Act Section 3008(a) and (g), 42 U.S.C. 6928(a) and (g), by failing to comply with the provisions of the federally approved Texas hazardous waste management program. The alleged violations occurred at a chemical manufacturing complex owned and operated by Rohm and Haas located in Deer Park, Texas (''the facility''). The United States sought injunctive relief and civil penalties to address these violations.

Under the proposed Consent Decree, Rohm and Haas will pay a civil penalty of $485,000 and implement a supplemental environmental project (''SEP'') which will cost at least $670,000. The SEP involves the purchase of at least 300 acres of coastal wetlands and associated upland prairie in the Texas Galveston Bay Watershed and the transfer of that property to a non-profit for conservation. The proposed Consent Decree also requires monitoring of CWA compliance. If Rohm and Haas violates the effluent limits in its permit, the Consent Decree requires the company to take action to prevent future violations.

The United States Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *Rohm and Haas Texas Inc.,* D.J. Ref. No. 90–5–1–1–06926.

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. If requesting from the Consent Decree Library a copy of the Consent Decree, please enclose a check in the amount of $22.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–4831 Filed 5–24–06; 8:45am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree

Notice is hereby given that a proposed Consent Decree in *Washington, et al.* v. *United States of America,* Civil Action No. 06–05225–RJB (W.D. Wash.), was lodged with the United States District Court for the Western District of Washington on May 8, 2006.

The proposed Consent Decree concerns a complaint filed by the State of Washington, the Puyallup Tribe of Indians and the Muckleshoot Indian Tribe against the United States pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601, *et seq.,* and the Model Toxics Control Act, Wash. Rev. Code 70.105D, for natural resource damages in Commencement Bay, Washington, resulting from releases of hazardous substances. Under the Consent Decree, the United States will pay $13,536,760.33 in natural resource damages and assessment costs in return for dismissal of all claims.

The Department of Justice will receive written comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: James L. Nicoll, U.S. Department of Justice, NOAA GC–DOJ DARC, 7600 Sand Point Way NE., Seattle, WA 98115, and should refer to *Washington* v. *United States,* DJ Reference No. 90–11–6–16908.

The proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/open.html.* It may also be examined at the Clerk's Office, United States District Court, 1717 Pacific Avenue Tacoma, WA 98402.

Russell M. Young,

Assistant Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 06–4830 Filed 5–24–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on May 5, 2006, a proposed Consent Decree in *United States of America* v. *Weyerhaeuser Company,* Civil Action No. 4:06–cv–61, was lodged with the United States District Court for the Western District of Kentucky.

The United States alleges that Weyerhaeuser (1) violated the particulate matter (PM) emission limit in the applicable air permit at a boiler and the wood dryer system at its Hawesville, Kentucky pulp and paper mill (''the Hawesville Mill'') and (2) violated the Recycling and Emissions Reduction regulations, 40 CFR Part 82, Subpart F (§§ 82.150 to 82.166), at its Hawseville Mill, its pulp and paper mill in Bennettsville, South Carolina, and its pulp and paper mill in Kingsport, Tennessee. The United States sought injunctive relief and civil penalties to address the clean Air Act violations.

Under the Consent Decree, Weyerhaeuser will pay a civil penalty of $142,000 and be prohibited from the use of any fuel other than natural gas in Hog Fuel Boiler No. 2 at the Hawesville Mill. This prohibition will remain in effect until Kentucky issues a new permit which prohibits the use of any fuel other than natural gas.

The United States Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *Weyerhaeuser Company,* D.J. Ref. No. 90–5ndash;2–1–2186/3.

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd./open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. If requesting from the consent Decree Library a copy of the Consent Decree, please enclose a check in the amount of

$7.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–4833 Filed 5–24–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 2, 2006, Applied Science Labs., Division of Alltech Associates Inc., 2701 Carolean Industrial Drive, State College, Pennsylvania 16801, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedules I.

The company plans to manufacture metabolites of Delta–9–THC to be used as chromatographic standards. These compounds fall under drug code 7370 (Tetrahydrocannabinols)

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than July 24, 2006.

Dated: May 17, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–7986 Filed 5–24–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated January 11, 2006, and published in the **Federal Register** on January 23, 2006, (71 FR 3545), Clariant LSM (Missouri), Inc., 2460 W. Bennett Street (or P.O. Box 1246, Zip: 65801), Springfield, Missouri 65807–1229, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Phenylacetone (8501), and Methadone Intermediate (9254), basic classes of controlled substances listed in Schedules II:

The company plans to manufacture in bulk, for sale to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Clariant LSM (Missouri) to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Clariant LSM (Missouri) to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: May 17, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–7980 Filed 5–24–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated January 11, 2006 and published in the **Federal Register** on January 23, 2006, (71 FR 3545), Clinical Trial Services (US), 2661 Audubon Road, Audubon, Pennsylvania 19403, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Fentanyl (9801) and Oxycodone (9143), basic classes of controlled substances listed in Schedule II.

The company plans to import small quantities of the listed controlled substances in dosage form to conduct clinical trials.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. Sections 823(a) and 952(a) and determined that the registration of Clinical Trial Services (US) to import the basic class of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Clinical Trial Services (US) to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. Sections 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substances listed.

Dated: May 18, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–7981 Filed 5–24–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated February 16, 2006 and published in the **Federal Register** on February 24, 2006, (71 FR 9606), JFC Technologies, LLC., 100 West Main Street, P.O. Box 669, Bound Brook, New Jersey 08805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Meperidine intermediate-B (9233), a basic class of controlled substance listed in Schedule II.

The company plans to import the basic class of controlled substance for the production of controlled substances for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of JFC Technologies, LLC to import the basic class of controlled substances is

consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated JFC Technologies, LLC to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substances listed.

Dated: May 17, 2006.

Joseph T. Ranazzissi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–7976 Filed 5–24–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 22, 2006, Lilly Del Caribe, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaguez, Puerto Rico 00680, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Dextropropoxyphen (9273), a basic class of controlled substance listed in Schedule II.

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal RegisterRepresentative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than July 24, 2006.

Dated: May 17, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–7977 Filed 5–24–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on December 9, 2005, Mallinckrodt Inc., 3600 North Second Street, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in Schedule II:

Drug	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Opium, raw (9600)	II
Poppy Straw (9650)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances for the manufacture of controlled substances in bulk for distribution to its customers.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than June 26, 2006.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in Schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: May 17, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–7978 Filed 5–24–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 8, 2005, and published in the **Federal Register** on December 19, 2005, (70 FR 242), Norac, Inc., 405 S. Motor Avenue, P.O. Box 577, Azusa, California 91702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of THC Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedules I.

The company plans to manufacture the listed controlled substance in bulk for formulation into the pharmaceutical controlled substance Marinol®.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Norac, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Norac, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's

physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: May 17, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–7982 Filed 5–24–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 24, 2006, Stepan Company, Natural Products Dept., 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedule I and II:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customer.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than July 24, 2006.

Dated: May 17, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–7989 Filed 5–24–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Kevin Dean Brockbank, M.D.; Revocation of Registration

On October 14, 2004, the Deputy Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause and Immediate Suspension of Registration to Kevin Dean Brockbank, M.D. (Dr. Brockbank) of Lakeside, Arizona. Dr. Brockbank was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AB2053027, as a practitioner, and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f) and 824(a)(4) on the basis that his continued registration would be inconsistent with the public interest. Dr. Brockbank was further notified that pursuant to 21 U.S.C. 824(d), his DEA registration was being immediately suspended as an imminent danger to the public health and safety.

The Order to Show Cause and Immediate Suspension of Registration alleged, in sum, that Dr. Brockbank was issuing prescriptions for large amounts of controlled substances to individuals without physical examinations, testing or evaluations consistent with a legitimate doctor-patient relationship. These prescriptions, which included OxyContin and hydrocodone, were not issued for legitimate medical purposes or in the usual course of professional treatment, thus violating 21 CFR 1306.04 and 21 U.S.C. 841(a). It was also alleged that over a six month period in 2004, on six occasions Dr. Brockbank issued prescriptions under such circumstances to local law enforcement officers posing undercover as patients.

The Order to Show Cause and Immediate Suspension of Registration alleged that over a 13 month period, Dr. Brockbank prescribed an estimated 690,000 dosage units of controlled substances to patients and that local pharmacies were refusing to fill or drastically reducing the ordered amounts of medication he was prescribing. As a result, individuals were traveling long distances to fill their prescriptions at out-of-area pharmacies. It was also alleged that one individual died of an accidental overdose of Schedule II controlled substances, which had been excessively prescribed by Dr. Brockbank to a friend of the victim and obtained by the decedent while visiting. Finally, it was alleged Dr. Brockbank had sexually assaulted a female patient during a home visit after administering her a Schedule II controlled substance.

According to the investigative file, the Order to Show Cause and Immediate Suspension of Registration was personally served on Dr. Brockbank by a DEA Diversion Investigator on October 26, 2004. More than thirty days have passed since service of the Order to Show Cause and Immediate Suspension of Registration and DEA has not received a request for hearing or any other reply from Dr. Brockbank or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause and Immediate Suspension of Registration to Dr. Brockbank, and (2) no request for hearing having been received, concludes that Dr. Brockbank is deemed to have waived his hearing right. See *David W. Linder,* 67 FR 12,579 (2002). After considering material from the investigation file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Brockbank is currently registered with DEA as a practitioner under DEA Certificate of Registration AB2053027. According to information in the investigative file, on October 18, 2004, Dr. Brockbank entered into a Consent Agreement for Surrender of Active License (Consent Agreement) with the Arizona Medical Board. In that Consent Agreement Dr. Brockbank admitted prescribing narcotic medications to two female patients without obtaining and recording detailed patient and family histories, performing minimum physical examinations or informing the individuals of the risks and benefits of taking the controlled medications. These actions were found to be outside the standard of care for a physician licensed to practice in Arizona. Dr. Brockbank also admitted making ''house calls'' to two female patients, where he injected them with controlled substances and then made sexual comments and advances toward them.

The Arizona Board concluded Dr. Brockbank had engaged in unprofessional conduct under state law

and directed him to immediately surrender his license to practice medicine. There is no evidence before the Deputy Administrator that the Consent Agreement has been modified, lifted or stayed or that Dr. Brockbank's Arizona medical license has been renewed or reinstated.

Pursuant to 21 U.S.C. 824(a)(3), the Deputy Administrator may revoke a DEA Certificate of Registration if she finds the registrant has had his state license revoked and is no longer authorized to dispense controlled substances in the jurisdiction of registration. Alternatively, revocation is authorized if the registrant has committed such acts as would render his registration contrary to the public interest, as determined by factors listed in 21 U.S.C. 823(f). See *Thomas B. Pelkowski,* D.D.S., 57 FR 28,538 (1992).

Nevertheless, despite Dr. Brockbank's egregious prescribing activities, his grossly inappropriate conduct with female patients and the public interest factors that are implemented by such unprofessional and unlawful conduct, his lack of state authorization to handle controlled substances is dispositive of this matter.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Rory Patrick Doyle, M.D.,* 69 FR 11,655 (2004); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (1993); *Bobby Watts, M.D.,* 53 FR 11,919 (1988).

Here, it is clear Dr. Brockbank surrendered his medical license and it is reasonable to infer that he is currently not authorized to handle controlled substances in Arizona and is therefore not entitled to a DEA registration in that state. As a result of the finding that Dr. Brockbank lacks any state authorization to handle controlled substances, the Deputy Administrator concludes it is unnecessary to address further whether his DEA registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause and Immediate Suspension of Registration. *See* Gilbert C. Aragon, Jr., D.O., 69 FR 58,536 (2004); Samuel Silas Jackson, D.D.S., 67 FR 65,145 (2002); Nathaniel-Aikens-Afful, M.D., 62 FR 16,871 (1997); Sam F. Moore, D.V.M., 58 FR 14,428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AB2053027, issued to Kevin Dean Brockbank, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective June 26, 2006.

Dated: May 5, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 06–4837 Filed 5–24–06; 8:45am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 03–26]

H & R Corporation; Denial of Application

On April 7, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to H & R Corporation (Respondent H & R) proposing to deny its application for a DEA Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged in substance that granting Respondent's application to distribute list I chemicals to what DEA has identified as the ''gray market,'' would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(h) and 824(a).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Atlanta, Georgia on October 28, 2003. At the hearing, both parties called witnesses to testify and introduced documentary evidence. Subsequently, both parties filed Proposed Findings of Fact, Conclusions of Law, and Argument.

On December 3, 2004, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (Opinion and Recommended Ruling), recommending that Respondent's application for a Certificate of Registration as a distributor of listed chemical products be denied. Neither party filed exceptions to the Opinion and Recommended Ruling and on January 11, 2005, judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Ruling of the Administrative Law Judge. Her adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or any failure to mention a matter of fact or law.

In April 2002, Respondent, a Tennessee corporation owned by members of the Patel family, submitted an application for DEA Certificate of Registration as a distributor of list I chemicals, seeking authority to distribute pseudoephedrine, ephedrine and phenylpropanolamine. Mr. Ramu Patel (Mr. Patel) owns 50 per cent of the business and the remainder is owned by R. Patel's uncle, Hasmukh Patel (H. Patel) and his brothers, Mahendra and Kantibhai Patel. Mr. Patel and H. Patel are Respondent's only employees.

H & R also does business under the name ''Tri-State Wholesale,'' a name used previously used by Elk International, Inc. (Elk International) when that company was operating out of the Chattanooga-area premises where H & R is now located. On May 1, 2001, Elk International filed an application for DEA registration as a distributor of list I chemicals. An Order to Show Cause was issued proposing to deny Elk International's application and H & R subsequently purchased the right to use the name ''Tri-State Wholesale'' from the company, along with its customer list. The Elk International matter was administratively closed as it was no longer in business at the location and H & R ultimately then submitted its application for registration, which is the subject of these proceedings.

H & R is a wholesale supplier of tobacco products, hair products and paper supplies to tobacco and convenience stores and what Mr. Patel referred to as ''mom and pop'' stores. Mr. Panel testified that he and his uncle previously owned retail tobacco stores/outlets in Dalton and Chickamauga, Georgia and his store had sold Mini-Thins and ephedrine products, along with tobacco products and other sundries.

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals which are legitimately manufactured and

distributed in single entity and combination forms as decongestants and bronchodilators, respectively. Both are used as precursor chemicals in the illicit manufacture of methamphetamine and amphetamine.

Phenylpropanolamine, also a list I chemical, is a legitimately manufactured and distributed product used to provide relief of the symptoms resulting from inflammation of the sinus, nasal and upper respiratory tract tissues and for weight control. Phenylpropanolamine is also used as a precursor in the illicit manufacture of methamphetamine and amphetamine. *See,* Gazaly Trading, 69 FR 22561 (2004). In November 2000, the United States Food and Drug Administration issued a public health advisory requesting drug companies to discontinue marketing products containing phenylpropanolamine, due to risk of hemorrhagic stroke. As a result, many pharmaceutical companies have stopped using phenylpropanolamine as an active ingredient.

As testified to by government witnesses and as addressed in previous DEA final orders, methamphetamine is an extremely potent central nervous system stimulant and its abuse is a persistent and growing problem in the United States. *See e.g.,* Direct Wholesale, 69 FR 11654 (2004); Branex, Inc., 69 FR 8682 (2004); Yemen Wholesale Tobacco and Candy Supply, Inc., 67 FR 9997 (2002); Denver Wholesale, 67 FR 99986 (2002).

A Special Agent from DEA's Chattanooga, Tennessee, Resident Office testified regarding the rapid proliferation of clandestine methamphetamine laboratories in Tennessee and its adjoining states and described prevalent methods of local production. He also described the multiple health hazards and social costs stemming from the production and abuse of methamphetamine in Southeastern Tennessee. In sum, he deemed it ''more than a legal issue; it is a terrible social issue.''

As recognized in recent published final orders, Tennessee has led the DEA Atlanta Region in the number of clandestine laboratories seized. *See* Prachi Enterprises, Inc., 69 FR 69407 (2004); CWK Enterprises, Inc., 69 FR 69400 (2004). Further, the Chattanooga/Eastern Tennessee area, where H & R seeks to distribute chemicals, has a ''substantial'' methamphetamine abuse problem and it has been recognized that local ''[d]istributors or retailers serving the illicit methamphetamine trade observe no borders and trade across state lines.'' Id., 69 FR at 69401.

The Special Agent estimated that 80 to 90 percent of ephedrine and pseudoephedrine used by area methamphetamine manufacturers was obtained from convenience stores. More often than not, the ephedrine and pseudoephedrine products were ''off name'' brands, with Max Brand the most prevalent encountered at illicit laboratories. He also sees products at these sites with brand names such as Mini-Thins, Mini-Tabs, Pseudo-60's and Z-60's and the preferred pseudoephedrine is of 60 mg. strength.

The Special Agent testified that convenience stores are readily able to purchase ephedrine and pseudoephedrine and may use several distributors simultaneously for these products. Further, persons seeking to buy ephedrine and pseudoephedrine from convenience stores for illicit manufacturing typically go to many stores and buy small quantities from each, or recruit four or five people, who each purchase chemicals from a single store. Often store personnel allow the same individual to complete multiple purchases in a short period of time and some convenience stores even cater to manufacturers, selling other products used in the manufacturing process such as coffee filters, antifreeze, and Heet fuel which, for certain customers were even packaged in manufacturing ''kits.''

Diversion Investigators testified that, in general, persons purchasing pseudoephedrine and ephedrine for legitimate therapeutic purposes bought their products, packaged in blister packs and in smaller dosage units and strengths, at traditional drug stores, grocery stores and large discount stores.

By written declaration, a DEA Diversion Investigator contrasted the ''traditional'' market for list I chemicals with what DEA has termed the ''gray market'' for these products. The traditional market, characterized by a short distribution chain from manufacturer to distributor to retailer, typically includes large chain grocery stores, chain pharmacies, large convenience stores and large discount stores. The gray market is characterized by additional layers of distribution and includes such non-traditional retailers as small convenience stores, gas stations and other retail establishments where customers do not usually purchase over-the-counter medications. These non-traditional retailers typically sell higher-strength products in large package sizes, such as 100 or 120 count bottles of 60 mg. pseudoephedrine. The Diversion Investigator also identified the brand names found at clandestine laboratory seizures in disproportionate numbers. They included Max Brand, Mini Two Way, MiniThin and Action-Pseudo.

A Group Supervisor from DEA's Nashville office testified that, in his view, the demand for pseudoephedrine and ephedrine for legitimate medical purposes did not justify the supply and much of these chemicals were being diverted at the convenience store level.

By declaration, the Government introduced evidence regarding ephedrine and pseudoephedrine sales and the convenience store market from Mr. Jonathan Robbin, a consultant in marketing information systems and databases, who is an expert in statistical analysis and quantitative marketing research.

Using the 1997 United States Economic Census of Retail Trade, Mr. Robbin tabulated data indicating that over 97% of all sales of non-prescription drug products, including non-prescription cough, cold and nasal congestion remedies, occur in drug stores and pharmacies, supermarkets, large discount merchandisers, mail-order houses and through electronic shopping. He characterized these five retail industries as the traditional marketplace where such goods are purchased by ordinary customers.

Analyzing national sales data specific to over-the-counter, non-prescription drugs containing pseudoephedrine, Mr. Robbin's research and analysis showed that a very small percentage of the sales of such goods occur in convenience stores—only about 2.6% of the HABC [Health and Beauty Care] category of merchandise or 0.05% of total in-store (non-gasoline) sales. He determined that the normal expected retail sales of pseudoephedrine tablets in a convenience store would range between $10.00 and $30.00 per month, with an average monthly sales figure of about $20.00 and the sales of more than $100.00 in a month would be expected to occur in a random sampling about once in one million to the tenth power, a number he characterized as nearly equivalent to the number of atoms in the universe. He further stated that the current convenience store gross margin in the health and beauty care category is about 40 percent, so that such a store could be expected to spend an average of $12.00 per month acquiring its inventory of pseudoephedrine products from a distributor.

In October 2002, a pre-registration inspection was performed at H & R's facility by a DEA Diversion Investigator. Mr. Patel advised the Diversion Investigator that H & R had purchased its customer list from Elk International and its customers were mainly convenience stores and gasoline stations

located within 30 miles of Chattanooga. He identified several listed products H & R intended to sell which are normally sold in the traditional market. Of concern, he also advised the Diversion Investigator that the company would carry whatever products its customers wanted to buy. At the hearing, Mr. Patel then testified that customers had brought him samples of products they wanted and specifically asked for Max Brand Pseudo 60s. However, he had not yet identified a supplier for that product.

Max Brand Pseudo 60s has been identified by DEA as ''the precursor product predominantly encountered and seized at clandestine methamphetamine laboratories'' and convenience stores are the ''primary source'' for the purchase of ''Max Brand products, which are the preferred brand for use by illicit methamphetamine producers * * *.'' Express Wholesale, 69 FR 62086, 62087 (2004); *see also* RAM, Inc. d/b/a/ American Wholesale Distribution Corp., 70 FR 11693 (2005).

The Diversion Investigator found Respondent's physical security adequate and its monitoring, storage and recordkeeping systems an improvement over Elk International's systems.

At the time of the hearing, Mr. Patel testified H & R then had about 385 customers. He also provided a list of 459 businesses, not all of whom were actual customers. At least 27 of these customers were located in cities some distance from Chattanooga, including Knoxville and Nashville, Tennessee; Atlanta, Summerville, Americus, Griffin, Rome, Tucker and Lakeland, Georgia; Huntsville, Chickasaw, Decatur and Mobile, Alabama; Myrtle Beach and Greenville, South Carolina; Gainsville, Florida; Kansas City, Missouri; and Woodstock, Illinois.

While Mr. Patel testified H & R would not sell listed chemicals to customers in Mobile, Woodstock and Gainesville, he did not specify whether he would sell to the customers at other distant locations on the list. He further testified H & R delivered to local customers but others, including those from nashville and Atlanta, would have to come to the Chattanooga facility to pick up orders.

A DEA Special Agent testified he recognized at least ten names on Respondent's customer list as being under investigation by DEA, state or local law enforcement agencies for involvement in distribution of ephedrine or other chemicals associated with methamphetamine manufacturing. A Supervisory Investigator testified that Respondent's customer list also included distributors who were already registered to sell list I chemicals.

Mr. Patel testified he would not sell over-threshold quantities of list I chemicals to customers, but he could not say how much he would sell. He estimated that in addition to other products, he expected an average convenience store to order one or two dozen bottles of Mini Thins per month, which would probably retail at $6.99 per bottle.

H. Patel did not testify, but submitted a post-hearing affidavit in which he stated that if Respondent's application were granted, they were willing to ''work with DEA to limit the amount of ephedrine and single ingredient pseudoephedrine products we sell'' and would not sell to customers being investigated by DEA. He also stated that H & R's customers requested that it carry listed chemicals, as they wanted to make their purchases from one distributor. H. Patel admitted having no experience selling listed chemicals at the wholesale level and did not know how much of these products H & R's customers might buy.

Mr. Patel testified that neither he nor his uncle had criminal records and the Government offered no evidence to the contrary.

Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for a Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest, as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or combination of factors, and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g.*, Direct Wholesale, 69 FR 11654 (2004); Energy Outlet, 64 FR 14269 (1999); Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

As to factor one, maintenance by the applicant of effective controls against diversion, the Deputy Administrator agrees with Judge Bittner that H & R's proposed physical security and recordkeeping arrangements were adequate. Judge Bittner also found that Respondent did not disput the Government's evidence that convenience stores are a major source of diversion of list I chemicals.

Judge Bittner phrased the key issue in factor one as whether Respondent would sell listed chemicals to retailers who were likely to divert them. In concluding this factor weighed against registration, Judge Bittner took particular note that Mr. Patel's estimates of anticipated sales were several times larger than what Mr. Robbin's research indicated a convenience store would legitimately sell.

Additionally, at least ten customers on Respondent's list were under investigation for involvement in the distribution of chemicals associated with illicit methamphetamine manufacturing. Red flags were further raised by Mr. Patel's failure to specifically testify whether he would refuse to sell listed chemicals to customers located substantial distances from H & R's Chattanooga facility.

The Deputy Administrator is particularly concerned with Mr. Patel's willingness to sell ''whatever'' products his customers wanted. Coupled with the specific requests from its gray market customers that the company carry Max Brand Pseudo 60's, the preferred precursor of illicit manufacturers, the risk of diversion should the application be approved, is apparent. *See*, RAM, Inc. d/b/a American Wholesale Distribution Corp., *supra*, 70 FR 11693, 11694.

Judge Bittner acknowledged applicability of a previously published DEA final order in which registration was denied an applicant who, much like Respondent, was seeking registration to distribute list I chemicals in the gray market. In that case, Xtreme Enterprises, Inc., 67 FR 76195 (2002), there was no evidence the applicant's owner had failed to comply with Federal, State or local law or that she had any prior convictions relating to controlled substances or chemicals. Further, she was willing to provide adequate security for the listed chemicals.

However, the Deputy Administrator found the applicant's owner had only a rudimentary knowledge of what would constitute a suspicious order and no experience in the manufacture or distribution of listed chemicals. Most

significant, for purposes of this and similar cases, the Deputy Administrator also found that ''[v]irtually all of the Respondent's customers, consisting of gas station and convenience stores, are considered part of the grey market, in which large amounts of listed chemicals are diverted to the illicit manufacture of amphetamine and methamphetamine.'' Xtreme Enterprises, Inc., *supra,* 67 FR at 76197.

Citing Xtreme Enterprises, Judge Bittner concluded that factor one (maintenance of controls against diversion), weighed against granting H & R's application. The Deputy Administrator agrees, noting DEA has applied this analysis in numerous final orders published after Xtreme Enterprises was decided. *See, e.g.*, Express Wholesale, *supra*, 69 FR 62086; Value Wholesale, 69 FR 58548 (2004); K & Z Enterprises, Inc., 69 FR 51475 (2004); William E. ''Bill'' Smith d/b/a B & B Wholesale, 69 FR 22559 (2004); Branex Incorporated, *supra*, 69 FR 8682: Shop It for Profit, 69 1,311 (2003); Shani Distributors, 68 FR 62324 (2003).

Judge Bittner found Respondent had complied with applicable Federal, State and local laws and its owners have not been convicted of any crimes relating to controlled substances or listed chemicals. Thus, she concluded that factors two and three weigh in favor of registration. Based on the record that was before the Administrative Law Judge, the Deputy Administrator agrees. However, as discussed in depth under factor five, after the Opinion and Recommended Ruling was issued, state legislation was enacted making it illegal to sell tableted pseudoephedrine products in Tennessee, outside of licensed pharmacies. Thus, to the extent that Respondent's Tennessee gray market customer base is no longer authorized to sell those products under state law, factor two is adversely impacted and weighs against registration.

With regard to factor four, the applicant's past experience in distributing listed chemicals, Judge Bittner found that while Mr. Patel had previously sold listed chemical products in his retail tobacco outlet, neither of H & R's owners/employees had experience selling listed chemicals at the wholesale level. Judge Bittner therefore found this factor weighed in favor of a finding that H & R's registration would be inconsistent with the public interest. The Deputy Administrator agrees with that conclusion.

With regard to factor five, other factors relevant to public health and safety, Judge Bittner was ''not persuaded that Respondent will limit its sales of listed chemicals to the quantities that convenience stores are likely to sell to legitimate customers.'' She thus found this factor also weighed against registration. The Deputy Administrator concurs.

Unlawful methamphetamine production and use is a growing public health and safety concern throughout the United States and specificially in the localities where Respondent intends to do business. Pseudoephedrine and ephedrine are the precursor products used to manufacture methamphetamine and area laboratory operators predominantly acquire their precursor chemicals from the customer base Respondent seeks to serve. While the Patels indicated some intent to avoid contributing to this scourge, the risk of diversion once listed chemicals enter the gray market is real, substantial and compelling.

The Deputy Administrator concludes Judge Bittner correctly applied DEA precedent. As in Xtreme Enterprise, *supra,* the Respondent's owners' lack of criminal records, their previous compliance with the law and any professed willingness to comply with regulations and guard against diversion, are far outweighed by the intent to sell ephedrine and pseudoephedrine, almost exclusively, in the gray market.

This reasoning has been consistently applied by the Deputy Administrator in a series of recently published final orders denying registration to potential gray market distributors. *See,* RAM, Inc. d/b/a American Wholesale Distribution Corp., *supra,* 70 FR 11693; Al-Alousi, Inc., 70 FR 3561 (2005); Volusia Wholesale, *supra,* 69 FR 69409; Prachi Enterprises, Inc., *supra,* 69 FR 69407; CWK Enterprises, Inc., 69 FR 69400 (2004); J & S Distributors, 69 FR 62089 (2004); Express Wholesale, *supra,* 69 FR 62086; Absolute Distributing, Inc., 69 FR 62078 (2004); Value Wholesale, *supra,* 69 FR 58548 (2004); John E. McRae d/b/a J & H Wholesale, 69 FR 51480 (2004).

While not addressed in the Opinion and Recommended Ruling, the Deputy Administrator notes that state legislatures throughout the United States are actively considering legislation designed to impede the ready availability of precursor chemicals. Many of these proposals are similar to legislation enacted by the State of Oklahoma, titled the ''Oklahoma Methamphetamine Reduction Act of 2004.'' Under that measure, as of April 6, 2004, pseudoephedrine tablets were designated as Schedule V controlled substances and may be sold only from licensed pharmacies within that state.

As a result, it is prohibited in Oklahoma to sell these products from gray market establishments, such as independent convenience stores, which have contributed so much to the scourge of methamphetamine abuse. *See, e.g.,* Express Wholesale, *supra,* 69 FR at 62809 [denying DEA registration to an Oklahoma gray market distributor, in part, because of new state restrictions].

A review of data for 2004 reveals the Oklahoma law has resulted in an apparent reduction in the number of seizures involving clandestine methamphetamine laboratories in that state. These developments are encouraging and represent an important step in the ongoing battle to curb methamphetamine abuse in the United States. State legislation, such as Oklahoma's, reflects a positive trend and growing recognition that the diversion of precursor chemicals through the gray market insidiously impacts public health and safety. *See, e.g.,* Tysa Management, d/b/a Osmani Lucky Wholesale, 70 FR 12732, 12734 (2005) [denying registration to intended Oklahoma distributor, in part, on basis of enactment of recent state legislation]; Express Wholesale, *supra,* 69 FR at 62089.

Of particular consequence to H & R and similarly situated Tennessee applicants and registrants, after Judge Bittner signed her Opinion and Recommended Ruling, legislation was enacted by the State of Tennessee that is patterned after the Oklahoma initiative. That legislation (Senate Bill 2318/House Bill 2334), collectively known as the ''Meth-Free Tennessee Act of 2005,'' was signed into law by Governor Phil Bredeson on March 31, 2005, and makes it unlawful for establishments, other than licensed pharmacies, to sell tableted pseudoephedrine products in Tennessee after April 1, 2005. This includes both name brand and off-name brand products.

Accordingly, Respondent's entire intended Tennessee customer base is now prohibited by state law from selling the pseudoephedrine products H & R seeks DEA registration to distribute. This adversely implicates factors five and two and weighs heavily against registration. *See,* Tysa Management, d/b/a Osmani Lucky Wholesale, *supra,* 70 FR at 12734; Express Wholesale, *supra,* 69 FR at 62089.

Factor five is also relevant to H & R's proposal to distribute chemicals to customers under criminal investigation. The conduct of a potential customer has previously been deemed a relevant consideration under factor five. *See,*

Gazaly Trading, *supra,* 69 FR 22561; Shani Distributors, *supra,* 68 FR 62326.

Finally, it is noted that Respondent seeks to distribute phenylpropanolamine. Accordingly, the Deputy Administrator finds factor five relevant to H & R's request to distribute phenylpropanolamine and the apparent lack of safety associated with the use of that product. DEA has previously determined that an applicant's request to distribute phenylpropanolamine constitutes a ground under factor five for denial of an application for registration. *See,* J & S Distributors, *supra,* 69 FR 62089; Gazaly Trading, *supra,* 69 FR 22561; William E. ''Bill'' Smith d/b/a B & B Wholesale, *supra,* 69 FR 22559; Shani Distributors, *supra,* 68 FR 62324.

Based on the foregoing, the Deputy Administrator concludes that granting Respondent's pending application would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and CFR 0.100(b) and 0.104, hereby orders that the pending application for a DEA Certificate of Registration, previously submitted by H & R Corporation, be, and it hereby is, denied. This order is effective June 26, 2006.

Dated: May 5, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 06–4838 Filed 5–24–06; 8:45am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Sidney S. Loxley, M.D.; Revocation of Registration

On January 25, 2005, the Deputy Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause and Immediate Suspension of Registration to Sidney S. Loxley, M.D. (Dr. Loxley) of Chesapeake, Virginia. Dr. Loxley was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AL6366428, as a practitioner, and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f) and 824(a)(4) on the basis that his continued registration would be inconsistent with the public interest. Dr. Loxley was further notified that pursuant to 21 U.S.C. 824(d), his DEA registration was being immediately suspended as an imminent danger to the public health and safety.

The Order to Show Cause and Immediate Suspension of Registration alleged that Dr. Loxley had been the subject of two prior disciplinary proceedings before the Virginia Board of Medicine (Virginia Board). In June 1993, his medical license had been suspended for 16 months as a result of his abusing the patient-doctor relationship by engaging in a sexual relationship with a minor and for a related misdemeanor conviction of contributing to the delinquency of a minor. His state license was reinstated in October 1994 but in a subsequent disciplinary proceeding occurring in October 2003, it was placed on probation for a period of not less than three years. At that time the Virginia Board found, along with several controlled substance recordkeeping violations reflecting gross incompetence, that Dr. Loxley had improperly prescribed controlled substances to his wife, who was not his patient and was chemically dependent. As a condition of his probation, Dr. Loxley was directed to complete a Board approved course in the proper prescribing of controlled substances.

The Order to Show Cause and Immediate Suspension of Registration alleged, in sum, that Dr. Loxley had been issuing prescriptions for large amounts of controlled substances to individuals without the physical examinations, testing or evaluations which are consistent with a legitimate doctor-patient relationship. These prescriptions were not issued for legitimate medical purposes or in the usual course of professional treatment, thus violating 21 CFR 1306.04 and 21 U.S.C. 841(a). It was further alleged that between September 2003 and May 2004, on ten separate occasions Dr. Loxley issued prescriptions under these circumstances to a DEA Special Agent and a confidential source who had been posing undercover as patients. Profiles obtained from area pharmacies covering the period between August and December 2004 indicated he was continuously prescribing large quantities of controlled narcotic substances, primarily oxycodone and hydrocodone, in 120 tablet quantities to patients without apparent legitimate medical reasons and supplier records shows that Dr. Loxley was the largest orderer of Demerol (meperidine), among all orthopedic surgeons in the Virginia Tidewater area.

Finally, it was alleged that four patients of Dr. Loxley had died while under his care as a result of possible excessive prescribing, that he prescribed controlled substances while under the influence of alcohol and had recently been convicted of driving while intoxicated in state court.

According to the investigative file, the Order to Show Cause and Immediate Suspension of Registration was personally served on Dr. Loxley by a DEA Diversion Investigator on January 27, 2005. More than thirty days have passed since service of the Order to Show Cause and Immediate Suspension of Registration and DEA has not received a request for hearing or any other reply from Dr. Loxley or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause and Immediate Suspension of Registration to Dr. Loxley, and (2) not request for hearing having been received, concludes that Dr. Loxley is deemed to have waived his hearing right. See David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds the Dr. Loxley is currently registered with DEA as a practitioner under DEA Certificate of Registration AL 6366424. According to information in the investigative file, on January 20, 2005, and indictment was unsealed by order of the United States District court, Eastern District of Virginia (Norfolk), charging Dr. Loxley with 91 felony counts relating to the unlawful distribution and dispensing of controlled substances without a legitimate medical purpose under 21 U.S.C. 841(a)(1) and (b)(1)C). The indictment includes four counts alleging that a death had resulted from Dr. Loxley's unlawful distribution and dispensing. On the date the indictment was unsealed, Dr. Loxley was arrested and he remains in custody pending trial in the matter of *USA* v. *Sidney Loxley* (Case No. 2:04–cr–00236–WDK–JEB–ALL).

On February 25, 2005, the Virginia Board notified Dr. Loxley that an informal conference had been scheduled to address allegations of multiple violations of state laws and regulations governing the practice of medicine and surgery and an allegation that he was unfit for the performance of his professional obligations and duties and unable to practice medicine with reasonable skill and safety. In response, Dr. Loxley advised the Virginia Board that he was currently unable to address

the allegations because of the pending criminal charges and was willing to surrender his license, pending resolution of that matter.

On May 20, 2005, after the investigative file was received by the Deputy Administrator, Dr. Loxley entered into a Consent Agreement with the Virginia Board in which he agreed to surrender his state medical license, pending the outcome of the criminal case. In the event he is acquitted of all charges, his license will be reinstated. However, if he is convicted of any misdemeanor or felony counts, it is to remain surrendered until further order of the Virginia Board. Upon entry of the Consent Agreement, Dr. Loxley's medical license was recorded as being surrendered and no longer current.

There is no evidence before the Deputy Administrator that the Consent Agreement has been modified, lifted or stayed or that Dr. Loxley's Virginia medical license has been reinstated or renewed.

Pursuant to 21 U.S.C. 824(a)(3), the Deputy Administrator may revoke a DEA Certificate of Registration if she finds the registrant has had state license revoked and is no longer authorized to dispense controlled substances in the jurisdiction of registration. Alternatively, revocation is authorized if the registrant has committed such acts as would render his registration contrary to the public interest, as determined by factors listed in 21 U.S.C. 823(f). See Thomas B. Pelkowski, D.D.S., 57 FR 28538 (1992).

Despite Dr. Loxley's egregious and unlawful activities and the public interest factors that are implemented by such unprofessional and criminal conduct, his lack of state authorization to handle controlled substances is dispositive of this matter.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Rory Patrick Doyle, M.D., 69 FR 11655 (2004); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear Dr. Loxley surrendered his medical license and it is reasonable to infer that he is currently not authorized to handle controlled substances in Virginia and is therefore not entitled to a DEA registration in that state. As a result of the finding that Dr. Loxley lacks any state authorization to handle controlled substances, the Deputy Administrator concludes it is unnecessary to address further whether his DEA registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause and Immediate Suspension of Registration. See Gilbert C. Aragon, Jr., D.O., 69 FR 58536 (2004); Samuel Silas Jackson, D.D.S., 67 FR 65145 (2002); Nathaniel-Aikens-Afful, M.D., 62 FR 16871 (1997); Sam F. Moore. D.V.M., 58 FR 14428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AL6366428, issued to Sidney S. Loxley, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective June 26, 2006.

Dated: July 6, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 06–4839 Filed 5–24–06; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Worth S. Wilkinson, M.D.; Revocation of Registration

On March 1, 2005, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Worth S. Wilkinson, M.D. (Dr. Wilkinson) of Shreveport, Louisiana, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certification of Registration BW2217974 under 21 U.S.C. 824(a)(3) and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f). As a basis for revocation, the Order to Show Cause alleged that Dr. Wilkinson is not currently authorized to practice medicine or handle controlled substances in Louisiana, his state of registration and practice. The Order to Show Cause also notified Dr. Wilkinson that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Wilkinson at his registered address at 729 Wichita Street, Shreveport, Louisiana 71101 and to his residence at 700 Delaware, Shreveport, Louisiana 71101. According to the return receipt the Order to Show Cause sent to his home was received by Dr. Wilkinson on March 9, 2005. DEA has not received a request for hearing or any other reply from Dr. Wilkinson or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that thirty days having passed since the delivery of the Order to Show Cause to the registrant and no request for hearing having been received, concludes that Dr. Wilkinson is deemed to have waived his hearing right. See Thomas J. Mulhearn, III, M.D., 70 FR 24625 (2005); James E. Thomas, M.D., 70 FR 3564 (2005); Steven A. Barnes, M.D., 69 FR 51474 (2004); David W. Linder, 67 FR 12579 (2002).

After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds Dr. Wilkinson currently possesses DEA Certificate of Registration BW2217974, as a practitioner authorized to handle controlled substances in Schedules IV–V. The Deputy Administrator further finds that on October 29, 2004, the Louisiana State Board of Medical Examiners (Louisiana Board) issued an Opinion and Ruling suspending Dr. Wilkinson's license to practice medicine in Louisiana.

That suspension was based upon the Louisiana Board's conclusion that Dr. Wilkinson was in need of further testing and evaluation for alcohol abuse and his apparent physical and mental inability to practice medicine with reasonable skill and safety to his patients.

The investigative file contains no evidence that the Louisiana Board's Opinion and Ruling has been stayed, modified or terminated or that Dr. Wilkinson's medical license has been reinstated. Therefore, the Deputy Administrator finds Dr. Wilkinson is not currently authorized to practice medicine in the State of Louisiana. As a result, it is reasonable to infer he is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Stephen J. Graham, M.D., 69 FR 11661 (2004); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts,

M.D., 53 FR 11919 (1988). Revocation is also appropriate when a state license has been suspended, but with possibility of future reinstatement. See Alton E. Ingram, Jr., M.D., 69 FR 22562 (2004); Anne Lazar Thorn, M.D., 62 FR 847 (1997).

Here, it is clear Dr. Wilkinson's medical license has been suspended and he is not currently licensed to handle controlled substances in Louisiana, where he is registered with DEA. Therefore, he is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BW2217974, issued to Worth S. Wilkinson, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modifications of such registration be, and they hereby are, denied. This order is effective June 26, 2006.

Dated: July 6, 2005.

Michael M. Leonhart,

Deputy Administrator.

Editorial note: This document was received at the Office of the Federal Register May 19, 2006.

[FR Doc. 06–4840 Filed 5–24–06; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Bureau of Justice Assistance Application Form: Public Safety Officer's Medal of Valor

The Department of Justice (DOJ), Office of Justice Programs (OJP), 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. Comments are encouraged and will be accepted for ''sixty days'' until July 24, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Maria A. Pressley at 202–353–8643, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

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:* Bureau of Justice Assistance Application Form: Public Safety Officers Medcal of Valor.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None.

(4) *Affected public who will be asked or required to respond, as well as a brief Abstract: Primary:* State, local and tribal government agencies within the United States and its territories.

Abstract: The Bureau of Justice Assistance, a component of the Office of Justice Program, Department of Justice, administers the Public Safety Officer's Medal of Valor. Once a year, the President of the United States of America may award, and present in the name of Congress, a Medal of Valor of appropriate design, with ribbons and appurtenances, to a public safety officer who is cited by the Attorney General, upon the recommendation of the Medal of Valor Review Board, for extraordinary valor above and beyond the call of duty. The Public Safety Officer Medal of Valor is the highest national award given to a public safety officer in recognition of their bravery and altruistic acts of valor to protect and save the lives of others. Nomination(s) for this award is voluntary.

Nominations are received through the Internet, or postal mail.

The Medal of Valor program is governed by F1.R.802, the ''Public Safety Officer Medal of Valor Act of 2001.''

(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 the 182 applicants under the Medal of Valor approximately 25 minutes to complete the application form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden to complete the certification form is 75.83 hours.

If additional information is required contact: Lynn Bryant, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 22, 2006.

Lynn Bryant,

Department Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. 06–4866 Filed 5–24–06; 8:45am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Existing Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Extension of a Currently Approved Collection; National Corrections Reporting Program.

This notice is published to correct an error in the notice that was published on May 19, 2006. It was incorrectly stated Bureau of Alcohol, Tobacco, Firearms and Explosives, it should have stated Office of Justice Programs.

The Department of Justice (DOJ), Office of Justice Programs (OJP) 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** in Volume 71, Number 12, page 3119–3120 on January 19, 2006, allowing for a 60 day comment period.

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:* National Corrections Reporting Program. The collection includes the forms: Prisoner Admission Report, Prisoner Release Report, Parole Release Report, Prisoner in Custody at Year-end.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form number(s): NCRP–1A, NCRP–1B, NCRP–1C, and NCRP–1D. Corrections Statistics Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The National Corrections Reporting Program (NCRP) is the only national data collection furnishing annual individual-level information for State prisoners admitted or released during the year, those in custody at year-end, and persons discharged from parole supervision. The NCRP collects data on sentencing, time served in prison and on parole, offense, admission/release type, and demographic information. BJS, the Congress, researchers, and criminal justice practitioners use these data to describe annual movements of adult offenders through State correctional systems. Providers of the data are personnel in the State Departments of Corrections and Parole.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* BJS anticipates 42 respondents for report year 2006 with a total annual burden of 2,298 hours. Magnetic media or other electronic formats are expected from 40 respondents and 2 respondents are expected to report manually. The respondents who have an automated data system will require an estimated 24 hours of time to supply the information for their annual caseload and an additional 2 hours documenting or explaining the data. The estimate of respondent burden for these States includes time required for modifying computer programs, preparing input data, and documenting the tape format and record layout.

The estimated average amount of time required to manually complete the NCRP–1B, and NCRP–1C questionnaires are 10 minutes, 5 minutes, and 3 minutes per inmate, respectively. The respondent burden is directly related to the number of cases reported. For 2000, the two manually reporting States submitted about 2,600 completed questionnaires for the NCRP–1A; about 2,400 for the NCRP–1B; and about 400 for the NCRP–1C. The estimated total burden for these respondents who submitted data manually was 654 hours. We expect no additional manual reporters in the future; and we expect an insignificant amount of increase in the number of prison admissions, prison releases and parole exits in the three States that currently report manually.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,298 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530 (phone: 202–514–4304).

Dated: May 22, 2006.

Lynn Bryant,

Department Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. 06–4867 Filed 5–24–06; 8:45am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Combating Exploitative Child Labor Through Education in Egypt, Peru and Tanzania

AGENCY: Bureau of International Labor Affairs, Department of Labor.

Announcement Type: New. Notice of Availability of Funds and Solicitation for Cooperative Agreement Applications.

Funding Opportunity Number: SGA 06–06.

Catalog of Federal Domestic Assistance (CFDA) Number: Not applicable.

Key Dates: Deadline for Submission of Application is July 24, 2006.

Executive Summary: The U.S. Department of Labor, Bureau of International Labor Affairs, will award up to USD 15 million through three or more Cooperative Agreements to an organization or organizations to improve access to and quality of education programs as a means to combat exploitative child labor in Egypt (up to USD 5 million), Peru (up to USD 5 million) and Tanzania (up to USD 5 million). Projects funded under this solicitation will provide educational and training opportunities to children and/or youth under the age of 18, as a means of removing and/or preventing them from engaging in exploitative work or the worst forms of child labor, and will ensure their retention in and completion of the education or training program(s) in which they are enrolled. The activities funded will complement and expand upon existing projects and programs aimed at eliminating the worst forms of child labor and improving basic education in the target countries. Applications must respond to the entire Scope of Work outlined in this solicitation for each country for which an application is submitted.

I. Funding Opportunity Description

The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be awarded by Cooperative Agreement to one or more

qualifying organizations for the purpose of withdrawing and preventing children from entering into exploitative child labor by (a) expanding access to and improving the quality of basic education; (b) strengthening the capacity of government and civil society to address child labor and education; and (c) collecting data on this target population.

Entities applying under this solicitation must develop and implement strategies consistent with the overall purpose of USDOL's Child Labor Education Initiative as described below. ILAB is authorized to award and administer this program by the Consolidated Appropriations Act of 2006 (Pub. L. 109–149), see Conference Report (H. Rept. 109–337). Cooperative Agreements awarded under this initiative will be managed by ILAB's International Child Labor Program (ICLP). The duration of the projects funded by this solicitation is three to four years. The start date of program activities will be negotiated upon award of the Cooperative Agreement, but will be no later than September 30, 2006.

Part 1 of this section provides an overview of USDOL's support of the global elimination of exploitative child labor. Part 2 provides USDOL definitions of key terminology. Part 3 provides an overview of the barriers to education for working children. Part 4 describes the scope of work of the awards themselves, and Part 5 provides an overview of country-specific information and cross-cutting themes to be incorporated in the project design.

1. Background: USDOL Support for the Global Elimination of Exploitative Child Labor

The International Labor Organization (ILO) estimated that 211 million children ages 5 to 14 were working around the world in 2000. Full-time child workers are generally unable to attend school, and part-time child laborers balance economic survival with schooling from an early age, often to the detriment of their education. Since 1995, USDOL has provided approximately USD 477 million in technical assistance funding to combat exploitative child labor in more than 70 countries around the world.

Programs funded by USDOL range from targeted action programs in specific sectors of work to more comprehensive efforts that target the worst forms of child labor as defined by ILO Convention 182. From FY 2001 to FY 2006, the U.S. Congress has appropriated over USD 205 million to USDOL for a Child Labor Education Initiative (EI) to fund programs aimed at nurturing the development, health, safety and enhanced future employability of children around the world by increasing access to quality, basic education for working children and those at risk of entering work, in areas with a high incidence of abusive and exploitative child labor.

In addition to withdrawing and preventing children and/or youth from exploitative child labor through direct education and training opportunities, the EI has four goals:

i. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;

ii. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;

iii. Strengthen national institutions and policies on education and child labor; and

iv. Ensure the long-term sustainability of these efforts.

2. Definitions

Exploitative child labor refers to the worst forms of child labor outlined in ILO Convention 182 and all types of work that prevent a child from obtaining an education or impede a child's ability to learn as outlined in ILO Convention 138. (See Appendix B for a visual presentation of the categories of exploitative child labor).

ILO Convention 182, Article 3, defines the worst forms of child labor as comprised of:

(a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;

(b) The use, procuring or offering of a child for prostitution, the production of pornography or for pornographic performances;

(c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

ILO Convention 138, Minimum Age Convention, Article 7.1(b) is also used to identify exploitative child labor. Article 7.1(b) states that children within a particular age range shall not participate in work that will ''prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.''

Unconditional worst forms of child labor refers to the worst forms of child labor that fall under Article 3(a)–(c) of ILO Convention 182. For USDOL's Child Labor Education Initiative, children involved in the unconditional worst forms of child labor must no longer be working in an unconditional worst form of child labor to be considered as withdrawn from exploitative work. That is, no improvements in the working conditions of children involved in slavery or slavery-like practices, prostitution or pornography, or illicit activities will create an acceptable environment for children to work, even for one hour.

Hazardous child labor refers to work that falls under Article 3(d) of ILO Convention 182. Applicants are encouraged to consult Recommendation 190 accompanying Convention 182 for additional guidance on identifying hazardous work.

In some cases, the work conditions of children involved in hazardous work may be improved so as to make the work conditions acceptable for children. This may include, for example, reducing hours of work or changing the type of work children perform (*i.e.*, disallowing children in agriculture from working with heavy machinery or pesticide applications). However, conditions can be improved to make work acceptable only for children who may legally work according to the specific laws of the implementing country. If, for example, a nine-year-old child is working in hazardous child labor in a country whose minimum age is 15 years, this child should be completely withdrawn from child labor, since conditions cannot be improved to make it legally acceptable for the child to work.

USDOL defines children withdrawn and prevented as follows:

Children withdrawn from exploitative work refers to those children who were found to be working in exploitative child labor and no longer work under such conditions as a result of a direct project intervention. This category includes: (a) Children who have been completely withdrawn from work, which is required by ILO Convention 182 for unconditional worst forms of child labor, and (b) children who were involved in hazardous work (Article 3(d) of Convention 182) or work that impedes a child's education (ILO Convention 138) but are no longer working under hazardous conditions or impeded from schooling due to improved working conditions (*i.e.*,

fewer hours or safer workplaces) or because they have moved into a new, acceptable form of work. To be considered as withdrawn from exploitative child labor each child must also have benefited or be benefiting from a direct educational service (as defined below) provided by the project.

Children prevented from entering exploitative child labor refers to children not yet working but who are considered to be at high-risk of engaging in exploitative child labor (see definition above), for example, siblings of (ex-) working children. A ''high-risk'' situation refers to a set of conditions or circumstances (*i.e.*, family environment or situation, vicinity of economic activities prone to employ children, etc.) under which the child lives or to which he or she is exposed. In order to be considered as ''prevented,'' these children must also have benefited or be benefiting from a direct educational service (as defined below) provided by the project.

Direct beneficiaries are children who, as a result of a USDOL-funded project, are (a) withdrawn or prevented from entering exploitative child labor and (b) are provided with a direct educational service (as defined below) that results in their enrollment in at least one of the four categories of educational activities listed below. **Note:** For a child to be counted as a direct beneficiary for the purposes of USDOL Government Performance and Results Act (GPRA) reporting, the Cooperative Agreement awardee (hereafter referred to as ''Grantee'') must complete the following three (3) steps:

(1) Assess the specific needs of each child targeted by the project in order for the child to (a) be withdrawn from or prevented from entering exploitative labor and (b) to be enrolled in an educational activity;

(2) Develop and implement an appropriate strategy for the child that provides a direct educational service that supports their enrollment in at least one of the educational activities defined below; and

(3) Monitor and report to USDOL on the work (*e.g.*, Is the child working in an exploitative labor situation?) and education status (*e.g.*, Is the child still attending an educational or training program?) of each child beneficiary.

Direct educational services may involve either (a) or (b):

(a) The provision of at least one of the following educational activities:

(1) Non-formal or basic literacy education—This type of educational activity may include transitional, levelling, or literacy classes so that a child may either be mainstreamed into formal education and/or can participate in vocational training activities;

(2) Vocational, pre-vocational, or skills training—This type of training is designed to develop a particular, marketable skill (*e.g.,* mechanics, sewing); or

(b) The provision of goods and/or services (if lack thereof is a barrier to education) that meets the specific needs of the targeted children and results in their enrollment or retention in at least one of the four categories of educational activities listed below. Examples of goods and/or services that may meet the specific gaps/educational needs of targeted children include tutoring, school meals, uniforms, school supplies and materials, books, tuition and transportation vouchers, or other types of incentives. The four categories of educational activities that qualify for USDOL's EI are:

(1) Non-formal or basic literacy education;

(2) Vocational, pre-vocational, or skills training;

(3) Formal education—This is defined as the formal school system within the target country; or

(4) Mainstreaming—This type of educational activity involves a project transitioning children from non-formal education into the formal education system. Generally, mainstreaming involves the provision of goods and/or services (*e.g.,* school uniforms, registration fees, transportation vouchers and/or tutoring) that may assist in placement testing and enable a child to attend and stay in school.

Other project interventions may include such activities as awareness raising and social mobilization campaigns, psychosocial services for children, improvements in curriculum, teacher training or improvements to school infrastructure that are also important for improving access to and the quality of basic education. While grantees are encouraged to address the needs of working children in a comprehensive manner, these activities will not be considered as direct educational services. Therefore, individuals benefiting solely from these interventions cannot be counted in GPRA reporting. USDOL recognizes that, in many cases, a combination of services—both direct educational services and other project interventions as outlined in this paragraph—may represent the most effective strategy for prevention or withdrawal of a child from exploitative labor. USDOL encourages applicants to propose the most effective package of services to achieve the goal of prevention or withdrawal.

Strengthening the capacity of government and civil society to address child labor and education may involve one or more of the following four elements:

(1) Adaptation of the legal framework to meet international standards;

Examples of actions that demonstrate progress toward this element include:

- The official adoption of an approved or revised list of hazardous work activities for children after tripartite consultation (*e.g.,* through law, presidential decree);
- The adaptation of labor code or education laws to include or modify child labor-related issues;
- The adaptation of the criminal code to include or modify child labor-related issues;
- The adaptation of existing legislation concerning child labor or education to put it in line with Conventions 138 or 182; or
- The approval of new legislation concerning specific forms of child labor.

(2) The formulation of specific policies and programs at the national, regional, or sectoral level within a country dealing with the worst forms of child labor or basic education;

Progress toward this element can be demonstrated by the development of a policy, plan or program document on the worst forms of child labor, a specific worst form of child labor, or basic education which addresses the worst forms of child labor by one or more of the following entities:

- Any level of Government (local, regional or national);
- The National Steering Committee; or
- Social Partners.

(3) The inclusion of child labor or basic education concerns in relevant development, social and anti-poverty policies and programs;

Examples of actions that demonstrate progress toward this element include:

- The incorporation of basic education (in non-education related programs) or the elimination of child labor as an *explicit objective* in poverty reduction, development, educational or other social programs;
- The inclusion of child labor or basic education (in non-education related strategies) as an *indicator* in poverty reduction, development or educational strategies, etc. (*e.g.* United Nations Development Assistance Framework, Poverty Reduction Strategy Papers, Education for All, the United Nations Millenneum Development Goals) ;
- The inclusion of child laborers as a priority *target group* in poverty reduction, development or educational strategies; or

• Requiring families to ensure children go to school and do not work in order to receive benefits from social and stipends programs.

(4) The establishment of a child labor monitoring system (CLMS).

Progress in this field can be demonstrated if one or several of the following systems has been established and is in operation:

• A CLMS covering various forms of child labor at the local and/or national level;

• A CLMS in any formal or informal sector, urban or rural; or

• A comprehensive plan and/or pilot program to develop and establish national, local or sector specific CLMS.

The characteristics of a comprehensive and credible CLMS include the following:

• A focus on the child at work and/or in school;

• Involvement of all relevant partners in the field, including labor inspectors, if appropriate;

• Regular observation to identify children in the workplace;

• Referral of identified children to the most appropriate alternative to ensure that they are withdrawn from hazardous work;

• Verification that children have actually shifted from hazardous work to an appropriate situation (school or other); and

• Recordkeeping on the extent and nature of child labor and the schooling of identified child workers.

3. Barriers to Education for Working Children

Throughout the world, there are complex causes of exploitative child labor as well as barriers to education for children engaged in or at risk of entering exploitative child labor. These include: Poverty; education system barriers; infrastructure barriers; legal and policy barriers; resource gaps; institutional barriers; informational gaps; demographic characteristics of children and/or families; cultural and traditional practices; tenuous labor markets; and weak law enforcement.

Although these elements and characteristics tend to exist throughout the world in areas with a high incidence of exploitative child labor, they manifest themselves in specific ways in the country of interest in this solicitation. Therefore, specific, targeted interventions are required. Applicants must be able to identify the specific needs of children in order to ensure (1) their long-term withdrawal or prevention from exploitative child labor, (2) for children of appropriate age, a reduction in the number of hours they work and improvement in their working conditions in accordance with national labor laws and (3) their attendance, retention, and completion of relevant educational and/or training programs. This includes identifying barriers to education and the educational needs of specific children targeted in their project (*e.g.*, children withdrawn from work, children at high-risk of dropping out of school and joining the labor force, and/or children still working in a particular sector) and defining how direct education service delivery, capacity building and policy change can be used to address these particular barriers and needs. Brief background information on education and exploitative child labor in the country of interest is provided below in Section I(5): Country-Specific Scope of Work.

4. Scope of Work—General Requirements

Each project must promote the goals of USDOL's EI listed above in Section I(1). Applicants should propose an innovative project strategy that will build on existing efforts to withdraw children from the worst forms of child labor and improve the conditions of children engaged in other types of legal work, while concurrently enrolling and maintaining these children in suitable educational programs. USDOL considers efforts to strengthen legal frameworks to prohibit exploitative child labor and to improve law enforcement practices against such illicit child labor activities as critical strategies for achieving a long-term impact in combating exploitative child labor and improving access to basic education. Applicants are encouraged to propose creative ideas in addressing the nexus between better enforcement of child labor laws and the improvement of educational opportunities for children.

EI projects are expected to contain at least five critical elements: (1) Focus on Action Research and Data Collection; (2) Direct Educational Services; (3) Clear and Specific Outcomes; (4) Collaboration and Leveraging Resources; and (5) Sustainability. Applicants are expected to consider the economic, social and cultural contexts of the country when formulating project strategies and to recognize that approaches applicable in one country may not be relevant to others. Applicants must take into account cross-cutting themes that could affect project results, including those outlined in Section I(5) for each target country, and meaningfully incorporate them into the proposed strategy, either to increase opportunities or reduce threats to successful implementation.

i. *Focus on Action Research and Data Collection.* In order to identify gaps, unmet needs and opportunities that could be addressed through a USDOL Child Labor Education Initiative project, applicants must conduct a needs assessment in preparing their application(s) to make a preliminary identification of the current working and educational status of the children that the applicant proposes as direct project beneficiaries. It is expected that the information gathered during this assessment will be refined after award. The assessment, with data sources, must include information on the incidence and nature of exploitative child labor, particularly the worst forms, among target children, hours of work, age and sex distribution of the proposed beneficiaries, educational performance relative to other children, if available, and any research or other data that might indicate correlations between educational performance and child labor. In the proposed strategy, applicants must consult and make reference to relevant literature and documents relating to child labor and the education of target children.

Applicants are also encouraged to propose strategies for collecting further data on exploitative child labor and children's participation in schooling in the early stages of the project's baseline data collection. Applicants must design and implement a project monitoring system that allows for the monitoring and tracking of direct beneficiaries' work and school status throughout the life of the project (including type of work, conditions of work, such as hours of work and hazardous conditions, and school attendance).

ii. *Direct Educational Services.* Projects funded under this Cooperative Agreement solicitation must provide for the long-term withdrawal and prevention of children and/or youth from exploitative labor through the provision of a direct educational service(s) that ensures their enrollment, retention and completion in at least one of the four educational activities identified in Section I(2). ''Withdrawn/prevented,'' ''exploitative child labor,'' and ''direct educational services'' are defined in detail in Section I(2). USDOL encourages interventions aimed at children and youth under age 18, such as literacy and income-generating activities. Applicants are encouraged to be creative in proposing cost-effective interventions that will have a demonstrable impact in eliminating exploitative child labor; and promoting school retention and completion in the geographical areas where children are engaged in or most at risk of working in

the worst forms of child labor. Applicants must demonstrate knowledge of the school calendar and the requirements of basic, non-formal, and vocational education systems, and develop an approach that successfully enrolls children in educational programs with the shortest delay and without missing an academic year or program cycle.

iii. *Clear and Specific Outcomes.* Within the countries identified in this solicitation, the applicant must identify the geographic areas of greatest need and establish the number of children the project is targeting for withdrawal or prevention from exploitative child labor through the provision of direct educational services that support enrollment in educational activities. Applicants must use the definitions provided in Section I(2) when establishing these targets. The expected outcomes/results of the project are to: (1) Reduce the number of children engaged in or at risk of entering exploitative child labor; (2) increase educational opportunities and access (enrollment and attendance) for children who are at risk of, engaging in, and/or removed from exploitative child labor, particularly its worst forms; (3) ensure retention in, and completion of, educational programs; (4) expand the successful transition of children from non-formal education programs into formal schools or vocational programs; and (5) reduce children's return to exploitative labor.

iv. *Collaboration and Leveraging Resources.* Due to the limited resources available under this award, applicants are expected to implement programs that complement existing efforts, and where appropriate, replicate or enhance successful models to serve a greater number of children and communities. In order to avoid duplication, enhance collaboration, expand impact, and develop synergies, the Grantee must work cooperatively with national stakeholders in developing project interventions, including the Ministries of Education, Labor, and other relevant ministries, and are encouraged to work with other key stakeholders, including non-governmental organizations (NGOs), national steering/advisory committees on child labor, education, faith and community-based organizations, and working children and their families.

Furthermore, applicants are strongly encouraged to collaborate with existing projects, particularly those funded by USDOL, including Timebound Programs (TBP) and other projects implemented by the International Labor Organization's International Program on the Elimination of Child Labor (ILO–IPEC). As discussed in Section V(1)(F), up to five (5) extra points will be given to applications that include committed non-U.S. Federal Government resources that significantly expand the project's scope. However, applicants must not duplicate the activities of existing efforts and/or projects and are expected to work within host government child labor and education frameworks and priorities.

Note to Applicants: USDOL has notified host government ministry officials of the proposed project. During the preparation of an application for this Cooperative Agreement solicitation, applicants may discuss proposed interventions, strategies, and activities with host government officials and civil society organizations.

v. *Sustainability.* USDOL considers the issue of sustainability to be of paramount importance and recognizes that questions of sustainability must be addressed at all stages, including project design, implementation and evaluation. From their inception, project strategies should foster sustainability. To USDOL, sustainability is linked to project impact and the ability of individuals, communities, and a nation to ensure that the activities or changes implemented by a project endure. A project's impact is manifested at the level of individuals, organizations, and systems. For individual children and their families this would mean a positive and enduring change in their life conditions as a result of project interventions. At the level of organizations and systems, sustained impact would involve continued commitment and ability (including financial commitment and policy change) by project partners to continue the actions generated by the project, including enforcement of existing policies that target child labor and schooling. Applicants are encouraged to develop approaches that support youth participation in project efforts to eliminate the worst forms of child labor. Applicants are encouraged to identify organizations in the country, including type of local organizations (*i.e.*, rural, indigenous, etc.), which could potentially implement or contribute to a future project. In addition, as child labor projects tend to be implemented in resource-poor environments where government education and labor inspection systems may be limited, applicants are encouraged to work with local stakeholders to develop sustainable child labor and education monitoring systems, including community-based systems, that can complement government efforts to monitor children's working and educational status beyond the life of the project and enforce the country's child labor and education laws.

5. Country-Specific Scope of Work

A. Combating Child Labor Through Education in Egypt

i. *Background.* An estimated 5.9 percent of children ages 6 to 14 were counted as working in Egypt in 1998. Rural children and children from poor or female-headed households account for the overwhelming majority of working children. Approximately 70 percent of child labor in Egypt occurs in rural areas. Many children work long hours in the agricultural sector where they work in dusty environments, without masks or respirators, and receive little or no training on safety precautions for work with toxic pesticides. Children are also found working in a number of hazardous sectors, including leather tanneries, pottery kilns, glassworks, blacksmith, metal and copper workshops, battery and carpentry shops, mining and quarrying, carpet weaving, auto repair workshops, and textile and plastics factories.

Reports indicate a widespread practice of poor rural families making arrangements to send daughters to cities to work as domestic servants in the homes of wealthy citizens. Child domestic workers are excluded from the protections of the labor code and may be susceptible to physical and sexual abuse, harsh working conditions, and exploitation. Urban areas are also host to large numbers of street children who have left their homes in the country-side to find work, and often to flee hostile conditions at home. The number of working street children in urban areas is estimated at 2 to 5 million. Street children work shining shoes, collecting rubbish, begging, cleaning and directing cars into parking spaces, and selling food and trinkets. Street children are particularly vulnerable to becoming involved in illicit activities, including stealing, smuggling, pornography, and prostitution. The commercial sexual exploitation of children may be under-acknowledged given that Egyptian cities (Alexandria and Cairo, in particular) are reported destinations for sex tourism. Egypt is a country of transit for child trafficking, particularly for underage girls from Eastern Europe and the former Soviet Union who are trafficked into Israel and parts of Europe for forced labor and sexual exploitation.

Child labor is one of among many problems associated with poverty. In 1999, the most recent year for which

data are available, 3.1 percent of the population in Egypt were living on less than USD 1 a day. In addition to poverty, numerous other interrelated socio-cultural factors affect whether or not a child enters exploitative work in Egypt, including: The deterioration in access to quality education; low rates of female labor force participation and literacy; the decline of the economic and social benefits of education; local economic inequalities; prevailing customs and traditions; protracted geopolitical conflict; and globalization.

The recent, unprecedented demographic growth in the region has had a profound impact on children, increasingly pushing them into the labor market, often at an early age. The population of Egypt exceeded 75 million in 2004, of which approximately 44 percent were under the age of 19 years. Poverty levels and unemployment rates are significant in urban centers, especially for young people: 15-to 24-year-olds represent only 21 percent of the labor force in Egypt, but over 60 percent of the unemployed population. The high levels of youth unemployment in Egypt increase the likelihood that youth will work under exploitative conditions, particularly in the informal sector, which accounts for approximately 55 percent of the labor force in Egypt.

The Constitution guarantees free and compulsory basic education for children ages 6 to 15 who are Egyptian citizens. Despite the constitutional guarantees to universal education, parents are increasingly responsible for both the direct and indirect costs of education. Egyptian law allows public schools to charge fees for services, insurance, and equipment. In 2002, the gross primary enrollment rate was 97 percent and the net primary enrollment rate was 91 percent. Gross and net enrollment ratios are based on the number of students formally registered in primary school and therefore do not necessarily reflect actual school attendance. Primary school attendance statistics are not available for Egypt. As of 2001, 98 percent of children who started primary school were likely to reach grade 5. A 2000 national survey of children ages 6 to 15 years found that 14 percent of girls were not currently attending school, compared to 8 percent of boys. Working children are predominantly school dropouts or have never been enrolled in school. The 2000 Egyptian Demographic and Health Survey of children ages 8 to 10 found that 3.4 percent of boys had never attended school, compared to 8.4 percent of girls in the same age group.

Due to a significant investment in building and renovating primary schools in the 1990s, access to primary school education in Egypt is now nearly universal; however, concerns about the quality of education persist. The following factors were cited as weaknesses in the education system that contribute to low school attendance among working children in reports from the United Nations Development Program; Egyptian Institute of National Planning; Egyptian Ministry of Planning; and the ILO: The centralized educational structure, inadequate teacher incentives, a shortage of trained teachers, misallocation of resources, overcrowding, corporal punishment in schools, lack of participatory learning techniques, irrelevant curricula, and inadequate school infrastructure, such as sanitation facilities.

ii. *Relevant Policies, Programs and Projects.* The Government's National Council for Childhood and Motherhood (NCCM) is implementing a national plan to increase educational opportunities for girls and combat the worst forms of child labor, among other goals. The NCCM is executing action programs related to the plan's objectives in collaboration with the Ministry of Manpower and Migration (MOMM), Egyptian Trade Union Federation (ETUF), ILO, UNICEF, and the Ministries of Social Affairs, Agriculture, Education, Health, and Interior. While the action programs being implemented to support the national plan began with technical support from ILO–IPEC and the American Federation of Labor-Congress of Industrial Organizations (AFL–CIO) Solidarity Center, the projects are now operated independently by the NCCM, ETUF, UNICEF, and MOMM without continued support from ILO–IPEC or the Solidarity Center. Efforts by NCCM and MOMM to collaborate with other line ministries and NGOs to increase awareness of child labor and strengthen enforcement of existing laws, include:

- Training police officers to raise awareness of child rights and best practices for dealing with at-risk children and youth in partnership with the Ministry of Interior;
- Conducting an awareness raising campaign in all 26 governorates to highlight the negative impact of child labor on children, their families and employers and to educate them about relevant legislation and enforcement issues in partnership with the Ministry of Information;
- Identifying governorates with high dropout rates in collaboration with the Ministry of Education, in order to increase child labor inspection in those areas;
- Preventing underage children from working in the cotton harvesting sector and providing children working legally with the necessary protection while engaging in agricultural activities in partnership with the Ministry of Agriculture.

The NCCM is implementing projects in the governorates of Sharkia, Menofia, Minya, and Damietta to shift working children into non-hazardous activities and gradually eliminate all forms of child labor. Additionally, the NCCM is executing a large-scale project supported by the European Union and other donors, which addresses children's issues, focusing on 7 priority areas: Child labor, street children, disabled children, early childhood education, drug abuse, girls' education, and prevention of harmful practices against girls. The Egyptian Prime Minister recently earmarked 100 million Egyptian pounds (USD 17.5 million) in matching funds towards this initiative.

Since 2003, the NCCM and UNICEF have been implementing the National Strategy for the Protection and Rehabilitation of Street Children (launched under the auspices of the First Lady), which aims to rehabilitate and reintegrate street children back into society. In June 2005, the NCCM and UNICEF jointly organized a 3-day conference in Cairo entitled ''Middle East and North Africa (MENA) Regional Consultation on Violence Against Children,'' at which Egypt's First Lady, Mrs. Suzanne Mubarak, announced the establishment of a national hotline to receive complaints of abused children, including child laborers. Following the conference, the NCCM established a permanent committee to combat all forms of violence against children, which will include branches in all governorates and representatives from the Ministries of Interior, Social Affairs, Justice, Education and Health, as well as representatives from civil society.

In January 2006, ILO–IPEC launched a campaign against child labor under the banner Red Card to Child Labor. The campaign is organized in cooperation with the NCCM, Federation International de Football Association (FIFA) and the African Football Confederation, and sponsored by the First Lady. ILO–IPEC is also currently working with a number of NGOs such as the Coptic Evangelical Organization for Social Services (CEOSS), CARITAS, Terre des hommes, the Boy Scouts, and the Red Crescent to raise awareness on child labor. The new Minister of Labor has also expressed her full-fledged support to this campaign and to the fight against child labor in general. In previous programs supported by ILO–

IPEC, 11 governorates benefited from programs to provide education services for working children, and 5 of these governorates have been declared ''child labor free.''

Large-scale programs and initiatives have focused on the expansion and improvement of basic education in Egypt. The Government of Egypt has established a National Taskforce for Girls' Education to promote girls' education and eliminate gender disparities in the education system by the year 2015. Other programs include USAID's basic education programs and the World Bank's Education Enhancement Project in Egypt, both of which are ongoing. The World Bank's Education Enhancement Program Project is working to ensure universal access to basic education, with an emphasis on girls, and to improve the quality of education. In February 2005, the World Bank also began supporting a USD 108 million Early Childhood Education Enhancement Project, which aims to increase access to and improve the quality of pre-primary education, and increase the capacity of the Ministry of Education to improve kindergarten programs. USAID's Basic Education and Policy Support Activity (BEPS) program provided policy support on child labor and education issues, but this project is no longer active.

iii. *Scope of Work.* Applicants must propose activities that build upon and complement the work that has been previously carried out by other relevant programs and avoid any unnecessary duplication of effort. The applicant must take into account cross-cutting themes and specific considerations that could affect project results in Egypt, and meaningfully incorporate them into the proposed strategy, either to increase opportunities or reduce threats to successful implementation. In Egypt these could include one or more of the following:

(1) *Rural/Urban focus.* Applicants should demonstrate thorough knowledge of child labor and barriers to education for working children in both rural and urban areas. The project should develop targeted strategies to decentralize inspection systems, improve monitoring mechanisms, raise awareness and improve access to education and training for working or at-risk children and youth that address the contextual realities and needs at the local level.

(2) *Targeted groups.* The project should focus direct interventions primarily on withdrawing children and youth under 18 years of age from exploitative labor, with particular emphasis on the worst forms of child labor.

(3) *Targeted sectors.* In rural areas, the project should specifically target exploitative child labor in the mining and quarrying and the cotton-farming sectors. In urban areas, the project should target child labor in formal establishments such as factories and workshops, as well as informal activity in the streets, markets and tourist centers. The project may also target children (mostly girls) who are sent from rural areas into the cities to work as domestic servants, either in the sending or receiving areas (or both). Applicants may also identify other child labor sectors/areas of intervention, but must provide convincing reasons why the targeted sector/focus merits funding.

(4) *Targeted regions.* In addition to complementing the upstream policy and awareness activities of the NCCM and ILO–IPEC in the 15 governorates in which child labor elimination programs are already underway, this project should focus direct action efforts primarily in the 12 governorates without ongoing activities: ad-Daqahliyah, Port Said, Suez, al-Isma'iliyah, Asyut, Bani Suwayf, Matruh, al-Bahr al-Ahmar (Red Sea), al-Buhayrah, Kafr ash-Shaykh, al-Gharbiyah, and Suhaj.

(5) *Girls' education.* The project should address the unique barriers to education for girls in rural as well as urban areas and incorporate these into the proposed interventions.

(6) *Collaboration.* The project must work collaboratively with institutions and organizations already engaged in child labor and education issues in Egypt and the Middle East and North Africa region at the local, national and regional levels. At a minimum, national collaborations should take place with the ETUF, ILO–IPEC, MOMM, NCCM, the Ministry of Education, the Ministry of Agriculture, the Central Agency for Public Mobilization and Statistics (CAPMAS), and the private sector.

(7) *Political and civil society environment.* In their approach to project interventions, applicants should take into account the complex legal and political relationship between civil society groups and government structures. Applicants should also factor in the effect that personnel changes in cooperating ministries might have, and design strategies that minimize disruptions when such events occur. Applicants should demonstrate how they have managed to operate within such environments in the past and/or include a plan for doing so under the proposed project.

(8) *Weak organizational capacity and conflictive social relations.* Evaluations of USDOL projects in the Middle East and North Africa region have noted incidents of weak local organizational capacity and conflictive social relations, including teachers' strikes leading to absenteeism. Applicants should indicate to what extent these challenges might be significant in the areas where the project would be implemented, how they would be addressed and how relationships with grassroots community organizations would be developed.

(9) *Educational relevance and cultural sensitivity.* Applicants must develop a strategy that will increase the perceived relevance of education and training for working children, their parents, and the communities where they live. If cultural traditions and norms impact decisions about schooling, applicants must show how education programs would be sensitive and responsive to these expectations, particularly as they relate to girls' education.

B. Combating Child Labor Through Education in Peru

i. Background. The urban informal sector in Latin America is dynamic and complex, often an alternative source of employment and entrepreneurship for those not able to obtain jobs in the formal sector. Although there are no recent statistics available on employment in Peru's informal sector, it is estimated that more than one-half of the economically active population works in this sector. Urban informal work makes up a large percentage of services and sales activities. Recent migrants from rural areas who often live in urban slums or barriadas and pueblos jóvenes tend to find precarious livelihoods in the informal sector.

According to a World Bank study published in 2005, 18.1 percent of the population in Peru in 2001 was living on less than USD 1 a day. Urban poverty has increased during the past decade. The United Nations Development Programme's Human Development Report shows that Peru's population living below the poverty line grew from 49 percent in 1997 to 54 percent in 2002. More recent statistics are not available, but the rapid growth of pueblos jóvenes in the outskirts of the main urban centers suggests a continued challenge with issues of poverty and migration.

In the urban informal sector, migrants may also reproduce economic relationships common in rural areas that include self-employment and family labor, including child labor. Young people unaccompanied by their families, or not living with relatives,

may be forced to survive alone as street children. An estimated 16.5 percent of children ages 6 to 14 were counted as working in Peru in 1994. The number of children engaged in urban informal work in Peru is unknown, but given the size of the country's informal sector, it is likely that many children are involved. In urban and surrounding areas, they are involved in street-vending, fireworks production, and brick-making. They shine shoes, wash and guard cars, perform at traffic-light intersections, and sell goods on public transportation and markets. Many children, particularly girls, move from rural to urban areas to work as domestic servants. Children are also involved in crime, including petty theft, and drug trafficking. Some children and youth are trafficked internally along commercial routes, where some fall victim to prostitution and other forms of commercial sexual exploitation in tourist and other locations such as beaches, markets, cinemas, theaters, and restaurants.

Whether living on the streets or in slums, urban child laborers are exposed to high emotional and physical risks and levels of violence. Children working in the streets can be harassed by the police, and are extremely vulnerable to traffic accidents and weather conditions. Being on their own and struggling for survival, they generally do not attend school. On the other hand, children who live in slums with their families may manage to combine work with school attendance. Yet poor school quality, combined with many of the social conditions faced in the slums such as family breakdown, domestic violence, early parenthood, and crime may deter school attendance or lead to drop out.

In Peru, the General Education Law establishes free and compulsory public education through secondary school. Despite the legal guarantee for free education, some primary school fees continue to be charged. In 2002, the gross primary enrollment rate was 118 percent and the net primary enrollment was 100 percent. As of 2001, 84 percent of children who started primary school were likely to reach grade five. Girls attend school at a lower rate than boys, and school attendance is lower in rural than in urban areas.

In recent years there have been positive efforts to decentralize school management, giving parents and teachers some decision-making power in relation to the school budget. However at the school performance level, children from poor families continue to learn significantly less and leave school sooner than other children. In the 2003 Programme for International Student Assessment, Peruvian students from poor families scored sharply lower in reading and math than those from higher income families. School performance is a greater issue among indigenous and Afro-Latin students. While 35 percent of students reached sufficient levels of reading comprehension in national tests, that level was only reached by 0.3 percent of native Quechua and 8 percent of native Aymara speakers.

In Peru, the minimum age of work is 15. Various laws regulate the hours and types of jobs that working adolescents may perform. The National Police, local prosecutors, Municipal Child and Adolescent Defender Centers, and the Ministry of Labor and Employment Promotion are involved in the enforcement of child labor laws. Most labor inspections are conducted in the formal sector rather than the urban informal sector, where child labor usually occurs.

ii. *Relevant Policies, Programs and Projects.* There are a number of efforts by the Government of Peru, international organizations, and NGOs to address exploitative child labor in the urban informal sector. Three important policy frameworks in place in Peru include the National Plan for the Prevention and Eradication of Child Labor, the National Action Plan for Children and Adolescents, and Network Now Against Child Sexual Exploitation. See Comité Directivo Nacional para la Prevención y Erradicación del Trabajo Infantil (CPETI), Plan Nacional de Prevención y Erradicación del Trabajo Infantil, 2005 available on ICLP's Web site *http://www.dol.gov/ilab/grants/bkgrd.htm.*

The Government of Peru is participating in a USDOL-funded ILO–IPEC program to eliminate exploitative child labor in the domestic service and commercial sex sectors. USDOL also supports a project to provide education to children involved in small-scale artisanal mining in Puno. In order to promote education for child domestics, the Ministry of Education offers night classes and has lengthened matriculation periods for such children. The government also supports NGOs that provide services to sexually exploited and trafficked minors.

There are a number of programs that promote basic education for children involved in or at risk of urban informal work. The Ministry of Women and Social Development (MIMDES) supports the program Street Educators, which provides education and services to children in the streets and urban markets. The National Institute of Family Well-Being has a program that provides a variety of services to working youth, including school support, school reinsertion, reintegration to the family, and vocational training.

The Ministry of Education implements a basic education program to strengthen teachers' skills and provide them with free educational materials. The Ministry also oversees a project to build the capacity to develop innovative teaching materials and operates a tutoring program for children formerly excluded from the public school system, including working children. The Inter-American Development Bank (IDB) is providing a loan to the Ministry of Labor and Employment Promotion to develop training activities and facilitate labor market access for older youth. The IDB provided a new loan in May 2005 to the Ministry of Economy and Finance that aims to provide support to social sector reforms in education, labor and other areas. The Ministry is also working with USAID to develop models of educational decentralization and strengthen local educational capacity.

iii. Scope of Work. The primary focus of proposed strategies should be to develop educational programs for children aged 11 to 15, which will enable them to successfully progress as appropriate towards the completion of secondary school, vocational certification, or other course of study/training that substantially improve their basic literacy, numeracy, entrepreneurial, technical, or vocational skills. Applicants should focus on the urban informal sector and identify urban centers in Peru where they will undertake this work, such as the ones that have been attracting most of the internal migration and informal sector development in the past decades (*e.g.*, Lima, Callao, Piura, Chiclayo, Trujillo, Arequipa, Juliaca, Cuzco and Iquitos). For the purposes of this Solicitation for Grant Applications (SGA), the urban informal sector is used to refer to areas of economic activity in large metropolitan areas that are largely unregulated. Labor relations in this sector are largely based on casual employment, kinship, or personal and social relations rather than on formal contractual arrangements. Examples of such urban informal sector activities include selling goods on the street or in markets or involvement in small scale businesses or industries. Applicants may also identify other child labor sectors/areas of intervention, but must provide convincing reasons why the targeted sector/focus merits funding. The Government of Peru has identified Cajamarca, Lima and Puno as priority

regions/cities. These regions should be considered in as much as they fit within the context of this SGA.

The application must also take into account cross-cutting themes that could affect project results in Peru, and meaningfully incorporate them into the proposed strategy, either to increase opportunities or reduce threats to successful implementation. In Peru these include:

(1) Governmental and non-governmental efforts to implement the National Plan for the Prevention and Eradication of Child Labor.

(2) Knowledge of the major trends in thought and practice regarding the informal sector in Peru and its regulation, and how this knowledge might be used to monitor and regulate in a productive manner the worst forms of child labor, and compliance with compulsory education laws.

(3) Organizational and coordination capacity of governmental and non-governmental agencies that might contribute to the project's implementation.

(4) The strength and innovation of many civil society and private sector initiatives to address social and education issues in Peru, and how these might be harnessed to the benefit of the project.

(5) Changes in the political environment, including those resulting from the presidential election, and the corresponding changes that may occur in policy and personnel in cooperating governmental agencies.

(6) The socio-economic environment in which the project will operate and the demographic and social characteristics of the beneficiaries, and how programs to increase income of families in marginalized urban areas might complement the efforts of the project.

C. Combating Child Labor Through Education in Tanzania

i. Background. An estimated 35.4 percent of children ages 5 to 14 worked in Tanzania in 2000–2001. The majority of working children are found in the agricultural sector (77.4 percent) and service sectors (22.4 percent). However, children are also found to be working in the manufacturing sector (0.1 percent) and other sectors (0.2 percent). Children work on commercial tea, coffee, sugar cane, sisal, cloves, and tobacco farms, and in the production of wheat, corn, green algae, pyrethrum and rubber. Children also work in underground mines and near mines in bars and restaurants. In the informal sector, children are engaged in scavenging, fishing, fish processing, and quarrying. Other children work as street vendors, cart pushers, and in garages. Children also work as paid domestic servants in third-party homes.

Tanzania is reported to be a country of origin, transit and destination for women and children trafficked for sexual exploitation and forced labor. Within Tanzania, children are trafficked to work in mines, on farms and in domestic service. It is reported that girls are trafficked from Tanzania to South Africa, Saudi Arabia, the United Kingdom, and Europe for domestic labor. Children are also reportedly trafficked to North Africa and the Middle East.

Girls as young as 7 years, and increasingly boys, are reportedly exploited in prostitution and other forms of commercial sexual exploitation. Children are trafficked, often under false pretenses, from rural to urban areas for exploitation in the commercial sex sector. Such children are often lured with false promises of work as house girls, barmaids, and in hair salons. There are reports of sex tourism involving children under the age of 18 years on the island of Zanzibar. Children from Kenya, Uganda, and Rwanda are also exploited in prostitution in Tanzania. In addition, there are reports of children exploited in the production of pornographic films. HIV/AIDS is a significant factor contributing to the incidence of exploitative labor, including the worst forms of child labor in Tanzania. According to UNICEF, an estimated 2 million children have been orphaned in Tanzania, primarily due to HIV/AIDS.

Education in Tanzania is compulsory for 7 years, until age 15. Primary school fees were eliminated in Tanzania in 2002, and this has led to primary schools becoming overwhelmed by the massive increase in children seeking to take advantage of free primary education. It has also resulted in a lack of resources for additional teachers, classrooms, and books. Moreover, families must pay for books, uniforms, and for enrollment fees for children beyond form 2 (the equivalent of the second year of high school). There are also reports of children not attending school because of poorly paid teachers demanding money from them in order to be enrolled.

ii. *Relevant Policies, Programs and Projects.* In Tanzania, the Ministry of Labor, Youth Development, and Sports has primary responsibility for enforcing the country's child labor laws. The Ministry's Child Labor Unit works with other government ministries and networks with other stakeholders; gathers, analyzes, and disseminates child labor-related data; and trains and sensitizes labor inspectors on child labor issues. At the community level, child labor committees have been established to identify children who are not attending school and take measures to prevent or withdraw these children from child labor.

The Government of Tanzania is working with ILO's International Program on the Elimination of Child Labor (IPEC) to implement a Timebound Program (TBP), with the goal of eliminating the worst forms of child labor in the country by 2010, including exploitative child labor in commercial agriculture, domestic service, mining, fishing, and prostitution. Under the TBP, the Ministry of Labor's Child Labor Unit is working with ILO–IPEC to provide training for child labor coordinators and other officials in 11 districts to increase their capacity to combat the worst forms of child labor and is developing a community-based monitoring system to collect information and track trends in the incidence of child labor. The Child Labor Unit also acts as the secretariat for the TBP's National Child Labor Elimination Steering Committee (NCLESC), which is responsible for defining objectives and priorities for child labor interventions, approving and overseeing implementation of child labor action projects, and advising the government on various child labor issues.

The Government of Tanzania's Poverty Reduction Strategy Paper (PRSP) includes the elimination of child labor as an objective and established the Poverty Monitoring Master Plan (PMMP), which incorporates the percentage of children in the labor force as a poverty monitoring indicator and calls for an Education Fund to support children from poor families. In February 2005, the PRSP II document—otherwise known as the National Strategies for Growth and Poverty Reduction—was finalized and approved by the Cabinet. The National Strategies for Growth and Poverty Reduction includes specific references to elimination of the worst forms of child labor and the provision of skills training and educational alternatives for children and their families.

The Government of Tanzania supports a number of basic education initiatives, including the Ministry of Education's Complementary Basic Education in Tanzania (COBET) Program and its Vocational Education Training Authority (VETA). As part of the ILO–IPEC Project of Support to the Tanzania TBP, the COBET and CETA programs have provided basic education and

vocational training to children withdrawn or prevented from involvement in the worst forms of child labor in 11 target districts.

In addition, from 2002 to 2006, a USDOL-funded, EI project implemented by the NGO, the Education Development Center (EDC), has helped further expand the coverage of informal education services in Tanzania by developing a radio-based curriculum for Standards 1 through 4; establishing 288 Mambo Elimu learning centers in ten districts; and training community mentors to work at each center. With the project nearing completion, the Ministry of Education has stated its intention to support the continued operation of these centers, and Radio Tanzania has agreed to maintain broadcasting of the radio-based curriculum. An effort funded by the Government of Japan, through UNICEF, is also supporting a basic education project targeting out-of-school children in Tanzania by providing textbooks, reading materials on HIV/AIDS, and community workshops on HIV/AIDS with support from COBET.

The government's Basic Education Master Plan aims to achieve universal access to basic education for children over the age of 7 and ensure that at least 80 percent of children complete primary education and are able to read and write by age 15. The government is implementing a 5-year Primary Education Development Plan (PEDP), begun in 2002, which aims to expand enrollment, improve the quality of teaching, and build capacity within the country's educational system. Under the PEDP, the government has committed up to 25 percent of its overall recurrent expenditures on the education sector, 62 percent of which is allocated to primary education. The government has received a USD 150 million credit from the World Bank to support this program. Tanzania's Development Vision 2025 and its Poverty Eradication Strategy 2015 both identify education as a strategy for combating poverty, and the country's poverty eradication agenda includes ensuring all children the right to basic quality education. The Government of Tanzania receives funding from the World Bank and other donors under the Education for All Fast Track Initiative, which aims to provide all children with a primary school education by the year 2015.

iii. *Scope of Work.* The primary focus of the proposed strategy should be to develop educational programs for children under the age of 18 that will enable them to successfully progress towards the completion of secondary school or its equivalent or the transition to non-exploitative labor in line with Tanzania's national labor laws. The projects developed by the applicant can include catch-up and equivalency programs, basic literacy and numeracy programs, or entrepreneurial, technical or vocational skills.

Applicants should identify target areas in Tanzania where they will undertake this work and the types of the worst forms of child labor from which the project will seek to withdraw or prevent children from engaging. The Government of Tanzania has indicated a number of areas of potential focus for a future USDOL-funded EI project that could build upon and expand the scope of efforts begun under the EDC project referred to above, including the following: (a) Working to raise awareness further in communities about child labor and child rights; (b) expanding upon the coverage—both in terms of districts and educational standards/levels—of non-formal education provided in Tanzania through COBET, VETA, and EDC Mambo Elimu centers; (c) helping to build more effective communication and decision-making processes from the grassroots to the various levels of government on issues related to child labor and basic education; and (d) assisting the Government of Tanzania to assess its VETA program and help make VETA more relevant to the supply and demands of the Tanzanian and global labor markets.

The application must also take into account cross-cutting themes that could affect project results in Tanzania and meaningfully incorporate them into the proposed strategy, either to increase opportunities or reduce threats to successful implementation. In Tanzania, these include:

(1) Governmental and non-governmental efforts to implement the National Timebound Program for the Elimination of the Worst Forms of Child Labor, including the elements of that program that have been incorporated into the Government of Tanzania's PRSP—otherwise known as the Mkukuta.

(2) The government's Basic Education Master Plan and its 5-year PEDP.

(3) Organizational and coordination capacity of governmental and non-governmental agencies that might contribute to the project's implementation.

(4) The strength and innovation of many civil society and private sector initiatives to address social and education issues in Tanzania, and how these might be harnessed to the benefit of the project.

(5) The socio-economic environment in which the project will operate and the demographic and social characteristics of the beneficiaries will be taken into account and addressed, and how programs to increase income of families in marginalized urban areas might complement the efforts of the project.

II. Award Information

Type of assistance instrument: Cooperative agreement. USDOL's involvement in project implementation and oversight is outlined in Section VI(3). The duration of the project(s) funded by this solicitation is up to four (4) years. The start date of program activities will be negotiated upon awarding of the Cooperative Agreement, but will be no later than September 30, 2006.

Up to USD 15 million will be awarded under this solicitation. USDOL may award three or more Cooperative Agreements to one, several, or a partnership of more than one organization(s) that may apply to implement the program. A Grantee must obtain prior USDOL approval for any subcontractor proposed in the application before award of the Cooperative Agreement. The Grantee may not sub-grant any of the funds obligated under this cooperative agreement. See Section IV(5)(E) for further information on subcontracts.

III. Eligibility Information

1. Eligible Applicants

Any commercial, international, educational, or non-profit organization(s), including any faith-based, community-based, or public international organization(s) capable of successfully developing and implementing educational programs that aim to withdraw or prevent children from exploitative child labor in the country of interest is eligible to apply. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of Cooperative Agreement recipients. Applications from foreign government and quasi-government agencies will not be considered. An applicant must demonstrate a country presence, independently or through a relationship with another organization(s) with country presence, which gives it the ability to initiate program activities upon award of the Cooperative Agreement. See Section V(1)(C)(ii). Applicants may apply for more than one Cooperative Agreement; however, separate applications must be submitted for each country. If applications for

more than one Cooperative Agreement are combined, they will not be considered.

If it is deemed the most effective and efficient strategy for achieving the goals outlined in the Scope of Work, USDOL may award one or more Cooperative Agreements to a partnership of more than one organization(s). If two or more applicants, who do not constitute a single legal entity (hereinafter referred to as ''Associations''), join in applying for an award, each member of the Association (hereinafter referred to as an ''Associate'') must be individually eligible for award. All references to ''the Applicant'' refer to Associations as well as individual applicants. All Associates must sign, and agree to be bound jointly and severally by, the awarded Cooperative Agreement, and all must designate one Associate as the ''Lead.'' Any such Association must submit to USDOL, as an attachment to the application, an Association agreement, reflecting an appropriate joint venture, partnership, or other contractual agreement and outlining the deliverables, activities, and corresponding timeline for which each Associate will be responsible. Copies of such agreements will not count toward the page limit.

If any entity identified in the application as an Associate does not sign the Cooperative Agreement, the Lead must provide, within 60 days of award, either a written subcontract agreement with such entity, acceptable to USDOL, or an explanation as to why that entity will not be participating in the Cooperative Agreement. USDOL reserves the right to re-evaluate the award of the Cooperative Agreement in light of any such change in an entity's status, and may terminate the award if USDOL deems appropriate.

For the purposes of this proposal and the Cooperative Agreement award, the Lead will be: (1) The primary point of contact with USDOL to receive and respond to all inquiries, communications and orders under the project; (2) the only entity with authority to withdraw or draw down funds through the HHS system; (3) responsible for submitting to USDOL all deliverables, including all technical and financial reports related to the project, regardless of which Associate performed the work; (4) the sole entity to request or agree to a revision or amendment of the award or the project document; and (5) responsible for working with USDOL to close out the project. Note, however, that each Associate is ultimately responsible for overall project performance, regardless of any assignment of specific tasks, but Associates may agree, among themselves only, to apportion the liability for such performance. Each Associate must comply with all applicable federal regulations, and is individually subject to audit.

In accordance with 29 CFR part 98, entities that are debarred or suspended from receiving federal contracts or grants shall be excluded from Federal financial assistance and are ineligible to receive funding under this solicitation.

2. Cost Sharing or Matching Funds

This solicitation does not require applicants to share costs or provide matching funds. However, the leveraging of resources and in-kind contributions is strongly encouraged and is a rating factor worth up to five (5) additional points (see Section V(1)(F)).

IV. Application and Submission Information

1. Application Package

This solicitation contains all of the necessary information and forms needed to apply for Cooperative Agreement funding. This solicitation is published as part of this **Federal Register** notice. Additional copies of the **Federal Register** may be obtained from your nearest U.S. Government office or public library or online at *http://www.archives.gov/federal_register/index.html*.

2. Content and Form of Application Submission

Applicants must submit one (1) blue ink-signed original, complete application, plus three (3) copies of the application. Applicants may submit applications for one or more countries. However, applicants applying for a Cooperative Agreement in more than one country must submit a separate application for each country. The application must consist of two (2) separate parts as defined below. Applicants should number all pages of the application. All parts of the application must be written in English, in 10–12 pitch font size.

Part I of the application, the cost proposal, must contain the Standard Form (SF) 424, Application for Federal Assistance and Sections A–F of the Budget Information Form SF 424A, available from ILAB's Web site at *http://www.dol.gov/ilab/grants/bkgrd.htm*. Copies of the SF 424 and SF 424A are also available online at *http://www.whitehouse.gov/omb/grants/sf424.pdf* and *http://www.whitehouse.gov/omb/grants/sf424a.pdf* respectively. The individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant.

All applicants are requested to complete the Survey on Ensuring Equal Opportunity for Applicants (Office of Management and Budget (OMB) No. 1890–0014), which has been provided as an attachment.

Part II, the Technical Proposal, demonstrates the applicant's capabilities to plan and implement the proposed project in accordance with the provisions of this solicitation. The Technical Proposal must not exceed 45 single-sided (8½″ x 11″), double-spaced pages. The technical application must identify how the applicant will carry out the Scope of Work (Section I Parts (4) and (5)) of this solicitation. The following information is required:

- A two-page abstract summarizing the proposed project and applicant profile information including: Applicant name, contact information of the key contact person at the applicant's organization in case questions should arise (including name, address, telephone and fax numbers, and e-mail address, if applicable), project title, partnership members, proposed project activities (which must focus on the withdrawal and prevention of children from exploitative labor by the provision of direct educational services that support the enrollment of the target children in educational activities), funding level requested and the amount of leveraged resources, if applicable;
- A table of contents listing the application sections;
- A project description as described in the Application Evaluation Criteria found in Section V(1) of this solicitation;
- A logical framework matrix as described in Section V(1)(A);
- A work plan identifying major project activities, deadlines for completing the activities and person(s) or institution(s) responsible for completing these activities that is linked to the logical framework matrix.

Please note that the abstract, table of contents, logical framework matrix and work plan are *not* included in the 45-page limit for Part II.

Any applications that do not consist of the above-mentioned parts and conform to these standards will be deemed unresponsive to this solicitation and may be rejected. Any additional information not required under this solicitation will not be considered.

3. Submission Dates, Times, and Address

Applications must be delivered (by hand or mail) by 4:45 p.m., eastern time,

July 24, 2006, to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210, Attention: Lisa Harvey, Reference: Solicitation 06–06. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by non-Postal Service delivery services, such as Federal Express or UPS, will be accepted; however, the applicant bears the responsibility for timely submission. The application package must be received at the designated place by the date and time specified or it will be considered unresponsive and will be rejected. Any application received at the Procurement Services Center after the deadline will not be considered unless it is received before the award is made and:

A. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at USDOL at the address indicated; and/or

B. It was sent by registered or certified mail not later than the fifth calendar day before the deadline; or

C. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to the deadline.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on the envelope or wrapper on the original receipt from the U.S. Postal Service.

If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at USDOL is the date/time stamp of the Procurement Service Center on the application wrapper or other documentary evidence of receipt maintained by that office. Confirmation of receipt can be obtained from Lisa Harvey (see Section V(3)(F) for contact information). All applicants are advised that U.S. mail delivery in the Washington D.C. area can be slow and erratic due to concerns involving contamination. All applicants must take this into consideration when preparing to meet the application deadline.

4. Intergovernmental Review

This funding opportunity is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

5. Funding Restrictions, Unallowable Activities, and Specific Prohibitions

In addition to those specified under OMB Circular A–122, the following costs and activities are also unallowable or contain specific restrictions:

A. Pre-award Costs

Pre-award costs are not reimbursable.

B. Alternative Income-Generating Activities

USDOL funds awarded under all USDOL–ICLP Cooperative Agreements may not be used to provide micro-credits, revolving funds, or loan guarantees. Permissible costs related to alternative income-generating activities for parents and adolescents may include, but are not limited to, vocational or skills training, incidental tools and equipment, guides, manuals, and market feasibility studies. USDOL reserves the right to negotiate the exact nature, form, or scope of alternative income-generating activities and to approve or disapprove these activities at any time after award of the Cooperative Agreement.

C. Direct Cash Transfers to Communities, Parents, or Children

As a matter of policy, USDOL does not allow for direct cash transfers to target beneficiaries. Therefore, Grantees may not provide direct cash transfers to communities, parents, or children. USDOL, however, would support the purchase of incidental items in the nature of ''participant support costs'' as defined in OMB Circular A–122, Attachment B, No. 34, which are necessary to ensure that target children are no longer working in exploitative child labor and that these children have access to schooling. Participant support costs are direct costs that may include such items as uniforms, school supplies, books, provision of tuition (*i.e.*, in the form of stipends), and transportation costs. If approved by USDOL, these items are expected to be purchased or paid for directly by the Grantee or its subcontractor(s) in the form of vouchers, or payment to the service provider, as opposed to handing cash directly to children or other individuals.

If the applicant proposes the provision of participant support costs, the applicant must specify: (1) Why these activities and interventions are necessary, and how they will contribute to the overall project goals; and (2) how the disbursement of funds will be administered in order to maximize efficiency and minimize the risk of misuse. The application must also address how participant support costs will be made sustainable once the project is completed (*i.e.*, the mechanism(s) for which support will be mainstreamed into government efforts after project ends).

D. Construction

Construction with funds under the Cooperative Agreement is subject to USDOL approval and ordinarily should not exceed 10 percent of the project budget's direct costs and is expected to be limited to improving existing school infrastructure and facilities in the project's targeted communities. USDOL encourages applicants to cost-share and/or leverage funds or in-kind contributions from local partners when proposing construction activities in order to ensure sustainability.

E. Subcontracts to Organizations, Groups and/or Persons

The funding for this program does not include authority for sub-grants. Sub-granting may not appear or be included in the budget as a line item or in the Project Document text.

However, Grantees may enter into sub-contractual relationships with other organizations to fulfill the purpose and activities of the Cooperative Agreement award. Subcontracting may be included as a budget line item. Subcontracts must be awarded in accordance with 29 CFR 95.40–48 and are subject to audit, in accordance with the requirements of 29 CFR 95.26(d). Subcontracts awarded after the Cooperative Agreement is signed, and not proposed in the application, must be awarded through a formal competitive bidding process, unless prior written approval is obtained from USDOL. In addition, all subcontracts are subject to the restrictions and prohibitions related to prostitution, inherently religious activities, and terrorism as outlined in Section 5(H–J). Detailed information on

subcontracts should be provided during the project document review process. Copies of all subcontracts above $100,000 must be provided to USDOL.

In compliance with Executive Orders 12876, as amended, 13230, 12928 and 13021, as amended, Grantees are strongly encouraged to provide subcontracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions and Tribal Colleges and Universities.

F. Lobbying or Fund-raising the U.S. Government With Federal Funds

Under the Cooperative Agreements, no activity, including awareness raising and advocacy activities, may include fund-raising, or lobbying of U.S. Federal, State or local governments (see OMB Circular A–122). Cooperative Agreement applicants classified under the Internal Revenue Code as a 501(c)(4) entity (see 26 U.S.C. 501(c)(4)), may not engage in lobbying activities. According to the Lobbying Disclosure Act of 1995, as codified at 2 U.S.C. 1611, an organization, as described in Section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities directed toward the U.S. Government will not be eligible for the receipt of Federal funds constituting an award, grant, Cooperative Agreement, or loan.

G. Funds to Host Country Governments

USDOL funds awarded under this solicitation are not intended to duplicate or substitute for host-country government efforts or resources intended for child labor or education programs. Therefore, in general, Grantees may not provide any of the funds obligated under the Cooperative Agreement to foreign government entities, ministries, officials, or political parties. However, subcontracts with foreign government agencies may be awarded to provide direct educational services or undertake project activities subject to applicable laws and only after a competitive procurement process has been conducted and no other entity in the country is able to provide these services. Grantees must receive prior USDOL approval before subcontracting to foreign government agencies for the provision of direct educational services.

H. Prostitution

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. U.S. non-governmental organizations, and their subcontractors, cannot use U.S. Government funds to lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work. Foreign non-governmental organizations, and their subcontractors, that receive U.S. Government funds cannot lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work; this includes organizations receiving both general and trafficking-related grants. It is the responsibility of the primary Grantee to ensure its subcontractors meet these criteria.

I. Inherently Religious Activities

The U.S. Government is generally prohibited from providing direct financial assistance for inherently religious activities. Federal funds provided under a USDOL-awarded Cooperative Agreement may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious activities. Neutral, non-religious criteria that neither favor nor disfavor religion must be employed by the Grantee in the selection of subcontractors. This provision must be included in all subcontracts issued under the Cooperative Agreement.

J. Terrorism

Applicants are reminded that U.S. Executive Orders and U.S. law prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of Grantees to ensure compliance with these Executive Orders and laws. This provision must be included in all subcontracts issued under the Cooperative Agreement.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey e-mail address: *harvey.lisa@dol.gov.* For a list of frequently asked questions on USDOL's Child Labor Education Initiative Solicitation for Cooperative Agreement, please visit *http://www.dol.gov/ILAB/faq/faq36.htm.*

V. Application Review Information

1. Application Evaluation Criteria

This section identifies and describes the criteria that will be used to evaluate proposals for USDOL's Child Labor Education Initiative on the basis of 100 points. Up to 10 additional points will be given to proposals: (a) providing direct educational services to 10,000 or more direct beneficiaries (5 points) and (b) which include non-Federal leveraged resources (5 points) as described below in Sections V(1)(E) and V(1)(F). Applicants are requested to prepare their technical proposal (45 page maximum) organized in accordance with Appendix A, and address all of the following rating factors. When preparing the technical proposal, the applicant must follow the outline provided in Appendix A.

Project Design/Budget-Cost Effectiveness.	40 points
Promoting Sustainability	15 points
Organizational Capacity	25 points
Key Personnel/Management Plan/Staffing.	20 points
Direct Beneficiaries	5 extra points
Leveraging Resources	5 extra points

A. Project Design/Budget-Cost Effectiveness (40 Points)

This part of the technical proposal constitutes the ''preliminary project design document'' and serves as the basis of the final project document to be submitted and approved by USDOL after Cooperative Agreement award. The applicant's preliminary project design document must describe in detail the proposed approach to comply with each requirement and be linked to a supporting logical framework matrix. The supporting logical framework matrix will not count in the 45-page limit, but should be included as an annex to the preliminary project design document. To guide applicants, a sample logical framework matrix for a hypothetical Child Labor Education Initiative project is available at: *http://www.dol.gov/ilab/grants/bkgrd.htm.*

i. *Background and Justification.* Applicants will be rated based on their knowledge and understanding of: (a) The child labor and education context in the host country and in the targeted sectors; (b) the issues, barriers, and challenges involved in providing education to children engaged in or at risk of engaging in exploitative child labor, as a strategy for ensuring their long-term withdrawal or prevention; (c) best-practice solutions to address their needs; and (d) the policy and implementing environment in the selected country.

Additional factors for consideration include:

- Assessment of the incidence and nature of exploitative child labor, particularly the worst forms in geographic area and/or sector targeted, including hours of work, age and sex distribution of the target group, educational performance relative to other children, and if available, any research or data that might indicate correlations between educational performance and child labor;
- Identification of the sources of the relevant literature and documents used

to analyze the child labor and educational context;

• Demonstrated familiarity with existing child labor, education and social welfare policies, plans and projects and the sector in which the children work, which the applicant is using to inform project design for target children; and

• Demonstrated knowledge of other relevant programs as they pertain to child labor or education of target children in Egypt, Peru or Tanzania.

ii. *Proposed strategy.* The applicant must discuss its proposed strategy: (a) To provide for the long-term withdrawal and prevention of children and/or youth from exploitative labor through the provision of a direct educational service(s) that ensures their enrollment, retention and completion in at least one of the four educational activities identified in Section I(2); (b) to collect data on this target population; and (c) to build the capacity of national institutions and civil society to address child labor and education issues. Please refer to Section I(2) for USDOL's definition of ''exploitative child labor,'' ''withdrawn/prevented,'' ''direct educational services,'' and ''strengthening the capacity of government and civil society.'' Applicants will be rated based on the quality and pertinence of their proposed strategies.

The proposal must: (1) Identify how many children and/or youth are expected to be withdrawn or prevented from exploitative child labor by the project through the provision of direct educational services; (2) describe the specific gaps/educational needs of the children targeted by the project and explain how the project will address those gaps/needs/barriers of the children targeted; (3) provide detailed information on the forms of direct educational services that will be provided to the target children, including the type(s) of educational activities in which the children will be enrolled, to prevent them from entering and/or to withdraw them from exploitative labor, as well as the types of training opportunities and technical assistance that will be provided to project staff, host country nationals, and community groups involved in the project; and (4) provide a detailed work plan that identifies major project activities, deadlines for completing these activities, and person(s) or institution(s) responsible for completing these activities. (The work plan may vary depending on what is the most logical form. It may, for example, be divided by project component, country, or region.) Based on the specific cost-efficiency measures DOL/ICLP has established with OMB, a minimum of 8,600 direct beneficiaries must be served for each $5 million project. Applications that propose to serve less than 8,600 direct beneficiaries will be considered non-responsive. Please refer to Section I(2) for USDOL's definition of ''direct beneficiaries.''

Please note that the number of children targeted for withdrawal and the number of children targeted for prevention should be reported separately. Applicants are strongly encouraged to propose a balanced number of children targeted for withdrawal from exploitative child labor with the number of children targeted for prevention. Applicants should also provide information on how many children will be indirect beneficiaries of the project, i.e., those benefiting from other project interventions, such as through improved school quality, but who would not qualify as a direct beneficiary. See Section I(2) for further guidance on ''other project interventions.'' In each case, detailed information on the project beneficiaries, including demographics, sectors of work, geographical location, type(s) of educational activities provided, and other relevant characteristics and strategies must be provided. Applicants are strongly encouraged to enroll at least one-quarter of the children the project is targeting for withdrawal or prevention in educational activities during the first year of project implementation.

Additional factors that will be considered include:

• Demonstrated knowledge of the school calendar and the requirements of basic, non-formal and vocational education systems to develop an approach that successfully enrolls children in educational programs with the shortest delay without missing an academic year or program cycle;

• The extent to which country-specific cross-cutting themes that could affect project results, including those outlined in Section I(5), were meaningfully incorporated into the proposed strategy, either to increase opportunities or reduce threats to successful implementation;

• Incorporation of the economic and social context of the country in the proposed strategy, recognizing that approaches applicable in one country may not be relevant to others;

• The extent to which the proposed project promotes the goals of USDOL's Child Labor Education Initiative as listed in Section I(1);

• The creative and innovative nature of the applicant's approach to promote policies and services that will enhance the provision of educational opportunities for children involved in or at risk of entering exploitative child labor;

• The extent to which the number of children targeted by the project is commensurate with the need in the geographical area or sector where the project will be implemented;

• The feasibility and sensibility of the timeframes for the accomplishment of tasks;

• The clarity and quality of the information provided in the work plan; and

• The extent to which the proposed approach will build upon existing activities, government policies, and plans, thereby avoiding needless duplication.

iii. *Project Monitoring and Evaluation.* The applicant must describe: (1) How management will ensure that the goals and objectives will be met; (2) how information and data will be collected and used to demonstrate the impacts of the project; and (3) what systems will be put in place for self-assessment, evaluation, and continuous improvement.

USDOL has already developed common indicators (withdrawn/prevented, retention, and completion) and a database system for monitoring and tracking children's education and work status that can be used and adapted by Grantees after award. Further guidance on common indicators will be provided after award, thus applicants should focus their program management and performance assessment responses toward the development of their project's monitoring and tracking strategy to ensure children are: (a) Withdrawn and prevented from exploitative child labor; (b) provided educational/training opportunities; (c) able to continue or complete their educational programs; and (d) able to remain out of exploitative labor. Due to the potentially significant links between hours worked, working conditions, and school performance, Grantees must collect information to track this correlation among project beneficiaries.

Applicants should describe their monitoring strategies for measuring their performance in meeting the four goals of the Child Labor Education Initiative set out in Section I(1) and assessing the impact of proposed direct educational services on target children/youth and other project interventions on indirect beneficiaries, including a limited number of additional key indicators of project performance. These indicators will serve as a basis for

Grantees' Draft Performance Monitoring Plan (see Section VI(3)(D)).

Additional factors for consideration include:

- The applicant's plan for collecting baseline data;
- The applicant's plan for monitoring and tracking direct beneficiaries' work and education status, including the following factors: Type of work, conditions of work, such as hours of work and hazardous conditions, and school attendance; and
- The applicant's proposed methodologies for tracking the correlation between the number of hours worked, working conditions and school performance.

iv. *Budget-Cost Effectiveness.* This section will be evaluated in accordance with applicable Federal laws and regulations. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars). Applicants are also instructed that the project budget submitted with the application must include all necessary and sufficient funds, without reliance on other contracts, grants, or awards, to implement the applicant's proposed project activities and to achieve proposed project goals and objectives under this solicitation. If anticipated funding from another contract, grant, or award fails to materialize, USDOL will not provide additional funding to cover these costs. Applicants must provide an Outputs-Based Budget. An example of an Outputs-Based Budget is available from ILAB's Web site at *http://www.dol.gov/ilab/grants/bkgrd.htm.* The budget summary should include the cost breakdown for the Applicant. The applicant must (a) show how the budget reflects program goals and design in a cost-effective way to reflect budget/performance integration and (b) link the budget to the activities and outputs of the work plan discussed above.

The applicant must identify the direct cost per child of withdrawing a child from exploitative child labor and maintaining the child in the proposed project educational program(s) based on existing costs of similar programs.

The largest proportion of resources should be allocated to direct educational services and activities aimed at targeted children, rather than direct and indirect administrative costs. Higher ratings may be given to applicants with low administrative costs and with a budget breakdown that provides a larger amount of resources to project activities. All projected costs should be reported, as they will become part of the Cooperative Agreement upon award. In their cost proposal (Part I of the application), applicants must reflect a breakdown of the total administrative costs into direct administrative costs and indirect administrative costs. The Grant Officer reserves the right to negotiate administrative cost levels prior to award.

This section of the application must explain the costs for performing all of the requirements presented in this solicitation, and for producing all required reports and other deliverables (see Section VI(3)). The project budget must therefore include funds to: Plan, implement, monitor, report on, and evaluate programs and activities (including mid-term and final evaluations and annual single audits or attestation engagements, as applicable); conduct studies pertinent to project implementation, including baseline studies; and finance travel by field staff and key personnel to meet annually with USDOL officials in Washington, DC or within the project's region (*e.g.*, Africa, Asia/Pacific, Latin America, Caribbean, Middle East and North Africa, and Europe). Applicants based both within and outside the United States should budget for travel by field staff and other key personnel to Washington, DC at the beginning of the project for a post-award meeting with USDOL. Applicants should also budget for a facilitator-led project launch meeting in the target country, which will allow key stakeholders to discuss issues of project design and monitoring. This should include travel for a facilitator to and from the country.

Applicants should set aside a total of at least USD 70,000 in the proposed budget to cover the costs of a mid-term and a final evaluation, including: (1) Labor costs, particularly those associated with hiring an independent external evaluator and other staff time; (2) costs associated with conducting a stakeholders' meeting, including meeting facilities, interpreters (if necessary) and travel costs of meeting participants; and (3) site visits including travel to and within country (airfare, ground transportation, meals and lodging, interpreters (if necessary), etc.).

Applications are expected to allocate sufficient resources to proposed studies, assessments, surveys, and monitoring and evaluation activities, including costs associated with data collection. This includes but is not limited to costs associated with meeting the above reporting requirements including collecting and reporting on the common indicators (withdrawn/prevention, retention, and completion), data management, and assessing the impact of direct educational services on target children/youth and project interventions on indirect beneficiaries.

In addition, the budget should include a contingency provision, calculated at 5 percent of the project's total direct costs, for unexpected expenses essential to meeting project goals, such as host country currency devaluations, security costs, and inflation. USDOL will not provide additional funding to cover unanticipated costs.

Additional factors that will be considered include:

- The reasonableness and realism of prices/costs suggested in the budget;
- The extent to which the proposed budget takes into account the type of work in which the target children are currently engaged;
- Evidence that the proposed cost-efficiencies (defined as direct cost per child) is aligned with existing price structures for similar programs;
- Demonstration, to the extent possible, that the proposed cost-efficiencies are designed to withdraw or prevent as many children from exploitative child labor as possible through direct educational services that support their enrollment in educational activities.

Applicants are encouraged to discuss the possibility of exemption from customs and Value Added Tax (VAT) with host government officials during the preparation of an application for this Cooperative Agreement. While USDOL encourages host governments to not apply customs or VAT taxes to USDOL-funded programs, some host governments may nevertheless choose to assess such taxes. USDOL may not be able to provide assistance in this regard. Applicants should take into account such costs in budget preparation. If major costs are omitted, a Grantee may not be allowed to include them later.

Note to Applicants: After grant award, grantees must obtain prior approval from USDOL before using unobligated evaluation or contingency funds. If contingency funds have not been exhausted toward the end of the project period, USDOL and the Grantee will determine whether it is appropriate to reallocate the funds to direct educational or training services or return the funds to USDOL.

B. Sustainability Plan (15 points)

The applicant must discuss a proposed plan for sustainability of project efforts. The application must address detailed strategies, assumptions, and conditions for sustainability. Strategies are likely to differ by project and by the type of sustainability being addressed (*i.e.*, financial, services/benefits, programmatic/institutional and

political). Sustainability plans must also include a clear exit strategy that outlines how a project will transfer responsibility for project components to local or national stakeholders by the end of the project, if not sooner. Activities to address sustainability issues must be identified together with a list of (or statement concerning) external factors that may impact sustainability. Applicants must identify organizations in the target country, including type of local organizations (*i.e.*, rural, indigenous, etc.), which could potentially implement or contribute to a future project. Sustainability plans must also include a clear process for monitoring progress towards achieving the different areas of sustainability and key partners or institutions involved. In addition to the above factors, applicants will be rated based on the pertinence and appropriateness of the proposed sustainability plan.

C. Organizational Capacity (25 points)

Under this criterion, the applicant must present the qualifications of the organization(s) implementing the project. The evaluation criteria in this category are as follows:

i. *International and U.S. Government Grant Experience.* The organization applying for the award has international experience implementing basic, transitional, non-formal, or vocational education programs that aim to withdraw or prevent children from exploitative labor and address issues of educational access, quality, and policy reform for vulnerable children, preferably in the country of interest.

The application must include information on previous and current grants, Cooperative Agreements, or contracts of the applicant with USDOL and other Federal agencies that are relevant to this solicitation, including:

(1) The organizations for which the work was done;

(2) A contact person in that organization with his/her current phone number;

(3) The dollar value of the grant, contract, or Cooperative Agreement for the project;

(4) The time frame and professional effort involved in the project;

(5) A brief summary of the work performed; and

(6) A brief summary of accomplishments.

This information on previous grants, Cooperative Agreements, and contracts held by the applicant must be provided in appendices and will not count against the maximum page requirement. USDOL reserves the right to contact the organizations listed and use the information provided in evaluating applications.

Note to All Applicants: In judging organizational capacity, USDOL will take into account not only information provided by an applicant, but also information from the USDOL and others regarding past performance of organizations already implementing Child Labor Education Initiative projects or activities for USDOL and others. Past performance will be rated by such factors as the timeliness of deliverables, and the responsiveness of the organization and its staff to USDOL or grantor communications regarding deliverables and Cooperative Agreement or contractual requirements. In addition, the performance of the organization's key personnel on existing projects with USDOL or other entities, whether the organization has a history of replacing key personnel with similarly qualified staff, and the timeliness of replacing key personnel, will also be taken into consideration when rating past performance. Lack of past experience with USDOL projects, Cooperative Agreements, grants, or contracts is not a bar to eligibility or selection under this solicitation.

ii. *Country Presence and Host Government Support.* Given the need to provide children engaged in the worst forms of child labor with immediate assistance in accessing educational and training opportunities, applicants will be evaluated on their ability to start up project activities soon after signing a Cooperative Agreement. Having country presence, or partnering with in-country organizations, presents the best chance of expediting the delivery of services to children engaged or at risk of engaging in the worst forms of child labor. In their application, applicants must address their organization's country presence; ability to work directly with government and NGOs, including local and community-based organizations; and ability to start up project activities in a timely fashion. Applicants may submit supporting documentation with their application demonstrating country presence and/or outreach to host government ministries and non-governmental organizations in the country. These attachments will not count toward the page limit.

Within 60 days of award, an applicant, or its partners, must be formally recognized by the host government(s) using the appropriate mechanism, *i.e.*, Memorandum of Understanding or local registration of the organization.

iii. *Fiscal Oversight.* Applicants will be evaluated on their ability to demonstrate evidence that the organization has a sound financial system in place. If the applicant is a U.S.-based, non-profit organization already subject to the single audit requirements, the applicant's most recent single audit, as submitted to the Federal Audit Clearinghouse, must accompany the application as an attachment. In addition, applications must show that they have complied with report submission timeframes established in OMB Circular A–133. If an applicant is not in compliance with the requirements for completing their single audit, the application will be considered unresponsive and will be rejected. If the applicant is a for-profit or foreign-based organization, a copy of its most current independent financial audit must accompany the application as an attachment.

Applicants should also submit a copy of the most recent single audit report for all proposed U.S.-based, non-profit partners, Associates and subcontractors that are subject to the Single Audit Act. If the proposed Associate(s) or partner(s) is a for-profit or foreign-based organization, a copy of its most current independent financial audit should accompany the application as an attachment.

If the audit submitted by the applicant reflects any adverse opinions, the application will not be further considered by the technical review panel and will be rejected. USDOL reserves the right to ask further questions on any audit report submitted as part of an application. USDOL also reserves the right to place special conditions on Grantees if concerns are raised in their audit reports.

In order to expedite the screening of applications and to ensure that the appropriate audits are attached to the proposals, the applicant must provide a cover sheet to the audit attachments listing all proposed partners and subcontractors. These attachments will not count toward the application page limit.

D. Management Plan/Staffing (20 Points)

Successful performance of the proposed work depends heavily on the management skills and qualifications of the individuals committed to the project. Accordingly, in its evaluation of each application, USDOL will place emphasis on the applicant's management approach and commitment of personnel qualified for the work involved in accomplishing the assigned tasks. This section of the application must include sufficient information to judge management and staffing plans, and the experience and competence of program staff proposed for the project to

ensure that they meet the required qualifications.

Management and professional technical staff members comprising the applicant's proposed team should be individuals who have prior experience with organizations working in similar efforts, and who are fully qualified to perform the work specified in the Scope of Work. Where subcontractors or outside assistance are proposed, organizational lines of authority and responsibility should be clearly delineated to ensure responsiveness to the needs of USDOL.

In order to promote and increase national and local capacity, USDOL encourages the hiring of qualified national experts. USDOL also encourages applicants to consider staffing strategies that aim to develop capacity of national staff over the course of the project as part of a contribution to the development of national capacity for combating child labor. Preference may be given to applicants who propose such strategies.

i. *Key Personnel.* The Applicant must identify all key personnel candidates proposed to carry out the requirements of this solicitation. ''Key personnel'' are staff (Project Director, Education Specialist, and Monitoring and Evaluation Officer) who are essential to the successful operation of the project and completion of the proposed work.

(1) The Project Director will be responsible for overall project management, supervision, administration, and implementation of the requirements of the Cooperative Agreement. The Project Director will establish and maintain systems for project operations; ensure that all Cooperative Agreement deadlines are met and targets are achieved; maintain working relationships with project stakeholders and partners; and oversee the preparation and submission of progress and financial reports. The Project Director must have a minimum of three years of professional experience in a leadership role in implementation of child labor and complex basic education programs in developing countries in areas such as: Education policy; improving educational quality and access; educational assessment of disadvantaged students; development of community participation in the improvement of basic education for disadvantaged children; and monitoring and evaluation of basic education projects. Consideration will be given to candidates with additional years of experience including experience working with officials of ministries of education and/or labor. Preferred candidates must also have knowledge of exploitative child labor issues, and experience in the development of transitional, formal, and vocational education of children removed from exploitative child labor and/or victims of the worst forms of child labor. Fluency in English is required and working knowledge of at least one of the official languages of the target country is preferred.

(2) The Education Specialist will provide leadership in developing the technical aspects of this project in collaboration with the Project Director. This person must have at least three years experience in basic education projects in developing countries in areas including student assessment, teacher training, educational materials development, educational management, and educational monitoring and information systems. This person must have experience in working successfully with ministries of education, networks of educators, employers' organizations and trade union representatives or comparable entities. Additional experience with exploitative child labor/education policy and monitoring and evaluation is an asset. A working knowledge of English is preferred, as is a similar knowledge of the official language(s) spoken in the target country.

(3) The Monitoring and Evaluation Officer who will oversee the implementation of the project's monitoring and evaluation strategies and requirements. This person should have at least three years progressively responsible experience in the monitoring and evaluation of international development projects, preferably in education and training or a related field. Related experience can include strategic planning and performance measurement, indicator selection, quantitative and qualitative data collection and analysis methodologies, database management, and knowledge of the GPRA. Individuals with a demonstrated ability to build capacity of the project team and partners in these domains will be given special consideration.

The applicant must include a resume, as well as a description of the roles and responsibilities of all key and other professional personnel (as described below) proposed. Resumes must be submitted as an attachment to the application and will not count toward the page limit. At a minimum, each resume must include the following:

- The educational background and previous work experience for each key and other professional personnel to be assigned to the project, including position title, duties, dates, employing organizations, and clearly defined duties;
- The special capabilities of key personnel that demonstrate prior experience in organizing, managing and performing similar efforts; and
- The current employment status of key personnel and availability for this project.

The applicant must also indicate whether the proposed work will be performed by persons currently employed by the applying organization(s), and if so, for how long, or is dependent upon planned recruitment or subcontracting.

(4) All key personnel must allocate 100 percent of their time to the project and be present within the target country. Key personnel positions must not be combined. Proposed key personnel candidates must sign letters of agreement to serve on the project, and indicate availability to commence work within 30 calendar days of Cooperative Agreement award. If key personnel candidates are not designated, or if letters of agreement to serve on the project or resumes are not submitted as part of the application, the application will be considered unresponsive and will be rejected. (These will not count toward the page limit.) If either the Education Specialist or Monitoring and Evaluation Officer are not fluent in English, the project must assume responsibility for ensuring that key personnel have a clear understanding of USDOL policies and procedures and that all documents produced by key staff for submission to USDOL are in fluent English.

ii. *Other Professional Personnel.* The applicant must identify other program personnel proposed to carry out the requirements of this solicitation. The applicant must also indicate whether the proposed work by other professional personnel will be performed by persons currently employed by the organization(s) or is dependent upon planned recruitment or subcontracting.

iii. *Management Plan.* Applicants will be rated based on the clarity and quality of the information provided in the management plan. The plan must include (a) a description of the functional relationship between elements of the project's management structure; and (b) the responsibilities of project staff and management and the lines of authority between project staff and other elements of the project.

iv. *Staff Loading Plan.* The staff loading plan must identify all key tasks and the person-days required to complete each task. Labor estimated for each task must be broken down by individuals assigned to the task,

including Associates, subcontractors, and consultants. All key tasks should be charted to show the time required to perform them by months or weeks.

E. Direct Beneficiaries (5 points)

As noted above applicants are required to provide direct educational services to a minimum of 8,600 direct beneficiaries for each $5 million project based on the specific cost-efficiency measures DOL/ICLP has established with OMB. Applicants may receive up to 5 additional rating points by providing direct educational services to 10,000 or more direct beneficiaries. Please note that the proposed strategy must reflect appropriate services and monitoring mechanisms to ensure children are withdrawn from or prevented from entering exploitative child labor and are benefiting from a direct educational service provided by the project. Please refer to Section I(2) for USDOL's definition of ''direct beneficiaries.''

F. Leveraging Resources (5 points)

USDOL will give up to five (5) additional rating points to applications that include committed non-Federal resources that significantly expand the dollar amount, size and scope of the application. These programs or activities will not be financed by the project, but can complement and enhance project objectives. Applicants are also encouraged to leverage resources for activities, such as micro-credit, revolving funds, or loan guarantees, which are not directly allowable under the Cooperative Agreement. To be eligible for the additional points, the applicant must list the source(s) of funds, the nature, and possible activities anticipated with these resources under this Cooperative Agreement and any partnerships, linkages or coordination of activities, cooperative funding, etc. Staff time of proposed key personnel may not be submitted as a leveraged resource.

2. Review and Selection Process

The Office of Procurement Services at USDOL will screen all applications to determine whether all required elements, as identified in Section IV(2) above, are present and clearly identifiable. If an application does not include all of the required elements, including required attachments, it will be considered unresponsive and will be rejected. Once an application is deemed unresponsive, the Office of Procurement Services will send a letter to the applicant, which will state that the application was incomplete, indicate which document was missing from the application, and explain that the technical review panel will be unable to rate the application.

The following documents must be included in the application package in order for the application to be deemed complete and responsive:

(1) A cost proposal

(2) A technical proposal

(3) The applicant's most recent audit report

(4) Resumes of all key personnel candidates

(5) Signed letters of agreement to serve on the project from all key personnel candidates

(6) Signed partnership agreement(s), if applicable.

Each complete application will be objectively rated by a technical review panel against the criteria described in this announcement. Applicants are advised that panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select a Grantee on the basis of the initial application submission or the Grant Officer may establish a competitive or technically acceptable range from which qualified applicants will be selected. If deemed appropriate, the Grant Officer may call for the preparation and receipt of final revisions of applications, following which the evaluation process described above, may be repeated, in whole or in part, to consider such revisions. The Grant Officer will make final selection determinations based on panel findings and consideration of factors that represent the greatest advantage to the government, such as cost, the availability of funds, and other factors. If USDOL does not receive technically acceptable applications in response to this solicitation, USDOL reserves the right to terminate the competition and not make any award. The Grant Officer's determinations for awards under this solicitation are final.

Note to All Applicants: Selection of an organization as a potential Cooperative Agreement recipient does not constitute approval of the Cooperative Agreement application as submitted. Before the actual Cooperative Agreement is awarded, USDOL may enter into negotiations about such items as program components, funding levels, and administrative systems in place to support Cooperative Agreement implementation. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application. In addition, USDOL reserves the right to further negotiate program components after award, during the project design document submission and review process. See Section V(3)(A).

Award of a Cooperative Agreement under this solicitation may also be contingent upon an exchange of project support letters between USDOL and the relevant ministries in the target country.

3. Anticipated Announcement and Award Dates

Designation decisions will be made, where possible, within 45 days after the deadline for submission of proposals. USDOL is not obligated to make any awards as result of this solicitation, and only the Grant Officer can bind USDOL to the provision of funds under this solicitation. Unless specifically provided in the Cooperative Agreement, USDOL's acceptance of a proposal and/or award of Federal funds does not waive any Cooperative Agreement requirements and/or procedures.

VI. Award Administration Information

1. Award Notices

The Grant Officer will notify applicants of designation results as follows:

Designation Letter: The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The designation letter will be accompanied by a Cooperative Agreement and ICLP's Management Procedures and Guidelines (MPG).

Non-Designation Letter: Any organization not designated will be notified formally of the non-designation and given the basic reasons for the determination.

Notification of designation by a person or entity other than the Grant Officer is not valid.

2. Administrative and National Policy Requirements

A. General

Grantees are subject to applicable U.S. Federal laws (including provisions of appropriations law) and regulations, Executive Orders, applicable OMB Circulars, and USDOL policies. If during project implementation a Grantee is found in violation of U.S. Government laws and regulations, the terms of the Cooperative Agreement awarded under this solicitation may be modified by USDOL, costs may be disallowed and recovered, the Cooperative Agreement may be terminated, and USDOL may take other action permitted by law. Determinations of allowable costs will be made in accordance with the applicable U.S. Federal cost principles.

B. Audits

After award, Grantees must also submit an annual independent audit regardless of grant amount.

i. For U.S. based non-profit organizations expending $500,000 or more in a year in Federal awards: a ''single'' or ''program specific'' audit conducted under the provisions of OMB Circular A–133 is required.

ii. For all other organizations (including foreign-based and private for-profit grantees): an audit conducted in accordance with the U.S. Government Accountability Office's (GAO) ''Government Auditing Standards'' is required. The audit must address the following:

(a) Compliance with the Department's regulations and the provisions of the Cooperative Agreement; and

(b) Reliability of the organization's financial and performance reports.

Costs for audits or attestation engagements should be included in direct or indirect costs, whichever is appropriate.

Please Note: USDOL generally allows the costs to be allocated based on the following (applicable to U.S. based agencies only): (1) A–133 ''single audit'' costs as part of the indirect cost rate/pool for organizations with more than one Federal source of funding. Organizations with only one Federal source could charge the A–133 single audit cost as direct costs; (2) A–133 ''*compliance supplement*'' costs—as direct costs for Federal sources only through a cost allocation methodology approved by the Federal cognizant agency; or (3) A–133 program specific audits as direct costs. Any deviations from the above must be explained and justified in the application.

C. Administrative Standards and Provisions

The Cooperative Agreements awarded under this solicitation are subject to the following administrative standards and provisions, and any other applicable standards that come into effect during the term of the Cooperative Agreement, if applicable to a particular Grantee:

i. 29 CFR Part 2 Subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.

ii. 29 CFR Part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.

iii. 29 CFR Part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

iv. 29 CFR Part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor.

v. 29 CFR Part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor.

vi. 29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

vii. 29 CFR Part 93—New Restrictions on Lobbying.

viii. 29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

ix. 29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

x. 29 CFR Part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

xi. 29 CFR Part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

Copies of all regulations referenced in this solicitation are available at no cost, on-line, at *http://www.dol.gov.*

Grantees should be aware that terms outlined in this solicitation, the Cooperative Agreement, and the MPGs are all applicable to the implementation of projects awarded under this solicitation.

D. Key Personnel

As noted in Section V(1)(D), the applicant must list all Key Personnel candidates.

After the Cooperative Agreement has been awarded and throughout the life of the project, Grantees agree to inform the Grant Officer's Technical Representative (GOTR) whenever it appears impossible for any key personnel to continue work on the project as planned. The Grantee must nominate, through the submission of a formal project revision, new personnel; however, the Grantee must obtain approval from the Grant Officer before all changes to key personnel are formalized. If the Grant Officer is unable to approve the key personnel change, she or he reserves the right to terminate the Cooperative Agreement or disallow costs.

E. Encumbrance of Cooperative Agreement Funds

Cooperative agreement funds may not be encumbered/obligated by a Grantee before or after the period of performance. Encumbrances/obligations outstanding as of the end of the Cooperative Agreement period may be liquidated (paid out) after the end of the Cooperative Agreement period. Such encumbrances/obligations may involve only specified commitments for which a need existed during the Cooperative Agreement period and that are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with a Grantee's purchasing procedures and incurred within the Cooperative Agreement period. All encumbrances/obligations incurred during the Cooperative Agreement period must be liquidated within 90 calendar days after the end of the Cooperative Agreement period, unless a longer period of time is granted by USDOL.

Federal Regulations require Grantees to submit annually an inventory listing of federally-owned property in their custody to USDOL. See 29 CFR 95.33(a). Such property must be inventoried and secured throughout the life of the project. At the end of the project, USDOL and the Grantee are expected to determine how to best allocate such property in order to promote sustainability of efforts in the projects' implementing areas.

F. Site Visits

USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. USDOL shall make every effort to notify the Grantee at least two weeks in advance of any trip to the USDOL-funded project site. If USDOL makes any site visit on the premises of a Grantee or a subcontractor(s) under this Cooperative Agreement, the Grantee shall provide and shall require its subcontractors to provide all reasonable facilities and assistance for the safety and convenience of government representatives in the performance of their duties. All site visits and evaluations are expected to be performed in a manner that will not unduly delay the implementation of the project.

3. Reporting and Deliverables

In addition to meeting the above requirements, a Grantee is expected to

monitor the implementation of the program; report to USDOL on a semi-annual basis or more frequently if deemed necessary by USDOL; and undergo independent evaluations of program results. Guidance on USDOL procedures and management requirements will be provided to Grantees in the MPGs with the Cooperative Agreement. Unless otherwise indicated, a Grantee must submit copies of all required reports to USDOL by the specified due dates. Exact timeframes for completion of deliverables will be addressed in the Cooperative Agreement and the MPGs.

Specific deliverables are the following:

A. Project Design Document

Within 180 calendar days of project award, the Grantee must deliver the final project design document, based on the application written in response to this solicitation, including the results of additional consultation with stakeholders, partners, and USDOL. The final project design document must also include sections that address coordination strategies, project management and sustainability.

B. Progress and Financial Reports

The format for the progress reports will be provided in the MPG distributed after the award. Grantees must furnish a typed technical progress report and a financial report (SF 269) to USDOL on a semi-annual basis by 31 March and 30 September of each year during the Cooperative Agreement period. However, USDOL reserves the right to require up to four technical progress reports a year, as necessary. Also, a copy of the Federal Cash Transactions Report (PSC 272) must be submitted to USDOL upon submission to the Health and Human Services—Payment Management System (HHS–PMS).

C. Annual Work Plan

Grantees must develop a final annual work plan within 180 calendar days of project award for approval by USDOL so as to ensure coordination with other relevant social actors throughout the country. Updated annual work plans must be delivered annually with the September technical progress reported.

D. Performance Monitoring and Evaluation Plan

Grantees must develop a performance monitoring and evaluation plan in collaboration with USDOL, including beginning and ending dates for the project; indicators, methods and cost of data collection; and planned and actual dates for mid-term and final evaluations. The Performance Monitoring Plan (PMP) must be developed in conjunction with the logical framework project design and common indicators for reporting selected by USDOL. The plan must include a limited number of additional key indicators that can be realistically measured within the cost parameters allocated to project monitoring. Baseline data collection is expected to be tied to the indicators of the project design document and the PMP. A draft PMP must be submitted to USDOL within 180 calendar days of project award. See background materials available on ICLP's Web site *http://www.dol.gov/ilab/grants/bkgrd.htm* for a sample PMP.

E. Project Evaluations

Grantees and the GOTR will determine on a case-by-case basis whether a mid-term evaluation will be conducted by an internal or external evaluation team. All final evaluations must be external and independent in nature. A Grantee must respond in writing to any comments and recommendations provided in the mid-term evaluation report. The budget must include at least USD 70,000 for projected mid-term and final evaluation costs.

VII. Agency Contacts

All inquiries regarding this solicitation should be directed to: Ms. Lisa Harvey, U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210; telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov.* For a list of frequently asked questions on USDOL's Child Labor Education Initiative Solicitation for Cooperative Agreement, please visit *http://www.dol.gov/ILAB/faq/faq36.htm.*

VIII. Other Information

1. Press Issues

The Grantee must inform USDOL to the extent possible of major press events and/or interviews. Any press release or press conference referring to a USDOL-funded project must first be discussed and agreed to with USDOL and the appropriate U.S. Embassy. USDOL and the Grantee are expected to discuss general policy towards the press when it relates to (1) acknowledgement of USDOL funding, and (2) USDOL policy regarding international child labor.

2. Materials Prepared Under the Cooperative Agreement

Grantees must submit to USDOL, for approval, all media-related, awareness-raising, and educational materials developed by the Grantee or its subcontractors before they are reproduced, published, or used. USDOL considers such materials to include brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the program. USDOL will review materials for technical accuracy and other issues.

In addition, USDOL reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use for Federal purposes, and authorize others to do so, all materials that are developed or for which ownership is purchased by the Grantee under an award.

3. Acknowledgment of USDOL Funding and USDOL Disclaimer

USDOL has established procedures and guidelines regarding acknowledgement of funding. The Grantee must acknowledge USDOL funding support in all publications, announcements, speeches and press releases relating to the projects. The acknowledgement must be as follows:

Funding for this (* * *) was provided by the United States Department of Labor under Cooperative Agreement number _____ .

In addition, the Grantee is required to include a disclaimer in publications and materials that have been directly funded by USDOL as follows:

This (* * *) does not necessarily reflect the views or policies of the United States Department of Labor, nor does the mention of trade names, commercial products, or organizations imply endorsement by the United States Government.

This acknowledgement and disclaimer must be included in documents (reports and other materials) produced, edited and published for distribution beyond the Grantee and USDOL (*i.e.*, to other donors, organizations, or the general public). At a minimum, the following USDOL-funded documents must include the acknowledgement and disclaimer:

- Research and Data Collection, including: Survey reports, rapid assessments and baseline survey reports, research studies (economic, social, legislation, education, health, etc.), good practices report and diagnostic reports;
- Manuals and Guidelines, including: Training manuals, operational and technical guidelines;
- Awareness Raising Materials, including: Web sites, posters, videos, cd-roms and pamphlets.

If there are any reasons preventing the Grantee from including the USDOL acknowledgement or disclaimer in the

publications listed above, the Grantee must discuss the issue with USDOL prior to publication to obtain appropriate guidance on the matter.

The USDOL logo may be applied to USDOL-funded material prepared for worldwide distribution, including posters, videos, pamphlets, research documents, national survey reports, impact evaluations, best practices reports and other publications of global interest. A Grantee must consult with USDOL on whether the logo may be used on any such items prior to final draft or final presentation for distribution. A Grantee must obtain USDOL written permission before placing the USDOL logo on any item.

4. Privacy and Freedom of Information

Any information submitted in response to this solicitation will be subject to the provisions of the Privacy Act and the Freedom of Information Act, as appropriate.

Signed at Washington, DC, this 19th day of May, 2006.

Eric Vogt,

Grant Officer.

Appendix A: Technical Proposal Format

Abstract
A. Project Design/Budget-Cost Effectiveness
  i. Background and Justification
  ii. Proposed Strategy
  iii. Project Monitoring and Evaluation
  iv. Budget-Cost Effectiveness Narrative (with cost of activities linked to Outputs Based Budget in Annex B)
B. Sustainability Plan
C. Organizational Capacity
  i. International and U.S. Government Grant Experience
  ii. Country Presence
  iii. Fiscal Oversight
D. Management Plan/Key Personnel/Staffing
  i. Key Personnel
  ii. Other Professional Personnel
  iii. Management Plan
  iv. Staff Loading Plan
E. Leveraged Resources
  i. Contributions/Inputs provided by the Grantee
  ii. National and/or Other Contributions
Annex A: Full Presentation of the Logical Framework Matrix
Annex B: Outputs Based Budget

(An example of a Logical Framework matrix, an Outputs Based Budget, PMP and other background documentation for this solicitation are available from ILAB's Web site at *http://www.dol.gov/ilab/grants/bkgrd.htm*.).

BILLING CODE 4510–28–P

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

OMB No. 1890-0014 Exp. 02/28/09

Purpose: The Federal government is committed to ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. In order for us to better understand the population of applicants for Federal funds, we are asking nonprofit private organizations (not including private universities) to fill out this survey.

Upon receipt, the survey will be separated from the application. Information provided on the survey will not be considered in any way in making funding decisions and will not be included in the Federal grants database. While your help in this data collection process is greatly appreciated, completion of this survey is voluntary.

Instructions for Submitting the Survey: If you are applying using a hard copy application, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it along with your application package. If you are applying electronically, please submit this survey along with your application.

Applicant's (Organization) Name: _____

Applicant's DUNS Number: _____

Federal Program: _____ **CFDA Number:** _____

1. Has the applicant ever received a grant or contract from the Federal government?

☐ Yes ☐ No

2. Is the applicant a faith-based organization?

☐ Yes ☐ No

3. Is the applicant a secular organization?

☐ Yes ☐ No

4. Does the applicant have 501(c)(3) status?

☐ Yes ☐ No

5. Is the applicant a local affiliate of a national organization?

☐ Yes ☐ No

6. How many full-time equivalent employees does the applicant have? *(Check only one box).*

☐ 3 or Fewer ☐ 15-50
☐ 4-5 ☐ 51-100
☐ 6-14 ☐ over 100

7. What is the size of the applicant's annual budget? *(Check only one box.)*

☐ Less Than $150,000
☐ $150,000 - $299,999
☐ $300,000 - $499,999
☐ $500,000 - $999,999
☐ $1,000,000 - $4,999,999
☐ $5,000,000 or more

Survey Instructions on Ensuring Equal Opportunity for Applicants

Provide the applicant's (organization) name and DUNS number and the grant name and CFDA number.

1. Self-explanatory.

2. Self-identify.

3. Self-identify.

4. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

5. Self-explanatory.

6. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

7. Annual budget means the amount of money your organization spends each year on all of its activities.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** The Agency Contact listed in this grant application package.

OMB No. 1890-0014 Exp. 02/28/09

[FR Doc. 06–4857 Filed 5–24–06; 8:45 am]
BILLING CODE 4510–28–C

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 5, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 5, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 17th day of May 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Appendix 55 TAA petitions instituted between 5/8/06 and 5/12/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
59336	Carolina Mills Inc (Comp)	Statesville, NC	05/08/06	05/04/06
59337	Carolina Mills Inc (Comp)	Maiden, NC	05/08/06	05/04/06
59338	International Paper Co. (Union)	Cantonment, FL	05/08/06	05/05/06
59339	Northern Technologies (State)	Pocahontas, AR	05/08/06	05/04/06
59340	Billings Transportation Co. (Comp)	Lexington, NC	05/08/06	05/03/06
59341	STERIS Corporation (UAW)	Erie, PA	05/08/06	05/04/06
59342	Sheridan Industries Inc. (State)	Albion, MI	05/08/06	05/04/06
59343	NABCO Inc (Comp)	Reed City, MI	05/08/06	05/05/06
59344	Factory Screen Works (Comp)	King, NC	05/08/06	05/05/06
59345	Theramatrix Physical Therapy and Services Inc (Wkrs)	Hapeville, GA	05/08/06	05/05/06
59346	Sonoco Products Co. (Comp)	Charlotte, NC	05/08/06	05/05/06
59347	Health Fitness Corp. (Wrks)	Minneapolis, MN	05/08/06	04/27/06
59348	Ardisam, Inc. (Comp)	Cumberland, WI	05/08/06	05/04/06
59349	P.H. Glatfelter Co. (Comp)	Neenah, WI	05/08/06	05/05/06
59350	Central Minnesota Tool and Stamping (State)	Little Falls, MN	05/08/06	05/05/06
59351	Southern Oregon Lumber (Wkrs)	Central Point, OR	05/08/06	05/04/06
59352	Town of Calhoun Falls (Comp)	Calhoun Falls, SC	05/08/06	04/14/06
59353	Auburn Technology Inc (Comp)	Auburn, NY	05/08/06	05/05/06
59354	Atlas Engineering (Comp)	Kent, OH	05/08/06	05/02/06
59355	Quebecor World Inc. (Union)	Brookfield, WI	05/09/06	05/08/06
59356	Masonite Corporation (Comp)	Corning, CA	05/09/06	05/08/06
59357	Dole Fruit Co. (Comp)	Gulfport, MS	05/09/06	05/08/06
59358	Cenveo-Waterbury (Wkrs)	Waterbury, CT	05/09/06	04/26/06
59359	Science Applications International Corp. (SAIC) (State)	Piscataway, NJ	05/09/06	05/08/06
59360	Smurfit Stone Company (Wkrs)	Mansfield, MA	05/09/06	05/08/06
59361	Columbian Chemicals Company (Comp)	Proctor, WV	05/09/06	05/08/06
59362	Mount Vernon Mills (Comp)	Trion, GA	05/09/06	05/09/06
59363	Moore Wallace (Comp)	Iowa City, IA	05/10/06	04/28/06
59364	Galileo International Cendant Co. (State)	Centennial, CO	05/10/06	05/04/06
59365	Napco Window Systems (Union)	Sarver, PA	05/10/06	05/09/06
59366	Yorktowne Cabinetry (Union)	Mifflinburg, PA	05/10/06	05/09/06
59367	United Technologies Corp. (Comp)	Carrollton, TX	05/10/06	05/09/06
59368	Formica Corporation (Comp)	Rocklin, CA	05/10/06	05/09/06
59369	3M Precision Optics (Wkrs)	Cincinnati, OH	05/10/06	05/06/06
59370	Universal Leaf of North America (Wkrs)	Danville, VA	05/10/06	04/24/06
59371	Sony Electronics (Comp)	San Diego, CA	05/10/06	04/21/06
59372	Sun Microsystems, Inc. (State)	Santa Clara, CA	05/10/06	05/02/06
59373	North Gate Litho Print (State)	Portland, OR	05/11/06	05/10/06
59374	Astec America (Wkrs)	Carlsbad, CA	05/11/06	05/10/06
59375	Eagle Picher (State)	Hillsdale, MI	05/12/06	05/11/06
59376	Escalade Sports Inc. (IUECWA)	Evansville, IN	05/12/06	05/09/06
59377	St. John (State)	Irvine, CA	05/12/06	05/10/63
59378	Crossroads Industries Inc. (Comp)	Gaylord, MI	05/12/06	05/10/06
59379	E.K. Wood Products, Inc. (State)	Barbourville, KY	05/12/06	05/10/06
59380	Siemens VDO (Union)	Elkhart, IN	05/12/06	05/10/06
59381	Shieldalloy Metallurgical Corp. (Wkrs)	Newfield, NJ	05/12/06	05/11/06

APPENDIX—Continued

[Appendix 55 TAA petitions instituted between 5/8/06 and 5/12/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
59382	C.M. Holtzinger Fruit Co. Inc. (Wkrs)	Prosser, WA	05/12/06	05/08/06
59383	Herrin Maytag Laundry Products (State)	Herrin, IL	05/12/06	05/11/06
59384	Wistron Infocomm (Wkrs)	Grapevine, TX	05/12/06	05/09/06
59385	G.E. Lighting (Wkrs)	Willoughby, OH	05/12/06	05/03/06
59386	Woodmaster Inc. (Comp)	St. Anthony, IN	05/12/06	04/27/06
59387	SKF USA Inc. (Comp)	Graniteville, SC	05/12/06	05/03/06
59388	Rose Art Industries Inc. (Comp)	Livingston, NJ	05/12/06	05/01/06
59389	Hirel Systems (Comp)	Kent, WA	05/12/06	05/04/06
59390	Eaton (Wkrs)	Phelps, NY	05/12/06	05/03/06

[FR Doc. E6–8061 Filed 5–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,780]

Direct Source Industries, San Francisco, CA; Notice of Revised Determination on Reconsideration

By letter dated April 10, 2006, a petitioner requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the subject firm. The determination was issued on March 3, 2006. On March 24, 2006, the Notice of determination was published in the **Federal Register** (71 FR 14954). The denial was based on the Department's finding that the workers do not produce an article or support a domestic production facility.

In the request for reconsideration, the petitioner asserts that, prior to the company's closure in October 2005, the workers were engaged in the production of garments (women's apparel).

During the reconsideration investigation, a company official stated that the subject workers were engaged in various functions (cut, inspected, washed, and pressed etc.) related to the production of garments. Based on this information, the Department determines that the subject workers were engaged in the production of garment producers (women's and girls' tops).

The investigation also revealed that aggregate U.S. imports of women's and girls tops increased significantly during the twelve month period ended June 2005 over the corresponding twelve month period ended June 2004 period. The ratio of aggregate United States imports of women's and girls' tops to United States shipments was well over 800 percent in 2004. The ratio increased significantly during the twelve month period ending June 2005.

The investigation further revealed that sales, production and employment at the subject plant declined during the relevant period.

In accordance with section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of section 246 of the Trade Act, as amended, must be met. The Department has determined in this case that the requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the information obtained in the reconsideration investigation, I determine that increases of imports of articles like or directly competitive with women's apparel produced by Direct Source Industries, San Francisco, California, contributed importantly to the total or partial separation of workers and to the decline in sales or production and at that firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

All workers of Direct Source Industries, San Francisco, California, who became totally or partially separated from employment on or after February 2, 2005 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974, as amended.

Signed in Washington, DC this 17th day of May 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8055 Filed 5–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,241]

Eagle Picher Automotive, Jonesville, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 19, 2006 in response to a petition filed by a company official on behalf of workers at Eagle Picher Automotive, Jonesville, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 12th day of May, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8060 Filed 5–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,385]

G.E. Lighting; Willoughby Quartz Plant; Willoughby, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 12, 2006, in response to a worker petition filed on behalf of workers at G.E.

Lighting, Willoughby Quartz Plant, Willoughby, Ohio.

The petitioning group of workers is covered by an earlier petition filed on April 28, 2006 (TA–W–59,292) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC this 12th day of May 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8063 Filed 5–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,078]

Hexion Specialty Chemicals, Inc. FFP Division Including On-Site Leased Workers of Express Personnel, High Point, NC; Notice of Affirmative Determination Regarding Application for Reconsideration

By application of May 11, 2006, a worker requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The determination was issued on May 2, 2006. The Department's Notice of determination will soon be published in the **Federal Register**. Workers produce specialty wood adhesives and ancillary products.

The negative determination was based on the Department's findings that the subject firm did not increase imports of wood adhesives and ancillary products or shift production of wood adhesives and ancillary products abroad, and that the subject firm's major declining customers did not increase imports of specialty wood adhesives and ancillary products during the relevant period.

The worker alleges that the subject firm supplied wood adhesive to customers affected by increased imports of wood furniture.

Following the issuance of the negative determination, the Department received information which indicates that it is possible that information provided to the Department regarding subject firm sales and production may be inaccurate and/or incomplete.

The Department has carefully reviewed the request for reconsideration and all available information, and has determined that the Department will conduct further investigation based on new information provided by the worker and the company official.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 16th day of May 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8056 Filed 5–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,774]

Innovex, Inc.; Litchfield, MN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Innovex, Inc., Litchfield, Minnesota. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–58,774; Innovex, Inc., Litchfield, Minnesota (May 17, 2006)

Signed at Washington, DC this 18th day of May 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–8054 Filed 5–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,119]

Nanston, Inc. Dental Lab, Norcross, GA; Notice of Revised Determination on Reconsideration

By letter dated May 3, 2006 a petitioner requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination signed on April 21, 2006 was based on the finding that imports of dentures, crowns and orthodontics work did not contribute importantly to worker separations at the subject plant and no shift of production to a foreign source occurred. The denial notice was published in the **Federal Register** on May 10, 2006 (71 FR 27291).

To support the request for reconsideration, the petitioner supplied additional information regarding the outsourcing of production of dentures, crowns and orthodontics by the subject firm and imports of like or directly competitive products with those produced at the subject firm.

A further contact with the company official revealed that the subject firm ceased production of dentures, crowns and orthodontics in order to outsource it to a domestic company which manufactures dentures, crowns and orthodontics abroad.

A survey of the outsourced company revealed that a high portion of the products supplied to the subject firm are manufactured abroad and those imports of dentures, crowns and orthodontics have increased significantly during the relevant time period. The investigation revealed that outsourcing of the production abroad and increased imports of dentures, crowns and orthodontics contributed importantly to the declines in production and employment at the subject firm.

In accordance with section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of section 246 of the Trade Act must be met. The Department has

determined in this case that the requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Nanston, Inc., Dental Lab, Norcross, Georgia, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Nanston, Inc., Dental Lab, Norcross, Georgia who became totally or partially separated from employment on or after March 6, 2005 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC this 16th day of May 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8057 Filed 5–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,175]

Q-Edge Corporation Also Known as Foxconn\Q-Edge Corporation, Ontario, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 7, 2006, in response to a petition filed by the Employment Development Department of State of California on behalf of workers at Q-Edge Corporation, also know as Foxconn/Q-Edge Corporation, Ontario, California.

This petitioner group of workers is covered by an active certification, (TA–W–58,327) which expires on January 5, 2008. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 12th day of May 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8058 Filed 5–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,204]

Ronfeldt Associates, Inc., Toledo, OH; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 13, 2006 in response to a worker petition filed by a company official on behalf of workers at Ronfeldt Associates, Inc., Toledo, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of May 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8059 Filed 5–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,372]

Sun Microsystems, Inc.; Anta Clara, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 10, 2006 in response to a petition filed by a company official on behalf of workers at SUN Microsystems, Inc., Santa Clara, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 12th day of May, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8062 Filed 5–24–06; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–220 and 50–410]

Nine Mile Point Nuclear Station, LLC; Nine Mile Point Nuclear Station, Units 1 and 2; Notice of Availability of the Final Supplement 24 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding the License Renewal of Nine Mile Point Nuclear Station

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, or the Commission) has published a final plant-specific supplement to the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS),'' NUREG–1437, regarding the renewal of operating licenses DPR–63 and NPF–69 for an additional 20 years of operation for the Nine Mile Point Nuclear Station, Units 1 and 2 (Nine Mile Point). Nine Mile Point is located in northern New York on the shore of Lake Ontario, approximately five miles northeast of Oswego, New York, 36 miles north-northwest of Syracuse, New York, and 65 miles east of Rochester, New York. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

As discussed in Section 9.3 of the final Supplement 24, based on: (1) The analysis and findings in the GEIS; (2) the Environmental Report submitted by Nine Mile Point Nuclear Station, LLC; (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments, the recommendation of the staff is that the Commission determine that the adverse environmental impacts of license renewal for Nine Mile Point are not so great that preserving the option of license renewal for energy-planning decision makers would be unreasonable.

The final Supplement 24 to the GEIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://adamswebsearch.nrc.gov/dologin.htm*. The Accession Number for the final Supplement 24 to the GEIS is ML061290310. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737,

or by e-mail at *pdr@nrc.gov.* In addition, the Penfield Library, located at State University of New York, Oswego, New York, 13126, has agreed to make the final Supplement 24 to the GEIS available for public inspection.

FOR FURTHER INFORMATION, CONTACT: Mr. Samuel Hernandez, Environmental Branch B, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Mr. Hernandez may be contacted by telephone at 1–800–368–5642, extension 4049 or via e-mail at *SHQ@nrc.gov.*

Dated at Rockville, Maryland, this 16th day of May, 2006.

For the Nuclear Regulatory Commission.

Michael Masnik,

Acting Branch Chief, Environmental Branch B, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E6–8037 Filed 5–24–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 171st meeting on June 6–7, 2006, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The schedule for this meeting is as follows:

Tuesday, June 6, 2006

1 p.m.–1:15 p.m.: Opening Statement (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

1:15 p.m.–3:15 p.m.: Overview of Commercial Spent Nuclear Fuel Reprocessing (Open)—A former ACNW Committee member will brief the ACNW on theory and technology used in the past to reprocess spent nuclear fuel.

3:30 p.m.–4:30 p.m.: NRC's spent Nuclear Fuel Reprocessing Regulation (Open)—The NRC staff will update the Committee on the implications of a Department of Energy Nuclear fuel Recycling Program to NRC regulations concerning the licensing of spent nuclear fuel recycling facilities.

4:30 p.m.–5:30 p.m.: Overview of the Application of NRC Regulations to Spent Nuclear Fuel Reprocessing (Open)—The NRC staff will brief the Committee on potential changes to the regulatory process that may be needed to accommodate spent nuclear fuel reprocessing.

5:30 p.m.–6 p.m.: Discussion of Proposed White Paper (Open)—The Committee will discuss the planning for scope and content of a potential ACNW White paper on spent nuclear fuel reprocessing.

Wednesday, June 7, 2006

8:30 a.m.–8:45 a.m.: Opening Remarks by the ACNW Chairman (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

8:45 a.m.–4 p.m.: Miscellaneous (Open/Closed)—The Committee will discuss matters related to the conduct of ACNW activities and specific issues that were not completed during previous meetings, as time and availability of information permit. Discussions may include future Committee Meetings.

Note: A portion of this meeting may be closed pursuant to 5 U.S.C. 552b (c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2005 (70 FR 59081). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Mr. Michael R. Snodderly (Telephone 301–415–6927), between 8:15 a.m. and 5 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Snodderly as to their particular needs.

In accordance with Subsection 10(d) Public Law 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted, therefore can be obtained by contacting Mr. Snodderly.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Video Teleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: May 19, 2006.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E6–8035 Filed 5–24–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the Joint ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and Human Factors; Notice of Meeting

The ACRS Subcommittees on Reliability and Probabilistic Risk Assessment (PRA) and Human Factors will hold a joint meeting on June 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:

Wednesday, June 28, 2006—8:30 a.m. until 3 p.m.

The joint Subcommittees will review three current human reliability assessment issues: the ATHEANA User's Guide, the application of ATHEANA to pressurized thermal shock, and comments received on the HRA Methods Evaluation NUREG. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and industry regarding this matter. The Subcommittees 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. Eric A. Thornsbury (Telephone: 301–415–8716) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m.(ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: May 18, 2006.

Michael R. Snodderly,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E6–8033 Filed 5–24–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Digital Instrumentation and Control Systems; Notice of Meeting

The ACRS Subcommittee on Digital Instrumentation and Control Systems will hold a meeting on June 27, 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:

Tuesday, June 27, 2006—8:30 a.m. until the conclusion of business.

The Subcommittee plans to review the ongoing digital system risk program and the development of regulatory guidance on risk informed digital system reviews. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff 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. Eric A. Thornsbury, (Telephone: 301–415–8716) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m.(ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: May 18, 2006.

Michael R. Snodderly,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E6–8034 Filed 5–24–06; 8:45 am]

BILLING CODE 7590–01–P

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb note, Title I of Public Law 104–333, 110 Stat. 4097, as amended, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held commencing 6:30 p.m. on Thursday, June 15, 2006, at the Golden Gate Club, 135 Fisher Loop, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to approve minutes from the last Board meeting, to adopt a revised budget for Fiscal Year 2006, to provide an Executive Director's Report, to present the final Supplemental Environmental Impact Statement in connection with the rehabilitation of the Public Health Service Hospital, and to receive public comment in accordance with the Trust's Public Outreach Policy.

Accommodation: Individuals requiring special accommodation at this meeting, such as needing a sign language interpreter, should contact Mollie Matull at (415) 561–5300 prior to May 31, 2006.

FOR FURTHER INFORMATION CONTACT: Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: (415) 561–5300.

Dated: May 22, 2006.

Karen A. Cook,

General Counsel.

[FR Doc. E6–8114 Filed 5–24–06; 8:45 am]

BILLING CODE 4310–4R–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:* Employee Representatives' Status and Compensation Reports.

(2) *Form(s) submitted:* DC–2a, DC–2.

(3) *OMB Number:* 3220–0014.

(4) *Expiration date of current OMB clearance:* 7/31/2006.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 65.

(8) *Total annual responses:* 65.

(9) *Total annual reporting hours:* 33.

(10) *Collection description:* Benefits are provided under the Railroad Retirement Act (RRA) for individuals who are employee representatives as defined in section 1 of the RRA. The collection obtains information regarding the status of such individuals and their compensation.

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. E6–8050 Filed 5–24–06; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summaary: 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:* Employer's Deemed Service Month Questionnaire.

(2) *Form(s) submitted:* GL–99.

(3) *OMB Number:* 3220–0156.

(4) *Expiration date of current OMB clearance:* 8/31/2006.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 150.

(8) *Total annual responses:* 4,000.

(9) *Total annual reporting hours:* 133.

(10) *Collection description:* Under Section 3(i) of the Railroad Retirement Act, the Railroad Retirement Board may deem months of service in cases where an employee does not actually work in every month of the year. The collection obtains service and compensation information from railroad employers needed to determine if an employee may be credited with additional months of railroad service.

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. E6–8051 Filed 5–24–06; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53842; File No. SR–Amex–2006–45]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Prohibition Against the Entry of Multiple Options Orders

May 19, 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 May 8, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal 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 Exchange proposes to revise Amex Rule 933—ANTE(e) prohibiting the entry via the Amex New Trading Environment system (''ANTE'') of multiple orders for any account of the same beneficial owner in the same option within any fifteen (15) second period. The text of the proposed rule change appears below. Proposed deletions are in [brackets].

Rule 933—ANTE

Automatic Matching and Execution of Options Orders

(a)–(d) No change.

(e) The Options Trading Committee shall determine the size parameters of orders eligible for automatic matching and execution. The Committee may determine to set the eligible order size parameter in any option class as the disseminated quote size. [An automatic matching and execution eligible order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than 15 seconds between entry of each such order in a call class and/or a put class for the same option. Members and member organizations are responsible for establishing procedures to prevent orders in a call class and/or a put class for the same option for any account in which the same person is directly or indirectly interested from being entered at intervals of less than 15 seconds.]

(f)–(g) No change.

Commentary * * * No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to revise Amex Rule 933—ANTE(e) in order to increase the number of orders handled through ANTE. Currently, Amex Rule 933—ANTE(e) prohibits the entry of multiple orders for any account of the same beneficial owner in the same option class within any fifteen (15) second period. The original purpose of the Rule in connection with the Exchange's Automatic Execution System (''Auto-Ex'') [6] was to assist Exchange specialists and Registered Options Traders (''ROTs'') in managing their risk of multiple executions of orders delivered in rapid succession. Prior to the introduction of ANTE, specialists and ROTs would find it very difficult to timely revise their quotations. As a result, the Exchange, as well as the other options exchanges, at that time adopted rules to prohibit the entry of multiple orders for any account of the same beneficial owner within fifteen (15) seconds. The purpose of the Rule was to protect investors and other market participants from the potential

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Amex has requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] The Auto-Ex system was established to provide small customer orders with an immediate single price execution.

negative consequences that might result from Order Entry Firms or off-floor broker-dealers ''picking off'' specialists and/or ROTs. The Exchange believed that if persons were allowed to effectively increase the size of Auto-Ex eligible orders by entering more than one such order at intervals of less than 15 seconds, Amex specialists and ROTs would be unable to make markets with the same liquidity as if there were effective limits on the size and frequency of Auto-Ex eligible orders.

The Amex has substantially improved its electronic trading systems such that the risk associated with multiple orders in the same option delivered for any account of the same or an affiliated beneficial account holder has become more manageable through electronic means. Specifically, ANTE now allows specialists and ROTs to submit proprietary electronic quotes through ANTE and to revise their quotes electronically, which reduces the risk of multiple executions of orders delivered in rapid succession before the specialist or ROT is able to revise its quotation. In addition, a revised and updated version of ANTE has incorporated a risk management tool to allow specialists and ROTs to set criteria for the system to adjust their quotes (the ''Quote Risk Manager'') if a certain number of trades are executed within a certain period of time. The Commission recently approved the Exchange's Quote Risk Manager.[7] Due to the substantial increase in automated option order handling and risk mitigation tools provided by ANTE, the Amex submits that the fifteen (15) second prohibition currently included in its Amex Rule 933—ANTE(e) is unnecessary.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] As required by Rule 19b–4(f)(6)(iii) under the Act, the Exchange also provided with the Commission with 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 of the proposed rule change.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[13] 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 Exchange has asked the Commission to waive the 30-day operative delay and allow the proposed rule change to become operative on May 8, 2006, the date that it was filed with the Commission. The Commission hereby grants that request.[14] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the Commission has approved a similar proposed rule change by the Philadelphia Stock Exchange, Inc.,[15] and thus the proposal does not raise any new regulatory issues.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–Amex–2006–45 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 No. SR–Amex–2006–45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All

[7] *See* Securities Exchange Act Release No. 53148 (January 19, 2006), 71 FR 4386 (January 26, 2006) (SR–Amex–2005–131).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] *Id.*

[13] *Id.*

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] *See* Securities Exchange Act Release No. 51827 (June 13, 2005), 70 FR 35491 (June 20, 2005) (SR–Phlx–2005–20).

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 No. SR–Amex–2006–45 and should be submitted on or before June 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–8052 Filed 5–24–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53836; File No. SR–BSE–2006–17]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Change Its Hours of Operation for Trading in Nasdaq Securities

May 18, 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 May 1, 2006, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The BSE filed the 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. 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 proposes to amend Chapter XXXV, Trading in Nasdaq Securities, Section 7, Dealings On Floor—Hours. The text of the proposed rule change is available on the BSE Web site at *http://www.bostonstock.com*, at the Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to change its hours of operation for trading in Nasdaq Securities from 7 a.m. until 6:30 p.m., to 7 a.m. until 4:30 p.m. This change would decrease the Exchange's transacting of business in Nasdaq Securities during Nasdaq's after hours trading session by two hours, ending at 4:30 p.m. The BSE believes this change meets the current needs of its members.

2. Statutory Basis

The BSE believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[5] in general, and Section 6(b)(5)[6] in particular, in that it is designed to promote just and equitable principles of trade, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The BSE has asked that the Commission waive the 30-day operative delay contained in Rule 19b–4(f)(6)(iii) under the Act.[8] The Commission believes such waiver is consistent with the protection of investors and the public interest, for it will allow BSE to implement a change that meets the current needs of its members. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.[9]

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–2006–17 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–2006–17. This file

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The BSE provided the Commission with written notice of its intention to file the proposed rule change on April 6, 2006. The BSE asked the Commission to waive the 30-day operative delay. *See* 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the 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 the File Number SR–BSE–2006–17 and should be submitted on or before June 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E6–7993 Filed 5–24–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53833; File No. SR–NASDAQ–2006–010]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change To Establish Certain Fees With Respect to Transactions Executed Through the Intermarket Trading System

May 18, 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 May 15, 2006, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to enter into arrangements with other national securities exchanges to pass certain fees they have collected from members for transactions executed on another exchange through the Intermarket Trading System (''ITS''). This proposal does not require changes to Nasdaq rule text. Nasdaq will implement the proposed rule change immediately upon approval by the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 31 of the Act[3] requires each national securities exchange to pay the Commission a fee based on the aggregate dollar amount of certain sales of securities (''covered sales''). Rules 31 and 31T, adopted by the Commission in June 2004,[4] established procedures for the calculation and collection of Section 31 fees on such covered sales. Rule 31 requires each national securities exchange that owes Section 31 fees to submit a completed Form R31 to the Commission each month, beginning with July 2004. Rule 31T required each exchange to submit a completed Form R31 for each of the months September 2003 to June 2004, inclusive. Each national securities exchange must report its covered sales volume based on the data from a designated clearing agency, when available. The designated clearing agency for covered sales of equity securities is the National Securities Clearing Corporation (''NSCC''). These covered sales are reported in Part I of Form R31, and each exchange is required to ''provide in Part I only the data supplied to it by a designated clearing agency.''[5] The data supplied by NSCC for the period September 2003 through August 2004 did not accurately reflect the aggregate dollar value of the covered sales occurring on each exchange to permit reports to be made in accordance with new Rules 31 and 31T. In particular, the data NSCC reported to each national securities exchange included non-covered sales data for sales originating on one exchange and executed on another exchange through the ITS.[6]

Section 31 requires that national securities exchanges pay a fee based on the aggregate dollar amount of sales of securities transacted on the exchange. Given the specific language of Section 31, the Commission in the Adopting Release for Rules 31 and 31T advised that the current methodology for treating sales of securities that occur through ITS[7] was no longer appropriate and that ''it would be simpler and more transparent for each covered [self-regulatory organization (''SRO'')] to report all covered sales that occur on its market.'' The Commission further stated:

The Commission acknowledges that a covered SRO on which a covered sale occurs as a result of an incoming ITS order may not

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78ee.

[4] *See* Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060 (July 7, 2004) (''Adopting Release'').

[5] 17 CFR 240.31(b)(5).

[6] As a result of this and other inaccuracies in the data reported by NSCC, the national securities exchanges were unable to report accurate information on Form R31, unless they made adjustments to the NSCC data based on data other than that provided by NSCC. On October 6, 2004, the Commission's Division of Market Regulation (''Division'') issued a ''no-action'' letter advising exchanges for whom NSCC acts as a designated clearing agency under Rule 31, that the Division staff would not recommend that the Commission take enforcement action if a national securities exchange adjusts the data provided by NSCC to accurately reflect covered sales occurring on the national securities exchange. *See* letter from Robert L.D. Colby, Deputy Director, Division, Commission to Ellen J. Neely, Senior Vice President and General Counsel, Chicago Stock Exchange, Inc. (''CHX''), dated October 6, 2004.

[7] In the Adopting Release, the Commission described the current methodology: ''SRO A sends an ITS commitment to a member of SRO B to sell a security, and the commitment is executed on SRO B. Under existing arrangements, SRO A pays the Section 31 fee arising from this trade and passes the fee to its member that initiated the trade. * * * [T]he SROs devised this system because SRO B does not have the ability to require members of SRO A to reimburse it for the cost of its Section 31 fees.'' Adopting Release, 69 FR at 41067.

be able to collect funds to pay the Section 31 fee from one of its own members. However, Section 31 does not address the manner or extent to which covered SROs may seek to recover the amounts that they pay pursuant to Section 31 from their members. Covered SROs may wish to devise new arrangements for passing fees between themselves so that the funds are collected from the covered SRO that originated the ITS order.[8]

The Commission further noted that any such arrangements devised by the SROs would have to be established pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder.

Working through a subcommittee of the ITS Operating Committee[9] (''Subcommittee''), the national securities exchanges that are ITS participants devised new arrangements for passing fees between the ITS participants that were collected from their members. This proposed rule change is being submitted by Nasdaq based on the substantially similar rule change proposals submitted by other exchanges participating in the arrangement.[10]

Pursuant to the arrangement, each ITS participant exchange determines whether it has received and executed more in dollar value of covered sales than it has originated and sent to each other ITS participant exchange. For example, for the historical period, September 2003 through August 2004, SRO A sent ITS commitments for covered sales whose dollar value was $150 million to SRO B for execution. SRO A collected fees from its members to fund its Section 31 obligation for those covered sales executed on SRO B. SRO B, as the executing market center, is obligated to pay the Section 31 fee to the SEC. During the same period, SRO B sent ITS commitments for covered sales whose dollar value was $210 million to SRO A. SRO B collected fees from its members for those covered sales executed on SRO A. SRO A, as the executing market center, is obligated to pay the Section 31 fee to the SEC. Since SRO A executed a greater dollar value of covered sales from SRO B than it sent to SRO B, the proposed arrangement requires SRO A to determine the amount of the fees collected by SRO B from its members based on the aggregate dollar value of covered sales from SRO B and executed on SRO A through ITS commitments. When invoicing SRO B, SRO A will deduct the amount of the fee it owes to SRO B (*i.e.*, the fee amount based on SRO A's $210 million in aggregate covered sales less the fee amount based on SRO B's $150 million in aggregate covered sales) and will invoice only for the difference of $60 million. The invoicing process under the arrangement occurs twice yearly to coincide with the March 15 and September 30 payment schedule for Section 31 fees set forth in the Act.

To implement this proposed arrangement, an ITS participant exchange will require access to the aggregate dollar value of buy and sell transactions occurring through ITS. The Securities Industry Automation Corporation (''SIAC'') uses the ITS database that it maintains to provide reports of the aggregate dollar value of buy and sell transactions occurring through ITS to the ITS participants. The reports provided by SIAC are used by ITS participants in connection with determining which ITS participant will pay the fee for transactions occurring through ITS and which ITS participant has collect the fee from its members.

Nasdaq believes that the proposed arrangement is a fair and efficient means for passing fees collected at one ITS participant exchange based upon executions of covered sales occurring at another ITS participant exchange. Nasdaq acknowledges that the legal duty to report and pay the Section 31 fee remains with the ITS participant on which the sale was in fact transacted.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Sections 6(b)(4)[12] and 6(b)(5)[13] of the Act, in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among Nasdaq's members and issuers and other persons using its facilities, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove the 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. This proposal will allow Nasdaq to participant in the process established by other SROs to pass fees they have collected from members for transactions executed on another SRO through ITS.

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

No written comments were solicited or received with respect to the proposed rule change.

III. 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–NASDAQ–2006–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2006–010. 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

[8] *Id.*

[9] The ITS participants are American Stock Exchange LLC, Boston Stock Exchange (''BSE''), Chicago Board Options Exchange, CHX, National Association of Securities Dealers (''NASD''), National Stock Exchange, New York Stock Exchange, Pacific Exchange, and Philadelphia Stock Exchange. Nasdaq is now also an ITS participant.

[10] *See, e.g.*, Securities Exchange Act Release No. 52593 (October 12, 2005), 70 FR 60584 (October 18, 2005) (SR–Amex–2005–083). NASD determined not to participate in the arrangement for passing fees between exchanges.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78f(b)(5).

the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. 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–NASDAQ–2006–010 and should be submitted on or before June 15, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act,[15] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. National securities exchanges obtain funds to pay their Section 31 fees to the Commission by charging fees to broker-dealers who generate the covered sales on which Section 31 fees are based. An exchange can obtain most of these funds by imposing a fee on one of its members whenever the member is on the sell side of a transaction. However, when the exchange accepts an ITS commitment to buy, the ultimate seller is a party on another market. The exchange lacks the ability to pass a fee to that seller directly, because the seller may not be a member of the exchange. Under the proposed arrangement, which has been adopted by each of the ITS participant exchanges other than NASD,[16] the exchange that routed the ITS commitment away will continue to collect a fee from the broker-dealer that placed the sell order. Then, with respect to each ITS participant exchange, the exchange will determine whether it is a net sender or net receiver of ITS trades and send fees to or accept fees from each other exchange accordingly. The Commission believes this is an equitable manner for the exchanges to obtain funds to pay their Section 31 fees on covered sales resulting from ITS trades.

Under Section 19(b)(2) of the Act,[17] the Commission may not approve any proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof, unless the Commission finds good cause for so doing. The Commission hereby finds good cause for approving the proposed rule change prior to the thirtieth day after publishing notice of filing thereof in the **Federal Register**. In this case, the Commission does not believe a comment period is necessary because all of the parties affected by the proposed fee—the other ITS participant exchanges—have already adopted the same fee arrangement.[18]

For the reasons set forth above, the Commission finds good cause to accelerate approval of the proposed rule change pursuant to Section 19(b)(2) of the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASDAQ–2006–010) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Nancy M. Morris,

Secretary.

[FR Doc. E6–7990 Filed 5–24–06; 8:45 am]

BILLING CODE 8010–01–P

[14] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(4).

[16] *See* letter from George W. Mann, Jr., Executive Vice President and General Counsel, BSE, and Chairman, Subcommittee, to Michael Gaw, Assistant Director, Division, Commission, dated September 29, 2005.

[17] 15 U.S.C. 78s(b)(2).

[18] *See supra* note 16.

[19] CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53838; File No. SR–NASD–2006–059]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Related to Non-NASD Member Broker/Dealer Access to Nasdaq's Brut and INET Facilities

May 18, 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 May 1, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On May 16, 2006, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] Nasdaq filed the proposed rule change, as amended, as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to continue the participation of broker-dealers that are non-NASD members in Nasdaq's Brut and INET systems through the earlier of July 1, 2006, or the date Nasdaq becomes operational as a national securities exchange for the particular types of securities traded by those non-members in Nasdaq's INET and Brut systems. Nasdaq would implement the proposed rule change immediately. The text of the proposed rule change is below. Proposed new language is in *italics*. Proposed deletions are in [brackets].

4901. Definitions

(a) through (h) No change.

(i) The term ''Participant'' shall mean an NASD member that fulfills the obligations contained in Rule 4902 regarding participation in the System. [Until May 1, 2006] [t]*T*he term ''Participant'' shall also include non-NASD broker/dealers that desire to use the System and otherwise meet all other requirements for System participation. *Non-NASD member broker/dealers shall have access to System until the earlier of either July 1, 2006, or the date that Nasdaq becomes operational as a national securities exchange for the particular class of securities traded by the non-NASD member.*

(j) through (w) No Change

* * * * *

4952. System Participant Registration

(a) Participation in INET requires current registration with the System and is conditioned upon the Participant's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange clarified in the purpose section the number of non-member broker-dealers with access to the Brut and INET systems. In addition, Nasdaq requested waivers of the 5-day notice and 30-day pre-operative delay contained in Rule 19b–4(f)(6)(iii) under the Act.

[4] 17 CFR 240.19b–4(f)(6).

initial and continuing compliance with the following requirements:

(1)–(5) No Change.

(6) In addition to the above, [on or before May 1, 2006,] all System Participants shall be members of the Association. *Exception: Non-NASD member broker/dealers shall have access to System until the earlier of either July 1, 2006, or the date that Nasdaq becomes operational as a national securities exchange for the particular class of securities traded by the non-NASD member.*

* * * * *

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, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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, Proposed Rule Change

1. Purpose

Nasdaq states that, under current rules, broker-dealers that are not members of the NASD may use the Brut and INET systems until May 1, 2006. Nasdaq is proposing to modify this provision so as to allow non-NASD member broker-dealers to use the Brut and INET systems until the earlier of either July 1, 2006, or the date that Nasdaq becomes operational as a national securities exchange for the particular class of securities traded by the non-member. Nasdaq believes that this division of dates upon which non-NASD members must be members of the Nasdaq exchange in order to continue to use Nasdaq's trading facilities is necessary because Nasdaq plans to become operational as an exchange in two phases with the first involving only Nasdaq securities, with a second later phase for securities listed by other exchanges. Under the proposal, non-NASD members trading Nasdaq-listed securities would be required to be a Nasdaq exchange member to continue to trade Nasdaq securities in Brut and INET on the date that Nasdaq becomes operational as exchange for Nasdaq issues, while entities trading other exchange-listed securities would be allowed continued access to the Brut and INET systems for that trading until such time as Nasdaq becomes operational as an exchange for non-Nasdaq issues. Nasdaq states that in neither scenario would non-NASD member access to the Brut and INET systems extend beyond July 1, 2006 without a further Commission-approved extension.

Nasdaq states that this extension is intended to allow these non-NASD member broker-dealers to have continued access to Brut and INET while they take actions to become members of the recently-approved Nasdaq exchange. Nasdaq notes that only 44 non-NASD member broker dealers currently have access to its Brut and INET systems (4 in the Brut system and 40 in the INET system) and, as before, Nasdaq commits not to allow any additional non-NASD broker-dealers access during this extension period.[5]

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[6] in general, and with Section 15A(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, and to remove impediments to a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq states that written comments were neither solicited nor received with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change, as amended, does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day pre-operative delay and the five-day pre-filing notice requirement and designate the proposed rule change, as amended, to become effective upon filing. Nasdaq believes that waivers of such periods will allow continued uninterrupted access to the Brut and INET systems for non-NASD broker dealers in the period of time immediately preceding Nasdaq's operation as an exchange. The Commission believes that waiving the 30-day pre-operative delay and the five-day pre-filing notice requirement is consistent with the protection of investors and the public interest because it would facilitate the orderly transition of Nasdaq to a national securities exchange, thus removing impediments to a free and open market and a national market system. For the reasons stated above, the Commission designates the proposal, as amended, to become effective and operative on May 1, 2006.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[13]

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[5] See Amendment No. 1, *supra* note 3.

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] The effective date of the original proposed rule change is May 1, 2006, and the effective date of Amendment No. 1 is May 16, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on May 16, 2006, the date on which the Exchange submitted Amendment No. 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2006–059 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-NASD–2006–059. 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 Nasdaq. 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–NASD–2006–059 and should be submitted on or before June 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E6–7996 Filed 5–24–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53826; File No. SR–NYSE–2005–90]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 To Allow Certain Institutional Customers To Elect Not To Receive Account Statements

May 18, 2006.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 21, 2005, the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission'') the proposed change to NYSE Rule 409 (Statements of Accounts to Customers) as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 28, 2006, the NYSE filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend NYSE Rule 409 to allow institutional customers conducting a Delivery versus Payment and Receive versus Payment (''DVP/RVP'') business to elect not to receive account statements.

The text of the proposed rule change is set forth below. *Italics* indicate new text that would be added to the current text of NYSE Rule 409.

Rule 409.

Statements of Accounts to Customers

(a) Except with the permission of the Exchange, *or as otherwise provided by this paragraph,* member organizations shall send to their customers statements of account showing security and money positions and entries at least quarterly to all accounts having an entry, money or security position during the preceding quarter. *Quarterly statements need not be sent to a customer pursuant to Rule 409(a) if:*

(1) The customer's account is carried solely for the purpose of execution on a Delivery versus Payment/Receive versus Payment basis (DVP/RVP);

(2) All transactions effected for the account are done on a DVP/RVP basis in conformity with Rule 387;

(3) The account does not show security or money positions at the end of the quarter;

(4) The customer consents to the suspension of such statements in writing. Such consents must be maintained by the member organization in a manner consistent with Exchange Rule 440 and Rule 17a–4 under the Securities Exchange Act of 1934;

(5) The member organization undertakes to provide any particular statement or statements to the customer promptly upon request; and

(6) The member organization undertakes to promptly reinstate the delivery of such statements to the customer upon request.

Nothing in this rule shall be seen to qualify or condition the obligations of a member organization under SEC Rule 15c3–2 concerning quarterly notices of free credit balances on statements.

For purposes of this rule, a DVP/RVP account is an arrangement whereby payment for securities purchased is to be made to the selling customer's agent and/or delivery of securities sold is to be made to the buying customer's agent in exchange for payment at time of settlement, usually in the form of cash.

(b) through (g)—No change.

Supplementary Material—No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In filing the proposed rule change and Amendment No. 1 with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, a partial amendment, the NYSE proposed additional changes to the text of proposed amended Rule 409, which are incorporated in the proposed rule text below.

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Waiving of Customer Statements for Institutional DVP/RVP Accounts. NYSE Rule 409, in pertinent part, specifies the obligations of member organizations with respect to customer statements, including frequency of delivery and elements of content.

NYSE Rule 409(a) requires that, except with the permission of the Exchange, members and member organizations shall send statements at least quarterly to customers for accounts showing security and money positions and entries during the preceding quarter. The Exchange proposes amendments to the Rule that would provide relief from this requirement for customer accounts that are carried solely for the purpose of DVP/RVP transactions. A DVP/RVP account is an arrangement whereby delivery of securities sold is made to the buying customer's bank in exchange for payment, usually in cash, at settlement. Such accounts must comply with the requirements outlined in NYSE Rule 387 (COD Orders).[5]

Due to the nature of DVP/RVP accounts, their statements do not generally reflect any cash balance or security position at the end of a quarter. Consequently, DVP/RVP customers (chiefly institutional customers) generally rely on confirmations (issued pursuant to SEC Rule 10b–10) or trade runs for transaction-related information. Such records provide critical transactional information (such as security name and price, commission or markup, trade date, settlement date, etc.) in a timely fashion (trade date +1). According to the NYSE, such records are preferred by institutional investors, who have no desire to receive voluminous quarterly statements.

Accordingly, the Exchange proposes amendments to Rule 409 that would relieve member organizations of the obligation to send quarterly statements to customers with such accounts if: (1) The customer's account is carried solely for the purpose of execution on a DVP/RVP basis; (2) all transactions effected for the account are done on a DVP/RVP basis in conformity with Rule 387; (3) the account does not show security or money positions at the end of the quarter; (4) the customer consents to the suspension of such statements in writing and such consents are maintained by the member organization in a manner consistent with Exchange Rule 440 and Rule 17a–4 under the Exchange Act; (5) the member organization undertakes to provide any particular statement or statements to the customer promptly upon request; and (6) the member organization undertakes to promptly reinstate the delivery of such statements to the customer upon request.

Nothing in the proposed amended rule would be seen to qualify or condition the obligations of a member organization under SEC Rule 15c3–2 concerning quarterly notices of free credit balances on statements. For purposes of the proposed amended rule, a DVP/RVP account is an arrangement whereby payment for securities purchased is to be made to the selling customer's agent and/or delivery of securities sold is to be made to the buying customer's agent in exchange for payment at time of settlement, usually in the form of cash.

By requiring affirmative consent, the ability of the customer to receive quarterly statements is preserved, and the member organization is precluded from unilaterally terminating delivery of such statements. The customer would also retain the right to reinstate the delivery of statements at any time, and to resume receipt of statements promptly upon request.

In sum, the Exchange believes that the proposed amended rule would provide reasonable regulatory flexibility by allowing customers to decline delivery of statements that are of little or no use to them. Correspondingly, the proposed amended rule would result in substantial cost savings to member organizations in that they would no longer be required to produce and deliver unwanted and unnecessary records.[6]

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of section 6(b)(5) of the Exchange Act.[7] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Exchange believes the proposed rule change is designed to promote just and equitable principles of trade, perfect the mechanism of a free an open market, and protect investors by permitting DVP/RVP customers to avoid receiving unwanted, voluminous quarterly account statements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

[5] NYSE Rule 387 sets out specific prerequisites for the acceptance of such orders:

(1) The member or member organization must have previously received the name and address of the agent, together with its customer number;

(2) The order must note the payment on delivery or collect on delivery nature of the trade;

(3) The member or member organization must deliver to the customer a confirmation in the specified form; and

(4) The member organization must have obtained an agreement from the customer regarding the furnishing of appropriate instructions for the settlement of the trade.

[6] In correspondence dated October 26, 2004, and May 22, 2003, that the NYSE received from Mr. Lawrence Morillo, Chairman of the Securities Industry Association STP Legal and Regulatory Subcommittee, it was estimated that it would not be unreasonable to expect a firm to realize savings of $100,000 per year in statement production and mailing costs.

[7] 15 U.S.C. 78f(b)(5).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2005–90 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2005–90. 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 the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–90 and should be submitted on or before June 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E6–8053 Filed 5–24–06; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53831; File No. SR–Phlx–2006–26]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Regulatory Services Agreements

May 18, 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 April 28, 2006, the Philadelphia Stock Exchange, Inc. (''Exchange'' or ''Phlx'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act,[3] which rendered the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a rule concerning regulatory services agreements (''RSAs''), in which the Exchange would contract with another self-regulatory organization (''SRO'') for the performance of certain of the Exchange's regulatory functions. The text of the proposed rule change is available on the Phlx's Web site, *http://www.phlx.com,* at the Phlx's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to enhance the Phlx's ability to carry out its regulatory obligations under the Act by clarifying the Phlx's ability to contract with another SRO for regulatory services. Under any RSA with another SRO, the Phlx would remain an SRO registered under Section 6 of the Act[4] and therefore would continue to have statutory authority and responsibility for enforcing compliance by its members, and persons associated with its members, with the Act, the rules thereunder, and the rules of the Exchange.

This rule change would have immediate applicability with respect to an RSA between the Phlx, the Chicago Board Options Exchange, Incorporated (''CBOE''), and other options markets participating in the proposed Options Regulatory Surveillance Authority national market system plan (''ORSA''). The Phlx has determined that to best discharge its SRO responsibilities, it will contract with CBOE, which is subject to Commission oversight pursuant to Sections 6 and 19 of the Act,[5] for CBOE to provide certain regulatory services to the Phlx, as set forth in the ORSA RSA. In performing services under the ORSA RSA, CBOE will be operating pursuant to the statutory SRO responsibilities of the Phlx under Sections 6 and 19, as well as performing for itself its own SRO responsibilities. The proposed rule change specifically states that any action taken by another SRO, or its employees or authorized agents, operating on behalf of the Phlx pursuant to an RSA with the Exchange (*e.g.*, CBOE under the ORSA RSA) will be deemed an action taken by the Exchange. The Phlx will retain ultimate responsibility for performance of its SRO duties under the RSA, and the proposed rule change states that the Exchange shall retain ultimate legal responsibility for and control of its SRO responsibilities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Sections

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f and 15 U.S.C. 78s.

[6] 15 U.S.C. 78f(b).

6(b)(1), 6(b)(6) and 6(b)(7) of the Act[7] in particular, in that it will enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; it will help ensure that members and persons associated with members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange; and it will provide a fair procedure for the disciplining of members and persons associated with members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of filing, 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[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9] The Exchange has requested that the Commission waive the 30-day operative delay period for ''non-controversial'' proposals and make the proposed rule change effective and operative upon filing. The Commission hereby grants the request. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. In this regard, the Commission believes that the proposal should be implemented without delay because of its immediate applicability with respect to the RSA among the Phlx, CBOE and the other ORSA participants.[10] For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the 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–Phlx–2006–26 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–Phlx–2006–26. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2006–26 and should be submitted on or before June 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–7997 Filed 5–24–06; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b)(1); 15 U.S.C. 78f(b)(6); and 15 U.S.C. 78f(b)(7).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] The Commission notes that the proposed rule change is based on a similar rule of the Boston Stock Exchange, Inc. *See* Securities Exchange Act Release No. 53436 (March 7, 2006), 71 FR 13194 (March 14, 2006) (SR–BSE–2006–08).

[11] For the purposes only of accelerating the 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).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5419]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: EducationUSA Advising Program for Students and Scholars from the Middle East and North Africa

Announcement Type: Cooperative Agreement.

Funding Opportunity Number: ECA/A/S/A–07–09.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: August 18, 2006.

Executive Summary: The Educational Information and Resources Branch (ECA/A/S/A), Office of Global Educational Programs, of the Bureau of Educational and Cultural Affairs, announces an open competition to administer EducationUSA advising centers in the Middle East and North Africa. Public and private non-profit U.S. organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to offer overseas educational advising, orientation, and information services for international students and scholars in one or more of twelve locations in the Middle East and North Africa. Organizations wishing to apply for this cooperative agreement must either currently have offices in the countries covered by this agreement, or include a detailed plan in their proposal for establishing such a presence by January

1, 2007, when advising activities must begin. Maximum expected award level is $600,000, pending availability of funds. Start-up costs related to opening new advising centers (fees, purchase of equipment, etc.) must be borne by the applicant, and may not be included in the budget submission of this proposal. Applicants are encouraged to keep headquarters costs as low as possible and ensure that maximum funding flows to field offices. Please see POGI for details.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: Department of State-affiliated EducationUSA advising centers operate in nearly 450 locations in 170 countries around the world. Advisors guide foreign students in their pursuit of educational opportunities in the United States and prepare them for direct exposure to American values, ideas, models, and traditions. They provide accurate, unbiased information on the full range of accredited U.S. higher educational institutions and work to build mutual understanding between the United States and other countries through educational exchange.

In the Middle East and North Africa, funding will support foreign student advising for U.S. study only (not for study in third countries) in Egypt (Alexandria and Cairo), Gaza, Jordan, Kuwait, Lebanon, Morocco, Oman, Syria, Tunisia, West Bank, and Yemen. Organizations may apply to operate centers in one or more of the listed locations, up to the total of twelve.

The advising centers will offer group informational and individual advising sessions for foreign students, and conduct frequent outreach to local in-country institutions. The advising centers will provide information on the following topics: The U.S. education system; U.S. colleges, universities, community colleges and other higher education institutions; accreditation; the application process to a U.S. university; majors and fields of study; testing requirements; life in the U.S.; scholarship programs and financial aid; and visa procedures. Centers will provide pre-departure orientation sessions and also try to stay in touch with students once they are in the United States, and after they return from their U.S. experience, as they will be an excellent source of expertise for new advisees.

Free introductory group advising sessions and free access to the library (at least 50% of the time) must be provided, but applicants may charge modest, affordable fees to students for other services, or devise a membership package to recover some advising costs. Applicants may also charge reasonable fees if services are provided to help U.S. university representatives traveling in the region for recruitment purposes. See POGI for details. Group advising and outreach sessions should pay particular attention to reaching out to underserved populations, to addressing student and parent safety concerns, and to correcting misperceptions regarding the U.S. visa process. Outreach efforts should be coordinated with Public Affairs and Consular sections at U.S. Embassies.

Advising centers will provide regular access, at times convenient to the public, to the reference library and computers with Internet to allow students to conduct online research related to study in the U.S. The library will contain, at a minimum, materials provided by ECA through its annual online book ordering process; it may also have catalogues and other materials sent by accredited U.S. colleges or other recognized educational sources. A list of ECA materials may be obtained by contacting Program Officer Rachel Waldstein, *waldsteinre@state.gov.*

Security and public access should be taken into consideration in terms of advising center location; EducationUSA offices should be centrally located and near public transportation whenever possible.

The grantee organization will employ the advisors and handle all personnel benefits and other human resource issues. Advisors will be eligible to participate in Department of State-sponsored training opportunities, to order reference materials from the Department of State, and to receive guidance and assistance from the Department of State's Regional Educational Advising Coordinator (REAC) based in Rabat, Morocco. The REAC's job is to conduct site visits to evaluate advising centers and local country conditions as they relate to educational advising, share information with all advisors through a listserv and newsletter, provide training through regional and local workshops, and recommend new advisors for ECA training programs.

The EducationUSA advising office serves as the U.S. Embassy's in-country resource on U.S. higher education. Therefore, applicants should describe their abilities to monitor, to the extent possible, the status of the education systems in each of the countries and report important issues to ECA/A/S/A and the U.S. Embassies. Organizations should develop a network of contacts within the Ministries of Education, local schools, universities and other appropriate institutions.

II. Award Information

Type of Award: Cooperative Agreement. In a cooperative agreement, ECA/A/S/A is substantially involved in program activities above and beyond routine grant monitoring. ECA/A/S/A activities and responsibilities for this program are as follows: Approve staffing requirements including level of effort and distribution of responsibilities among advising staff; select advisors for training and conference attendance; and designate program priorities such as outreach to underserved populations, and others as needed. Public Affairs and Consular officials at U.S. Embassies should be notified of all in-country outreach activities, to maximize synergies to be achieved by dual efforts.

Fiscal Year Funds: 2007 (pending availability).

Approximate Total Funding: Minimum of $450,000 and, pending availability of funds, up to $600,000.

Approximate Number of Awards: One or more.

Anticipated Award Date: Pending availability of funds, January 1, 2007.

Anticipated Project Completion Date: December 31, 2007.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

Applicants must submit a comprehensive budget with a summary budget as well as detailed administrative and program budgets. Organizations may apply to provide advising services in one or more of the above-listed countries. Educational advising services must be provided on a regularly scheduled basis, open to the public for group and individual use at

least 30 hours per week, with free access to library and computer at least 50% of those hours. Additional hours may be reserved for program development, administrative work, and communications. If applying for more than one site, applicants should provide separate budgets and identify proposed program components and activities for each location. Proposals with overhead and indirect costs exceeding 35% of the amount requested will be deemed less competitive.

III. Eligibility Information

III.1. *Eligible applicants:* Applications may be submitted by public and private U.S. non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. *Cost Sharing or Matching Funds:* There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

Overhead and indirect costs should not exceed 35% of the amount requested.

III.3. *Other Eligibility Requirements:* Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. *Contact Information to Request an Application Package:* Please contact the Educational Information and Resources Branch of the Office of Global Educational Programs, ECA/A/S/A, room 349, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, tel: 202–453–8866. fax: 202–453–8890, e-mail: *Waldsteinre@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/S/A–07–09 located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Program Officer Rachel Waldstein and refer to the Funding Opportunity Number ECA/A/S/A–07–09 located at the top of this announcement on all other inquiries and correspondence.

IV.2. *To Download a Solicitation Package Via Internet:* The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.3. *Content and Form of Submission:* Applicants must follow all instructions in the Solicitation Package. The application should be sent per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. *Adherence to All Regulations Governing the J Visa:* For your information only, the Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements. The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 203–5029. FAX: (202) 453–8640.

Please refer to Solicitation Package for further information.

IV.3d.2. *Diversity, Freedom and Democracy Guidelines:* Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to

adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. *Program Monitoring and Evaluation:* Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.
2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

Please describe your plans for: Provision of services affordable to students, financial sustainability of centers, use of EducationUSA advising-related program income to fund further advising activities, overall program management, coordination of activities with ECA as well as Public Affairs and Consular Sections at U.S. Embassies, staffing to provide an adequate level of service, and avoiding overlap with support for other ECA programs if applicable. (Applicants that have received other ECA grants on which proposed staff also work should specify programs and amount of staff time devoted to them.)

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program for each country in which they propose to operate. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. The most competitive proposals will have overhead and indirect costs which do not exceed 35% of the total funding requested.

IV.3e.2. Allowable costs for the program include the following:

A. Program Costs

(1) Advisers' salaries and benefits;

(2) Office supplies and expenses, including rent, utilities, communications, postage, shipping; publicity, materials and travel for outreach activities.

B. Indirect Costs

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. *Submission Dates and Times:*

Reference Number: ECA/A/S/A–07–09.

Application Deadline Date: Friday, August 18, 2006.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. *Submitting Printed Applications.* Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

Applicants must follow all instructions in the Solicitation Package.

The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/A–07–09, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

IV.3f.2. *Submitting Electronic Applications:* Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the ''Get Started'' portion of the site (*http://www.grants.gov/GetStarted*).

Applicants have until midnight (12 a.m.) of the closing date to ensure that their entire applications have been uploaded to the grants.gov site. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will not notify you upon receipt of electronic applications.

IV.3g. *Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) for its(their) review.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation. Please see POGI for description of each criterion.

1. Quality of the program idea.
2. Program planning/ability to achieve program objectives.
3. Institutional capacity/record.
4. Area expertise.
5. Multiplier effect/impact.
6. Support of diversity.
7. Cost effectiveness/cost sharing.
8. Project evaluation.

VI. Award Administration Information

VI.1. *Award Notices:* Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. *Administrative and National Policy Requirements:* Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local andIndian Governments.''

OMB Circular No. A–110 (Revised), ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.''

OMB Circular No. A–102, ''Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.''

OMB Circular No. A–133, ''Audits of States, Local Government, and Non-profit Organizations.''

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants.
http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.

VI.3. *Reporting Requirements:* You must provide ECA with a hard copy original plus one copy and electronic version of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award; financial report must include program income from all advising activities (see POGI for description of applicable services).

(2) Quarterly program and financial reports which should include discussion of advising activities at each center, challenges encountered and efforts to overcome them, and an accounting of EducationUSA-related program income as mentioned above.

Grantees will be required to provide analysis of their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must

be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

Optional—VI.4. Program Data Requirements: Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from grant funding but do not travel.

(2) Monthly statistics of advising center usage, to be sent by e-mail directly to the REAC.

VII. Agency Contacts

For questions about this announcement, contact: Rachel Waldstein, Program Officer, Educational Information and Resources Branch, ECA/A/S/A, Room 349, ECA/A/S/A–07–09, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone 202–453–8866, fax 202–453–8890, *Waldsteinre@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/A–07–09.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: May 16, 2006.

Dina Habib Powell,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–8065 Filed 5–24–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending May 5, 2006

The following Agreements were filed with the Department of Transportation under the sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2006–24688.

Date Filed: May 1, 2006.

Parties: Members of the International Air Transport Association.

Subject:

Mail Vote 488—Resolution 010o, TC3 Within South East Asia, Special Passenger Amending Resolution from Chinese Taipei to South East Asia.

Intended effective date: May 15, 2006.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–8044 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending May 5, 2006

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2005–22228 and OST–2005–24735.

Date Filed: May 3, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 24, 2006.

Description: Application of Cargoitalia, S.p.A. requesting a foreign air carrier permit to provide scheduled and charter air service of property and mail between Italy and the United States.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–8045 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Air Traffic Management Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Government/Industry Air Traffic Management Advisory Committee.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Government/Industry Air Traffic Management Advisory Committee.

DATES: The meeting will be held June 16, 2006, from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Bessie Coleman Conference Center (2nd Floor), Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Air Traffic Management Advisory Committee meeting. **Note:** Non-Government attendees to the meeting must go through security and be escorted to and from the conference room. Attendees with laptops will be required to register them at the security desk upon arrival and departure. Agenda items will be posted on *http://www.rtca.org* Web site.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain

information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 16, 2005.

Francisco Estrada C.

RTCA Advisory Committee.

[FR Doc. 06–4861 Filed 5–24–05; 8:45am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 186: Automatic Department Surveillance—Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 186 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B).

DATES: The meeting will be held June 12–16, 2006 starting at 9 a.m. (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 186 meeting. **Note:** Specific working group sessions will be held on June 12, 13, 14, 15.

- June 12:
  - WG4/B STP Subgroup
  - RFG–NRA
  - RFG–AD
- June 13:
  - WG4/B STP Subgroup
  - RFG–NRA
  - RFG–AD
- June 14:
  - WG4/B ASAS MOPS–ASSAP Subgroup
  - WG4/B STP Subgroup
  - RFG–NRA
  - RFG–AD
- June 15:
  - WG4/B ASAS MOPS–ASSAP Subgroup
  - WG4/B STP Subgroup
  - RFG–NRA
  - RFG–AD

Note:
AD–Application Development
ASAS–Aircraft Surveillance Applications System
ASSAP–Airborne Surveillance & Separation Assurance Processing
CDTI–Cockpit Display of Traffic Information
MOPS–Minimum Operational Performance Standards
NRA–Non-Radar Airspace
RFG–Requirements Focus Group
STP–Surveillance Transmit Processing

- June 16:
  - Opening Plenary Session (Chairman's Introductory Remarks, Review of Meeting Agenda, Review/Approval of the Thirty Sixth Meeting Summary, RTCA Paper No. 090–06/SC–186–233,
  - SC–186 Activity Reports:
  - WG–1, Operations & Implementation
  - WG–2, TIS–B
  - WG–3, 1090 MHz MOPS
  - WG–4, Application Technical Requirements
  - WG–5, UAT MOPS
  - WG–6, ADS–B MASPS
  - Requirements Focus Group
  - EUROCAE WG–51 Activity Report
  - Final Review/Approval–STP MOPS, RTCA Paper No. 100–06/SC186–234
  - Closing Plenary Session (New Business, Other Business, Review Action Items/Work Program, Date, Place, and Time of Next Meeting, Review Actions Items/Work Program, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, May 18, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–4860 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Oconto and Marinette Counties, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The FHWA and WisDOT are issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for proposed transportation improvements in the United States Highway (US) 51 corridor in the city of Madison, Dane County, Wisconsin generally between US 12/18 (South Beltline Highway) and State Trunk Highway (STH) 19. The EIS is being prepared in conformance with 40 CFR 1500 and FHWA regulations.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Chandler, Field Operations Engineer, Federal Highway Administration, 567 D'Onofrio Drive—Suite 100, Madison, Wisconsin 53719–2814; Telephone: (608) 829–7514. You may also contact Eugene Johnson, Director, Bureau of Equity and Environmental Services, Wisconsin Department of Transportation, P.O. Box 7916, Madison, Wisconsin 53707–7916: Telephone: (608) 267–9527.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Offices' Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of Federal Register's home page at: *http://www.archives.gov/* and the Government Printing Offices' database at: *http://www.gpoaccess.gov/nara/index.html.*

Background

The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an Environmental Impact Statement (EIS) on proposed improvements to address safety, operational and capacity concerns on an approximate 10-mile (16-kilometer) portion of U.S. 51 between Terminal Drive/Voges Road in the Village of McFarland and STH 19, in the Town of Burke in Dane County. These improvements are being considered to address existing and future transportation demand on U.S. 51 as identified in the 2003 Stoughton Road Needs Assessment Technical Report, safety concerns, and to identify land which may need to be preserved for future transportation improvements.

FHWA's decision to prepare a draft EIS is based on the initial environmental assessment that indicates the proposed action is likely to have significant impacts on the environment including wetlands. The draft EIS will evaluate the social, economic, and environmental impacts of the

alternatives including no build, improvements within the existing highway corridor, and improvements on new location.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, private agencies and organizations, and citizens who have expressed or are known to have an interest in this proposal.

During needs assessment activities, coordination was conducted with State and Federal review agencies (including an April 2005 Pre-Consultation/NEPA 404 Merger Scoping Meeting) and there has been extensive coordination with local officials. Ongoing coordination with local, State, and Federal agencies and officials, including Native American Tribes, is planned throughout the environmental analysis process. Public information meetings were conducted from 2003 to 2006 and several ongoing focus group meetings and workshops have been held since 2002. A Policy Advisory Committee consisting of neighborhood & business representatives and elected officials has met quarterly since the study began in 2002. A public information meeting is planned while the draft EIS is being written and also following completion of the draft EIS, to address the impacts of each alternative. Public notice will be given of the time and place of the meeting and the draft EIS will be available for public and agency review and comment prior to the meeting. Coordination with State and Federal review agencies will also continue throughout preparation of the draft EIS.

To ensure that the full range of issues related to this proposed action are addressed, and all substantive issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the draft EIS should be directed to FHWA or the Wisconsin Department of Transportation at the addresses provided under the heading **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: May 18, 2006.

Mark R. Chandler,

Field Operations Engineer, Federal Highway Administration, Madison, Wisconsin.

[FR Doc. E6–8012 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2005–23328]

Implementation of the Highways for LIFE Pilot Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA is issuing this notice to announce the implementation plan for the Highways for LIFE (HfL) Pilot Program outlined in Section 1502 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). LIFE is an acronym for ''Long-lasting, Innovative, Fast construction of Efficient and safe pavements and bridges.'' The purpose of the HfL Pilot Program is to accelerate the rate of adoption of innovations and technologies, thereby improving safety and highway quality while reducing congestion caused by construction. This will be accomplished through technology transfer, technology partnerships, information dissemination, incentive funding of up to 20 percent, but not more than $5 million on Federal-aid highway projects (eligible for assistance under Chapter 1 of title 23, United States Code) and HfL Program accountability.

DATES: May 25, 2006.

FOR FURTHER INFORMATION CONTACT: Byron Lord, Office of Infrastructure, HIHL–1, (202) 366–0131; Mr. Michael Harkins, Office of the Chief Counsel, HCC–30, (202) 366–4928; Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL) for the Document Management system (DMS) at *http://dms.dot.gov.* The DMS is available 24-hours each day, 365 days each year. An electronic copy of this document may be downloaded by using the Internet to reach the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov/nara.*

I. Background

The FHWA published a notice on December 30, 2005 (70 FR 77446), that proposed an implementation plan for the HfL Pilot Program, as outlined in Sections 1101 and 1502 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005). The notice requested comments on the FHWA's proposed plan to implement the program and to develop the final implementation document for the program.

The purpose of the HfL Pilot Program is to accelerate the rate of adoption of innovations and technologies, thereby improving safety and highway quality while reducing congestion caused by construction.

II. Discussion of Comments and Responses

A. Summary of Comments

In response to the December 30, 2005, notice, the FHWA received eight sets of comments. These comments were submitted by eight State Transportation Agencies (STA), three highway-related associations; and one private company. The comments were supportive of the proposed HfL Program but offered suggestions of how it could be better implemented.

The following discussion summarizes the comments submitted to the docket by the commenters on the proposed implementation plan for the HfL Pilot Program and FHWA's responses to the comments.

B. Significant Comments and Changes to the Implementation Plan

1. Funding

a. Amount of Incentives

An industry association recommended that the FHWA consider providing more HfL funds to fewer projects. We acknowledge that $500,000 to $1,000,000 is a small incentive for a STA to implement new innovations. The purpose of the HfL Program is not to simply fund construction projects. It is to create within the highway community new business practices that seek innovation and new technology for building safer, better, less congested highways. The projects are platforms to showcase innovation and deliver technology transfer. The goal of an HfL project in each State is to provide a base across the nation for innovation. It is possible that funding may be lower or higher than $500,000 to $1,000,000. This amount is offered as guidance and reflects available funds. In describing the projects phase of the program, the legislation stipulated that ''the Secretary, to the maximum extent possible, shall approve at least 1 project

in each State for participation in the pilot program and for financial assistance''.

b. Funding for Projects Already Underway

An industry association suggested that the FHWA reward States that already have projects underway that are meeting HfL Program goals. Highways for LIFE has already taken steps to recognize States that have sought innovative solutions to improve safety, quality and reduce construction congestion through our Success Stories on the HfL Web site.[1] The purpose of the projects portion of HfL is to stimulate new innovations and accelerate implementation. Using the limited funding to ''reward'' States for their innovation initiative would deplete an already limited resource and not provide the platforms for demonstrations and peer-to-peer exchange.

c. Match Waiver

An industry association suggested that the FHWA should allow a match waiver not only for the grant itself but also for the use of other Federal-aid in the project. The program does indeed allow for the State match to be funded by other Federal-aid. For projects carried out using funds apportioned to the State under section 104(b)(1)-(4) of title 23, United States Code, (*i.e.,* National Highway System, Congestion Mitigation and Air Quality Improvement Program, Surface Transportation Program, and Interstate Maintenance funds), the State may request the Federal share be adjusted up to 100 percent. The funding category proposed in the nomination must meet the program funding eligibility requirements. However, not more than 10 percent of the total of any one particular apportioned Federal-aid fund can be applied to the HfL project.

d. Spending Plan

After considering the comment offered by several stakeholders, the FHWA has decided to increase the funding provided for Projects from 60 to approximately 70 percent of the available HfL funding. The goal of Highways for LIFE is to accelerate the adoption of innovations and technologies and to create new practices in developing and delivering highways and bridges. It is not intended solely to create additional funds for Federal-aid projects. We acknowledge that with a $75 million program, the amount designated for projects would not be significant enough to change the culture at a STA to adopt the HfL philosophy. Therefore, appropriate funding for the marketing and communication tools such as technology transfer, information dissemination, and technology partnership is essential to accomplish the intent of the HfL Program.

2. Performance Goals

a. Whether a project is bound to program performance measures or may States propose their own performance measures

Several stakeholders commented that the STAs should be allowed to propose performance goal targets for their projects to reflect a range of project scenarios and that those should be measured as percent improvements. The HfL Project application will allow the STA to propose their performance goal targets within Safety, Construction Congestion, Quality, and User Satisfaction. However, the STA must explain why it is not accepting the HfL performance goal and justify their proposed goal.

Industry associations and STA suggested that the FHWA not narrow project selections based on meeting all of the Performance Goals. Rather, the FHWA should consider project proposals that may do an extraordinary job accomplishing one or more of the Performance Goals. Project proposals that only meet one or two of the Performance Goals will be reviewed and may be selected. However, project proposals that meet all Performance Goals will be given preference.

b. User Satisfaction Surveys

There were a number of comments concerned with the effort, cost, value, and reporting of user satisfaction. One comment states that ''a user satisfaction survey could eat up a large portion of the funding (for a project), and that past experience with user satisfaction surveys is that they are expensive to conduct, receive poor response rates, and are generally inconclusive.''

The proposed implementation plan published in the **Federal Register** in December outlined a feedback mechanism, which lists two questions, ''How satisfied the user is with the new facility;'' and (2)'' How satisfied the user is with the approach used to construct the new facility in terms of minimizing disruption?'' A five-point Likert scale (1 = Not at all; 2 = Somewhat; 3 = Neutral; 4 = Somewhat positive; 5 = Very positive) is to be used, with a 4 + score being the level of success sought.

While scientifically based ''omnibus'' surveys (which cover a wide range of topics) can be costly, the type of feedback sought here does not need to be. It may be specific to the project itself and nothing else, and contain nothing but the two key questions stipulated, if the agency so desires. Agency public affairs offices have come up with creative ways of surveying affected publics. They have, for example, worked with the local newspaper's editorial board or transportation writer, and had the survey featured as a piece in the neighborhood edition that covers the project's area. In other cases, public affairs offices have set up newsletters distributed to businesses and residents in the project locale, and these could be used to carry the survey questions.

Historically, the American Association of State Highway and Transportation Officials (AASHTO) has recognized the vital role customer satisfaction plays in the quality of a highway project or program. In 2000, AASHTO's Standing Committee on Quality issued a Knowledge Sharing Database, which listed responses from 22 of 31 states surveyed on how they obtain feedback from highway users and other customers.[2] Such case studies, as well as shared experiences will be helpful in determining how an agency wishes to respond to this requirement. Also, the FHWA will develop a toolbox of techniques and instruments, which can be used. The toolbox will be available on the HfL Web site by June 2006.

There is an implied sense that, as long as an agency maintains high performance goals for the areas of safety, construction congestion, and quality, then user satisfaction will be taken care of; however, that is not always the case. There are a number of cases where agencies wished to use a particular approach in developing a project that supported those three key goals, yet found that the neighborhood community impacted by the project was set against the particular approach. The overarching goal of the Highways for LIFE Program is to dramatically enhance the driving experience of the American public. Having a method for direct feedback from the public is the only way to ensure that the goal is attained.

The two questions posed to the highway users as an integral aspect of the project often means a need for some level of user education on the need the project and the approaches taken will fill. While some might feel that the work speaks for itself, all too often, such is not the case. For example, where an agency goes to great trouble and expense

[1] The Highways for LIFE Web site is available at the following URL: *http://www.fhwa.dot.gov/hfl.*

[2] The user satisfaction toolbox is available at the following URL: *http://www.fhwa.dot.gov/hfl.*

to remove an old bridge structure and replace it overnight, many members of the driving public will not even know that the effort occurred. On the other hand, if the agency had used conventional approaches of using extensive work zones for months on end, the public would certainly be aware of the work, although the resulting customer satisfaction level may not be ideal. What is often needed is an educational effort to make customers aware of the work the agency is doing, so that, once the work is completed and surveys are taken, highway users can make informed decisions in their survey question responses. The FHWA will focus extra attention on the media and other interested parties on Highways for LIFE projects, making all aware of the importance and the benefits they have for the public.

c. Quality

An industry association recommended additional emphasis on longevity and durability. The FHWA recognizes the importance of longevity and durability; these characteristics are very much a part of the HfL Program. However, the ability to identify reliable metrics to provide sufficient reliability in the prediction of performance has remained elusive. Performance measures are intended to provide an achievable, measurable level of outcome that defines the desired outcome without directing how to achieve it. We will continue to work with stakeholders to maintain the importance of durability and longevity.

An industry association suggested the use of the new Mechanistic-Empirical Pavement Design Guide as an index for longevity. The new Mechanistic-Empirical Pavement Design Guide is a tool currently in development and refinement by FHWA and AASHTO. Its suitability for this purpose has not been demonstrated. If projects are submitted that use the new Guide in the pavement design as an innovative practice, it will be taken under consideration in the evaluation.

We received several comments concerning the improvement of material quality by specifying uniformity (low variability). While low variability of material tests may be an indication of more uniformity in material, there are many factors that are necessary to obtain a quality project with an extended life. The FHWA is willing to work with STAs' efforts to quantify quality using uniformity of materials as a measure and encourages other innovative measures that indicate a quality product and extended life.

An industry association suggested that the FHWA should consider allowing the measurement of smoothness and noise as part of user satisfaction. Smoothness and noise are related to the users and will effect user satisfaction. Many factors, along with smoothness and noise, are involved in user satisfaction, which is much more difficult and complex to quantify. The FHWA will consider smoothness and noise in determination of user satisfaction, and will still consider smoothness and noise measurements as measures of quality.

An industry association suggested including pavement friction and light reflectivity as a quality measurement. Friction or the ability of the surface of the pavement or bridge to provide a safe platform for steering and stopping is an important safety component of the system. The FHWA will accept innovative practices to assure safety along with performance measures to determine it has been achieved. The FHWA will work with the States to identify appropriate performance levels for pavement friction as a quality measurement. Light reflectivity is an important performance measure for striping, signs and delineators. How to do this for pavement surfaces to set safety performance measures remains to be identified. The HfL Program only considers proven technology. We are not aware of any light reflectivity requirements on pavement surfaces at this time. We will work with the States that desire to identify appropriate performance levels for reflectivity as a quality measurement.

3. Proprietary Products and Processes

A private company supported the implementation of Super-Slab System®, and proprietary products. Super-Slab System® (prefabricated pavement) is eligible to be considered as innovative practices to speed construction and minimize construction caused congestion. Proprietary products frequently offer benefits in safety, quality and speed of construction. The FHWA is open to their use and will work with States to allow the flexibility to incorporate all forms of innovation into the HfL Program.

Contracting agencies are subject to the FHWA regulations at 23 CFR 635.411 concerning the use of patented and proprietary products and processes. For more guidance of the application of these regulations, please refer to *http://www.fhwa.dot.gov/programadmin/contracts/011106.cfm.* However, contractors are free to select their own products, including proprietary products, as long as they meet contract specifications. In order to encourage contractors to be innovative and use products that further the objectives of the HfL Program, STAs should consider performance-based specifications.

Conclusion

As a result of stakeholder feedbacks, the following are the major changes that have been made to the proposed implementation plan that was published in December 2005:

- Revised the performance goals in the areas of Work Zone Safety During Construction, Worker Safety During Construction, and Construction Congestion.
- Allow the STA to propose their performance goal targets within Safety, Construction Congestion, Quality and User Satisfaction with justification.
- Established a goal to solicit the project nominations for FY06 and FY07 simultaneously.
- All candidate project applications are to be submitted electronically through the following Web site: *http://www.Grants.gov.*
- Clarified the HfL Project funding options.
- Revised the HfL spending plan.

III. Highways for LIFE Implementation Plan

HfL Pilot Program

Reflecting on the condition of existing highways and the traditional processes used for building new ones, the American public has expressed, through national and local surveys, public meetings, and other means, a need for an improved driving experience. Elements such as reducing congestion in construction work zones, reducing construction time, a need for improved levels of safety and quality, and more cost effective approaches have become the subject of much concern.

Congress intended the HfL Pilot Program to incentivize the use of innovative technologies and practices with the expectation that safe, efficient highways and bridges can be built faster, and with greater durability. The legislation reflects an understanding that the best approach to improving the quality of the highway system is made by working through the individuals and organizations charged with designing, building, and operating it. The FHWA intends to create an atmosphere that encourages and enables the rapid adoption of innovations in the design, construction and operation of highways.

The HfL Program has six program elements, which are discussed in detail below. These program elements are as follows: Technology transfer,

technology partnerships, information dissemination, projects, funding, and accountability.

Technology Transfer

The key approach for improving the quality of the highway system is the application of existing but under-utilized, high payoff highway innovations, such as, equipment, techniques, processes, materials and management processes. The key to using these innovations is a knowledgeable workforce that is aware of the benefits and committed to improving the driving experience of all Americans.

The purpose of the technology transfer initiative is to train, inform, motivate, enable and equip the highway community workforce to more efficiently deliver projects that meet the HfL Pilot Program performance goals using the above-mentioned innovations. Components of the technology transfer program may include technology training for public and private sector personnel, a knowledge exchange Web site where practitioners can log on and share ideas, technology workshops, and HfL project showcases demonstrating the actual use of the technology. The phrase, ''technology transfer'' has long been used to describe the process for taking such infrequently used innovations and making them standard approaches that a transportation agency is comfortable using on a day-to-day basis. Unfortunately, it has traditionally taken years or even decades to bring about such adoptions. This delay is not merely a factor of limited resources, workload, lack of awareness, and conservatism on the part of agency staffs, but also a lack of a standard concentrated approach for rolling out innovations. As part of the HfL Program, a major effort will be undertaken to develop an improved technology transfer process to significantly speed the adoption of innovations. This improved technology transfer process will be piloted focusing on a few innovations.

Specifically, the FHWA is proposing an innovation in each of the areas of safety, congestion and quality. These innovations need to be national in scope and have the potential for adding significant benefits to the highway community and highway users. The FHWA has already proposed three innovations that meet the HfL criteria: Prefabricated Bridge Systems and Elements [3]; Road Safety Audits [4]; and ''Making Work Zones Work Better [5].'' Focusing on these three innovations does not mean that they are requirements for any proposed HfL-funded project. On the contrary, as outlined later in this document, any innovation that addresses the HfL performance goals may be used in an HfL-funded project.

Additional technology transfer efforts would be provided by the HfL Program through an innovations workshop for each HfL-funded project. The workshop may be similar in scope and structure to the Accelerated Construction Technology Transfer [6] workshops sponsored by the American Association of State Highway and Transportation Officials (AASHTO) and FHWA.

Technology Partnerships

Within the HfL Pilot Program, Technology Partnerships are intended to foster the development, improvement and creation of innovative technologies and facilities, including the use of proprietary products, technologies or methodologies. Due to limited resources, the FHWA intends to focus this element of the HfL Program on refining and improving existing innovations for application on highway construction. The FHWA would enter into either a grant or cooperative agreement with public or private organizations to jointly fund or otherwise participate in adapting and/or making market-ready innovations to support the HfL Pilot Program. These agreements may be with traditional partners in the highway construction business or other organizations outside of the highway industry, which have promising innovations that can be made ready for timely implementation.

The HfL Technology Partnerships have a two-fold purpose: First, they are intended to foster the implementation of under-utilized innovations that will improve the safety, speed of highway construction, quality, cost effectiveness, and durability of pavements and bridges. Second, they provide an opportunity for those not involved in construction of the HfL projects aspect of the program to participate in, contribute to, and benefit from the Program.

The HfL Technology Partnerships would provide financial impetus needed to move some of the many proven but underutilized innovations and methods into routine practice in the highway industry. Innovations brought forward through the technology partnerships may be used in the HfL Projects and promoted through HfL technology transfer and information dissemination.

To be considered for participation, the innovation must have been used successfully in highway, transportation, or in some related venue which has a clear potential for successful use in the United States highway industry.

A detailed approach to technology partnerships has not yet been developed because this is an area where stakeholder and industry input is needed. Due to the desire to obtain input, as well as the lower level of funding in the first year of the HfL Program, it is proposed that funding for Technology Partnerships would begin in fiscal year 2007. However some deviations may be necessary, since the HfL technology partnerships effort focuses on proven technologies, rather than research.

Information Dissemination

An essential component of transferring technology is information dissemination, including the communication of the HfL goals, concepts and services. Communicating the HfL story is critical for several reasons: First, without a high level of communication, there would be no ''technology transfer;'' innovative approaches would remain with those people who initially employed them. Secondly, recounting others' successes tends to instill within organizations a higher level of competition and peer-pressure to keep up with the rest of the community.

Although Information Dissemination is a major element of Technology Transfer, the importance of this communication element within the overall HfL Pilot Program is sufficient to create a separate category of activities. One key reason is that others, outside the primary audience of individuals and organizations who design, build, and operate the nation's highways, need to be informed as well about safer, less congested and improved quality highways and bridges. The driving public, for example, needs to be a key recipient because they are the ultimate beneficiaries of the overall effort. Providing the information starts the dialog to ensure that activities undertaken within the program really are pertinent to improving the public's driving experience. Finally, the public needs to be informed because public opinion can be a major motivator to getting individuals and organizations who are slow to adopt innovations to move faster. Telling the public about the

[3] For more information on Prefabricated Bridge Elements and systems go to: *http://www.fhwa.dot.gov/bridge/prefab/.*

[4] For more information on Road Safety Audits go to: *http://safety.fhwa.dot.gov/index.htm.*

[5] For more information on ''Making Work Zones Work Better'' go to: *http://www.ops.fhwa.dot.gov/wz/index.asp.*

[6] For more information on ACTT go to: *http://www.fhwa.dot.gov/construction/accelerated.*

highway community's push for better roads and the HfL projects builds goodwill and shows an appropriate level of responsiveness to the public's need. It demonstrates that the highway community is being a good steward of the public trust. It also has the potential to show highway builders the benefits of using HfL approaches on more of their projects.

A key tool for information dissemination would be the publicizing of HfL success stories, showing how innovation can improve safety, reduce construction-related congestion, and improve quality, and why it is beneficial to pursue non-traditional approaches and innovations.

Communication tools such as publications, videos, special events, media relations, the Internet, and a web-based Community of Practice can be employed in getting information on the various elements of the HfL Program to different audiences. Specifically, those audiences may include the highway community, academia, associated industries and private sector groups, schools, elected officials, media, and the public in general.

Another facet of information dissemination will be publicizing the success of each of the HfL demonstration projects. This will be accomplished at the local, regional and national levels and will be done during and after construction. The focus in publicizing the HfL project success stories will be on the innovations, the resulting benefits and the people in the State DOT, Industry and Division Office that made it happen. One technique may be the establishment of an annual awards program and celebration for the HfL projects. Another technique would be a ribbon cutting ceremony for the HfL project. Additionally, HfL can work with other organizations such as the national Partnership on Highway Quality, industry associations, American Automobile Association, American Trucking Associations, State DOT Public Affairs offices in publicizing HfL projects and the people involved in constructing the projects. Positive information dissemination coupled with recognition will be used as a means to perpetuate the behavior and outcomes achieved on the HfL projects.

Projects

While training such as that outlined previously in the technology transfer section is important, the challenge is to get the transportation professional to put that training to use on an actual project. Such on-the-job experience will be provided through the Projects activity of the HfL Program. State transportation agencies will be asked to work with the FHWA Division Offices to identify candidate projects for HfL incentives where it intends to employ innovations that it was not used or rarely used in its State.

Funding construction projects within the HfL Program will allow for detailed documentation of the potential improvements in safety, construction-related congestion and quality that can be achieved through the application of innovations on actual projects. It may also serve as a new business model for how a State manages its highway project delivery process. The demonstration will involve showing the highway community and the public how the HfL projects are designed, built, and perform. Widespread demonstration of successes will, in turn, provide the impetus for more widespread application of the performance goals and innovations in the future.

Performance Goals

Paragraphs (a)(3) and (b)(4)(A) of Section 1502 of SAFETEA–LU makes reference to ''performance standards.'' In the HfL Program, the term ''performance standards'' are also synonymous with ''performance goals,'' which define the desired end result to be achieved on the projects. The FHWA has selected performance goals to put the emphasis on the highway motorist needs, to foster the acceptance and adoption of innovations, and to reinforce the need to address all goals—safety, congestion, user satisfaction, and quality—in every project. The individual HfL performance goals would be set at levels representing the best the highway community has and is able to produce.

In proposing performance goals for HfL projects, the FHWA considered whether a candidate goal has a highway community accepted definition, metric, measure, method, procedure, process and/or equipment. Candidate goals were evaluated with these considerations since it is expected that the State and its contractor(s) will be monitoring the goals for the design and/or construction of HfL projects.

It is FHWA's intention that the approved HfL projects would include the Performance Goals in each of the goal areas. The performance goals for HfL projects include:

Safety

- *Work Zone Safety During Construction*—work zone crash rate equal to or less than the pre-construction rate at the project location;
- *Worker Safety During Construction*—an incident rate for worker injuries to be less than 4.0 based on the OSHA 300 rate;
- *Facility Safety After Construction*—20 percent reduction in fatalities and injuries as reflected in 3-year average crash rates, using pre-construction rates as the baseline.

Construction Congestion

- *Faster Construction*—50 percent reduction, compared to traditional methods, in the duration that highway users are impacted;
- *Trip Time During Construction*—less than 10 percent increase in trip time during construction as compared to the average pre-construction speed using 100 percent sampling; or
- *Queue Length During Construction*—a moving queue length less than ½ mile (travel speed 20 percent less than posted speed) in a rural area OR a moving queue length less than 1½ mile (travel speed 20 percent less than posted speed) in an urban area.

Quality

- *Smoothness*—an inertial Profile, International Roughness Index (IRI) of less than 48 inches/mile.
- *Noise*—a close Proximity (CPX) noise measurement of less than 96.0 decibels.

User Satisfaction

- *User satisfaction*—project construction surveys will be used to determine user satisfaction in two areas: (1) How satisfied the user is with the new facility, compared with its previous condition, and (2) how satisfied the user is with the approach used to construct the new facility in terms of minimizing disruption. A five-point Likert scale [7] will be used for measurement, and the goal for each area will be 4+.[8]

The HfL Project application will allow the STA to propose their performance goal targets within Safety, Construction Congestion, Quality and User Satisfaction. However, the STA must explain why they are not accepting the HfL performance goal and justify their proposed goal.

Solicitation

The FHWA has established a goal to solicit the project nominations for fiscal year (FY) 2006 and FY07 simultaneously and proceed with the

[7] For more information on the Likert scale go to: *http://en.wikipedia.org/wiki/Liker_scale.*

[8] A typical question using a Likert scale poses a statement and asks the respondents whether he strongly agrees—agrees—is undecided—disagrees or strongly disagrees.

award of the FY06 projects in October 2006 and award FY07 projects in January 2007. All subsequent solicitations and awards will occur in March and August, respectively, beginning with the solicitation of FY08 projects in March 2007.

The FHWA has been notified that, in the very near future (beginning in FY 2007), all Federal agencies will be required to use *http://www.grants.gov/,* an electronic format for receiving applications. Therefore, the HfL Program will use it from the beginning to avoid any confusion in the future. Grants.gov was developed as part of the President's Management Agenda and related E-Government Strategy, which charged Federal grant-making agencies with developing a single electronic system to find and apply for Federal grant opportunities.

The annual solicitation for HfL Projects will be posted in Grants.gov. Additionally, the announcement would be publicized through various other means, including posting on the World Wide Web, providing facilitation by the FHWA Division Offices, and through other outreach to the States.

All candidate project applications are to be submitted electronically through Grants.gov. The STA should submit the draft candidate project application form to the FHWA Division Office for review prior to official submittal to Grants.gov. The Division Offices shall rrrreview the project(s) application to ensure that they are complete and meet the submission requirements. Once the application has been determined to be acceptable, the Division Office shall notify STA, with a cc: to the FHWA HfL Team that the candidate project has been reviewed and that it meets the submission requirements.

Eligibility Criteria

Section 1502(b)(2) of SAFETEA–LU establishes the eligibility criteria for a project's participation in the HfL Pilot Program. The eligibility criteria includes:

- The project must construct, reconstruct, or rehabilitate a route or connection on a Federal-aid highway eligible for assistance under chapter 1 of title 23, United States Code; and
- The project must use innovative technologies, manufacturing processes, financing, or contracting methods that improve safety, reduce congestion due to construction, and improve quality.

Application Requirements

Section 1502(b)(1) of SAFETEA–LU requires States to submit an application to the Secretary in order for a project to participate in the HfL Pilot Program. This application must contain the following information:

- An identification and description of the project, including when the project will be ready for construction;
- An identification and description of the specific performance goals that are proposed for the project;
- A description of the innovative technologies, manufacturing processes, financing, and contracting methods that will be used for the proposed projects;
- A description of how the project will result in improved safety, reduced congestion due to construction, improved quality and user satisfaction; and
- Whether the State is willing to (a) participate in subsequent technology transfer and information dissemination activities associated with the project(s) (examples of such activities include conducting an ''open house'' for highway practitioners on the project, providing information to the FHWA for success stories, and providing briefings to the FHWA and general public on the success of the technology and process used); (b) provide information needed by HfL to evaluate the project and innovations (costs incurred as a result of supplying this information to FHWA would be an eligible project expense); and (c) accept FHWA Division Office oversight if the project is approved by HfL.

Project Selection and Evaluation

Section 1502(b)(4) of SAFETEA–LU establishes the selection criteria for approving projects for participation in the HfL Pilot Program. This criteria requires the Secretary to give priority to projects that:

- Address achieving the HfL performance goals for safety, construction congestion, quality and user satisfaction;
- Deliver and deploy innovative technologies, manufacturing processes, financing, contracting practices, and performance measures that will demonstrate substantial improvements in safety, congestion, quality, and cost-effectiveness;
- Include innovation that will lead to change in the administration of the State's transportation program to more quickly construct long-lasting, high-quality, cost-effective projects that improve safety and reduce congestion; and
- Are or will be ready for construction within one year of approval of the project application. For purposes of the HfL Program, the FHWA considers a project to be ''ready for construction'' when the FHWA Division Office authorizes the construction project.

In addition, the Secretary will also give priority to projects where the State demonstrates a willingness to participate in subsequent technology transfer and information dissemination activities associated with the project(s).

The evaluation committee will be composed of FHWA staff who will evaluate project applications based on the priorities noted above.

Number of Projects

Section 1502 establishes a maximum of 15 projects per year that may receive HfL funding. In considering such factors as the purpose and scope of the program available funding and the various associated costs and activities needed for each HfL construction project to contribute to the desired outcome, it is proposed that the total number of HfL projects be kept at 15 per year, with the understanding that FHWA may consider adding projects to take advantage of unique opportunities. Only 15 projects may receive HfL funding each year, there is no limit on the number of projects that may receive a waiver of the matching share requirements. However, because of required program support, HfL is limiting the number of waiver match projects it can approve.

Funding

Section 1101(a)(20) of SAFETEA–LU established total program funding at $75,000,000 through 2009, including $15,000,000 for fiscal year 2006, and $20,000,000 for each of fiscal years 2007 through 2009. This funding includes incentive grants of up to 20 percent, but not more than $5 million of the total cost of qualifying demonstration projects. A maximum of 15 projects may receive incentive funds in any fiscal year. Up to 100 percent Federal share is also allowed on HfL demonstration projects. There is a goal of providing funds for at least one project in each State by 2009. Based on the level of incentive funding provided in SAFETEA–LU, it is anticipated that individual project funding levels will be in the $500,000 to $1,000,000 range per project. Project funding options are:

Option 1: The State may request HfL funding of up to 20 percent of the total cost of a construction project as outlined in SAFETEA–LU. The maximum HfL funding available for any one project is $5 million. The HfL funds may be applied to the non-Federal share of the cost of construction. Based on funding limitations it is unlikely any project will be given the maximum amount. It is anticipated that individual project funding levels will be in the range of

$500,000 to $1,000,000 per project. This HfL funding would be in addition to the State apportionment.

Option 2: For projects carried out using funds apportioned to the State under section 104(b)(1)–(4) of title 23, United States Code, (*i.e.,* NHS, CMAQ, STP, and IM funds), the State may request the Federal share be adjusted up to 100 percent. The funding category proposed in the nomination must meet the program funding eligibility requirements. However, not more than 10 percent of the total of any one particular apportioned Federal Aid fund can be applied to the HfL project.

Option 3: The State may request a combination of both Option 1 and Option 2.

Spending Plan

The majority of the HfL funding, in the order of 70 percent, is planned to be used for projects; a significant portion of the funds, approximately 20 percent, is planned to be used for technology transfer and the remainder of the funds would be expended on technology partnerships, information dissemination and stakeholder input and involvement. This approximate distribution of funds includes the costs for monitoring and evaluation for each element.

Accountability

As a means of ensuring appropriate stewardship of public funds, the HfL Program will include several monitoring and evaluation efforts to measure the effectiveness of the program and projects, as well as stakeholder input and involvement procedures. Although the individual activities within the HfL Program will require extensive effort and funding, there will need to be measurements beyond the basic levels of success or failure of those activities taken individually. The higher level of evaluation should reflect the primary objective of the program as a whole: to accelerate the adoption of innovations and technologies thereby improving safety and highway quality while reducing congestion caused by congestion.

Monitor and Evaluation

The FHWA has the lead for monitoring and evaluation of HfL projects, and would be responsible for data collection, data storage and access, analysis, and reporting. FHWA personnel and private contractors will be used for this function. The owners of HfL-funded projects would supply or provide access to data and information. Costs associated with these activities are an eligible project expense. The FHWA Division Offices would serve as points of contact and coordination between the FHWA's contractor(s) and the State. While the FHWA will be taking the lead in the monitoring and evaluation of HfL Projects, the FHWA regards the project owner as a partner and looks forward to working with them in all aspects of the Highways for LIFE Program.

The monitoring and evaluation effort will be used to fully describe and quantify the outputs, results, and outcomes in the goal areas and to provide an assessment of the benefits derived from the overall investment. A cost effective economic analysis on HfL projects will be conducted by the FHWA HfL Team using economic techniques for measuring and valuing user cost; this might include but not be limited to Event-Only Analysis, Life Cycle Cost Analysis or Benefit-Cost Analysis. The resulting information would serve as a resource to highway program decision makers on the value of the innovations demonstrated in the HfL projects, help maintain the momentum needed to achieve the HfL goals, demonstrate the value of the entire pilot program, and provide the basis for projecting the benefits gained from expanding such an approach in the future.

The monitoring and evaluation element would encompass the entire HfL Program. For the HfL projects, information collected prior to, during, and immediately after construction would include a full array of highway condition, financing, design, contracting, construction, operations, and safety data, as well as user statistics and opinions. The costs, outcomes, impacts, and benefits of the technology partnerships would also be fully documented. To the extent possible, information collected for the technology transfer and information dissemination aspects would include objective measures of the effectiveness and impact of the individual activities that are undertaken, in addition to information on the costs of those activities. The information gathered on the HfL projects, technology transfer and technology partnerships will also be used in research and development for the next generation of technologies and innovations and future technology transfer initiatives.

Stakeholder Input

The HfL stakeholders include highway owners, builders, suppliers, consultants, academicians, users (commercial motor carriers, motorists, bicyclist, and pedestrians), and those impacted secondarily by highways (neighbors and adjacent landowners, receivers of goods shipped over highways). Through stakeholder input and involvement, the FHWA desires to refine the approach and implementation of the HfL Program as well as to build ownership for the program. Stakeholder input and involvement will be an ongoing element of the HfL Program in order to evaluate the progress of the program, consider appropriate redirection in light of progress, and assess the overall program results. Stakeholders had opportunities to provide input on both the HfL Implementation plan, and the conduct of the program itself, including:

- The HfL performance goals;
- Applicable technologies and practices;
- Technology partnerships approaches; and
- Evaluation of HfL outcomes and benefits including demonstration projects, technology partnerships, technology transfer and information dissemination.

The FHWA is considering several additional stakeholder input and involvement approaches for the HfL Program. Providing information and soliciting feedback would happen routinely through notices published in the **Federal Register**, presentations at highway town hall meetings or regional forums, and the establishment of a Web-based communications interchange site, or ''Community of Practice'' on the HfL Internet Web site *http://www.fhwa.dot.gov/hfl/.*

(**Authority:** Pub. L. 109–59, Sec. 1502, 23 U.S.C. 502 and 23 U.S.C. 315)

Issued on: May 19, 2006.

J. Richard Capka,

Acting Federal Highway Administrator.

[FR Doc. E6–7954 Filed 5–23–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–24015]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 16 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the

prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective May 25, 2006. The exemptions expire on May 26, 2008.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@dot.gov,* FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at *http://dmses.dot.gov.*

Background

On March 22, 2006, FMCSA published a Notice of receipt of exemption applications from 16 individuals, and requested comments from the public (71 FR 14566). The 16 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce. They are: Juan D. Adame, Thomas G. Danclovic, Thomas W. Dufford, Williams F. Foote, Joshua G. Hansen, Daniel W. Henderson, Casey R. Johnson, Craig T. Jorgensen, Jose A. Lopez, William F. Mack, Bobby L. Mashburn, Albert L. Remsburg, Willard L. Riggle, Ricky L. Shepler, Barney J. Wade, and Kenneth E. Walker.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 16 applications on their merits and made a determination to grant exemptions to all of them. The comment period closed on April 21, 2006.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 16 exemption applicants listed in this Notice fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, central scotoma, chorioretinal scar, optic neuropathy, and loss of vision due to trauma. In most cases, their eye conditions were not recently developed. All but three of the applicants were either born with their vision impairments or have had them since childhood. The three individuals who sustained their vision conditions as adults have had them for periods ranging from 8 to 16 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 16 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 39 years. In the past 3 years, none of the drivers have had any convictions for traffic violations and none of them were involved in crashes.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the March 22, 2006 Notice (71 FR 14566).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA–98–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates

for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes. (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 16 applicants, none of the applicants had a traffic violation for speeding and none were involved in crashes. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 16 applicants listed in the Notice of March 22, 2006 (71 FR 14566).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 16 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

Advocates for Highway and Auto Safety (Advocates) expressed opposition to FMCSA's policy to grant exemptions from the FMCSR, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which FMCSA presents driver information to the public and makes safety determinations; (2) objects to the Agency's reliance on conclusions drawn from the vision waiver program; (3) claims the Agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31136(e) and 31315); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

Based upon its evaluation of the 16 exemption applications, FMCSA exempts Juan D. Adame, Thomas G. Danclovic, Thomas W. Dufford, Williams F. Foote, Joshua G. Hansen, Daniel W. Henderson, Casey R. Johnson, Craig T. Jorgensen, Jose A. Lopez, William F. Mack, Bobby L. Mashburn, Albert L. Remsburg, Willard L. Riggle, Ricky L. Shepler, Barney J. Wade, and Kenneth E. Walker from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: May 18, 2006.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. E6–8076 Filed 5–24–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of American Eagle Gold Proof Coin Price Increase

SUMMARY: The recent rise in the price of gold requires that the United States Mint raise the prices on its 2006 American Eagle Gold Proof Coins.

Pursuant to the authority that 31 U.S.C. 5112(i) and 5111(a)(3) grant the Secretary of the Treasury to mint and issue gold coins, and to prepare and distribute numismatic items, the United States Mint mints and issues American Eagle Gold Proof Coins in four denominations: One-ounce, one-half

ounce, one-quarter ounce, one-tenth ounce, and a four-coin set that contains one coin of each denomination. In accordance with 31 U.S.C. 9701(b)(2)(B), the United States Mint is changing the price of these coins to reflect the increase in value of the underlying precious metal content of the coins—the result of recent increases in the market price of gold. The price of gold has increased substantially from the time the United States Mint last set prices for gold proof coins. Accordingly, effective May 22, 2006, the United States Mint will commence selling these coins according to the following price schedule: One-ounce gold proof coin ($885.00), one-half ounce gold proof coin ($445.00), one-quarter ounce gold proof coin ($220.00), one-tenth ounce gold proof coin ($110.00), four-coin gold proof set ($1,575.00). Prices are subject to change again based on future fluctuations in the market price of gold.

FOR FURTHER INFORMATION CONTACT: Gloria Eskridge, Associate Director for Sales and Marketing, United States Mint, 801 Ninth Street, NW., Washington, DC 20220, or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: May 18, 2006.

David A. Lebryk,

Acting Director, United States Mint.

[FR Doc. E6–8066 Filed 5–24–06; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF THE TREASURY

United States Mint

Request for Citizens Coinage Advisory Committee Membership Applications

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b), the United States Mint is accepting applications for membership to the Citizens Coinage Advisory Committee (CCAC) for a member representing the interests of the general public in the coinage of the United States. The CCAC was established to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals produced by the United States Mint.
- Advise the Secretary of the Treasury with regard to the events, persons, or places that the CCAC recommends to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

Total membership consists of eleven voting members appointed by the Secretary of the Treasury:

- One person specially qualified by virtue of his or her education, training or experience as nationally or internationally recognized curator in the United States of a numismatic collection;
- One person specially qualified by virtue of his or her experience in the medallic arts or sculpture;
- One person specially qualified by virtue of his or her education, training, or experience in American history;
- One person specially qualified by virtue of his or her education, training, or experience in numismatics;
- Three persons who can represent the interests of the general public in the coinage of the United States; and
- Four persons appointed by the Secretary of the Treasury on the basis of the recommendations by the House and Senate leadership.

Members are appointed for a term of four years. No individual may be appointed to the CCAC while serving as an officer or employee of the Federal Government.

The CCAC is subject to the direction of the Secretary of the Treasury. Meetings of the CCAC are open to the public and are held approximately six to eight times per year. The United States Mint is responsible for providing the necessary support, technical services and advice to the CCAC. CCAC members are not paid for their time or services, but, consistent with Federal Travel Regulations, members are reimbursed for their travel and lodging expenses to attend meetings. Members are Special Government Employees and are subject to the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2653).

The United States Mint will review all submissions and will forward its recommendations to the Secretary of the Treasury for appointment consideration. Candidates should include specific skills, abilities, talents, and credentials to support their applications. The United States Mint is also interested in candidates who have demonstrated leadership skills, have received recognition by their peers in their field of interest, have a record of participation in public service or activities, and are willing to commit the time and effort to participate in the CCAC meetings and related activities.

Application Deadline: June 12, 2006.

Receipt of Applications: Any member of the public wishing to be considered for participation on the CCAC should submit a resume and cover letter describing qualifications for membership, by fax to 202–756–6525, or by mail to the United States Mint, 801 9th Street, NW., Washington, DC 20001, Attn: Greg Weinman. Submissions must be postmarked no later than June 12, 2006.

Notice Concerning Delivery of First-Class and Priority Mail: The delivery of first-class mail to the United States Mint has been delayed since mid-October 2001 and delays are expected to continue. Until normal mail service resumes, please consider using alternate delivery services when sending time-sensitive material.

Some or all of the first-class and priority mail we receive may be put through an irradiation process to protect against biological contamination. Support materials put through this process may suffer irreversible damage. We encourage you to consider using alternate delivery services.

FOR FURTHER INFORMATION CONTACT: Cliff Northup, United States Mint Liaison to the CCAC; 801 Ninth Street, NW.; Washington, DC 20220, or call 202–354–7463.

Dated: May 16, 2006.

David A. Lebryk,

Deputy Director, United States Mint.

[FR Doc. E6–7975 Filed 5–24–06; 8:45 am]

BILLING CODE 4810–37–P

Federal Register

Thursday,
May 25, 2006

Part II

Department of the Interior

National Indian Gaming Commission

25 CFR Part 502

Definition for Electronic or Electromechanical Facsimile; Proposed Rule

DEPARTMENT OF THE INTERIOR

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 502

RIN 3141–AA31

Definition for Electronic or Electromechanical Facsimile

AGENCY: National Indian Gaming Commission (''NIGC'' or ''Commission''), Interior.

ACTION: Proposed rule.

DATES: Submit comments on or before August 23, 2006.

Consultation: The Commission will be conducting government-to-government consultations with Tribes on this proposed rule at the following times:

July 10–11	Minneapolis, Minnesota.
July 12–13	Denver, Colorado.
July 18–19	Washington, DC.
July 24–25	Tacoma, Washington.
July 26–27	Ontario, California.
August 8–9	Oklahoma City, Oklahoma.

Invitations will be mailed out to Tribal leaders in the coming weeks. These consultation meetings will be transcribed. To schedule a consultation please contact Natalie Hemlock, Special Assistant to the Commission, at (202) 632–7003.

ADDRESSES: Mail comments to ''Comments on Electronic or Electromechanical Facsimile definition'' National Indian Gaming Commission, Suite 9100, 1441 L Street, NW., Washington, DC 20005, Attn: Penny Coleman, Acting General Counsel.'' Comments may be transmitted by facsimile to 202–632–0045, or mailed or submitted to the above address.

FOR FURTHER INFORMATION CONTACT: Penny Coleman or John Hay, Office of General Counsel, Telephone 202–632–7003. This is not a toll free call.

SUMMARY: The proposed rule revises the definition of a term Congress used to define Class II gaming under the Indian Gaming Regulatory Act, 25 U.S.C. 2701, *et seq.* (''IGRA'' or ''Act''). Specifically, the proposed rule revises the definition for ''electronic or electromechanical facsimile'' that appears in part 502 of the Commission's regulations (25 CFR part 501 *et seq.*). The Commission defined these terms in 1992 and revised the definitions in 2002. The proposed rule offers further revision.

SUPPLEMENTARY INFORMATION:

Background

IGRA, 25 U.S.C. 2701–21, enacted by the Congress in 1988, establishes the NIGC and sets out a comprehensive framework for the regulation of gaming on Indian lands. The Act establishes three classes of Indian gaming.

''Class I gaming'' means social games played solely for prizes of minimal value or traditional forms of Indian gaming played in connection with tribal ceremonies or celebrations. 25 U.S.C. 2703(6). Indian tribes regulate Class I gaming exclusively.

''Class II gaming'' means the game of chance commonly known as bingo, whether or not electronic, computer, or other technologic aids are used in connection therewith, including, if played in the same location, pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and various card games so long as they are not house banking games. 25 U.S.C. 2703(7)(A). Specifically excluded from Class II gaming, however, are banking card games such as blackjack and electronic or electromechanical facsimiles of any game of chance or slot machines of any kind. 25 U.S.C. 2703(7)(B). Indian tribes and the NIGC share regulatory authority over Class II gaming. Indian tribes can engage in such gaming without any state involvement.

''Class III gaming'' includes all forms of gaming that are not Class I gaming or Class II gaming. 25 U.S.C. 2703(8). Class III gaming thus includes all other games of chance, including most forms of casino-type gaming such as slot machines of any kind, electronic or electromechanical facsimiles of any game of chance, roulette, banking card games such as blackjack, and pari-mutuel wagering. Class III gaming may be conducted lawfully only if the state in which the tribe is located and the tribe reach an agreement called a tribal-state compact. Alternatively, a tribe may operate Class III gaming under gaming procedures issued by the Secretary of the Interior if the tribe and the state have not reached agreement or if the state has refused to negotiate in good faith toward an agreement. The tribal-state compact or Secretarial procedures may contain provisions for concurrent state and tribal regulation of Class III gaming. In addition, the NIGC also exercises regulatory authority over Class III gaming under IGRA, and the United States Department of Justice and United States Attorneys possess exclusive criminal jurisdiction over Class III gaming on Indian lands and also possess certain civil jurisdiction over such gaming.

As a legal matter, Congress defined the parameters for game classification when it enacted IGRA. As a practical matter, however, the congressional definitions were general in nature and specific terms within the broad gaming classifications were not explicitly defined. The Commission adopted regulations in 1992 that included definitions for many terms used in the statutory classification scheme, including ''electronic or electromechanical facsimile'', 25 CFR 502.7, and ''electronic computer or other technologic aid'', 25 CFR 502.8. The Commission revised the definitions in 2002. See 67 FR 41166 (June 17, 2002) for an extensive discussion of the reasons for the Commission's decision to revise these key terms.

A recurring question as to the proper scope of Class II gaming involves the use of electronics and other technology in conjunction with bingo and lotto as well as pull tabs, instant bingo, and other games similar to bingo that may be Class II if played in a location where Class II bingo is played. In IGRA, Congress recognized the right of tribes to use ''electronic, computer or other technologic aids'' in connection with these forms of Class II gaming. Congress provided, however, that ''electronic or electromechanical facsimiles of any game of chance or slot machines of any kind'' constitute Class III gaming. Because a tribe wishing to conduct Class III gaming may do so only in accordance with an approved tribal-state compact, it is important to distinguish the two classes.

As the Commission worked through a process to develop classification standards, it became apparent that the revised definitions issued by a divided Commission in June 2002, See 67 FR 41166, did not provide the clarity that had been a goal in that rulemaking. Accordingly, the Commission proposes to revise the definition of the term ''electronic or electromechanical facsimile.''

Development of the Proposed Rule Through Consultation With Indian Tribes

In recognition of tribal sovereignty and the fundamental importance of game classification to the operation and regulation of gaming on Indian lands under IGRA, the Commission developed a policy and process for consultation with Indian tribes that would provide opportunity for early and meaningful tribal input regarding formulation of the change to this regulation.

In particular, while initially advising tribes of the Commission's intention to develop these Class II Game Classification Standards, the Commission also actively consulted with tribes regarding formulation of the Commission's first-ever official government-to-government tribal

consultation policy. After several months of consultation with tribes, the Commission's official tribal consultation policy was adopted and published in the **Federal Register** on March 31, 2004. See 69 FR 16973. The Commission purposely established this policy in order to have consultation policy guidelines in place for pre-rulemaking tribal consultation on the Class II classification standards and other planned Commission rulemaking initiatives.

The Commission's tribal consultation policy calls for the Commission, to the extent practicable and permitted by law, to engage in regular, timely, and meaningful government-to-government consultation with Indian tribes when formulating proposed new or revised administrative regulations that may substantially affect the operation or regulation of gaming on Indian lands. To fulfill this policy commitment to consult with tribes on these proposed Class II regulations, the Commission devised a three-part plan to afford tribes a reasonable and practicable opportunity to consult with the Commission and to provide early input in formulation of the regulations, before they were published as proposed rules in the **Federal Register** and the actual rulemaking process began.

First, the Commission endeavored to consult in person at least twice with each gaming tribe between May 2003 and March 2006 regarding development of these proposed regulations. During this time period, the Commission sent out over 500 separate invitations to individual tribes to consult with the Commission and provide input. Many tribes accepted one or more of the Commission's invitations to consult during this pre-rulemaking period and participated in separate government-to-government consultation meetings with the Commission regarding the proposed regulations and other matters. While some tribes declined the Commission's invitation(s) to consult, between May 2003 and March 2006, the Commission conducted over 300 separate government-to-government consultation meetings with individual tribes and their leaders or representatives regarding development and formulation of these proposed regulations.

Second, the Commission established a joint Federal-Tribal advisory committee on March 31, 2004, composed of both Commission and tribal representatives to assist the Commission in formulating these proposed Class II gaming regulations. In January 2004, the Commission requested all gaming tribes across the country to nominate tribal representatives to serve on this advisory committee. From the tribal nominations received, the Commission selected the following seven tribal representatives on March 31, 2004, to serve on the committee: Norm Des Rosiers, Gaming Commissioner, Viejas Band of Kumeyaay Indians; Joseph Carlini, Gaming Commission Executive Director, Agua Caliente Band of Cahuilla Indians; Kenneth Ermatinger, Gaming Commission Executive Director, Sault Ste. Marie Tribe of Chippewa Indians of Michigan; Jamie Hummingbird, Gaming Commission Director, Cherokee Nation, Oklahoma; Mark Garrow, Gaming Commission Inspections Manager, St. Regis Mohawk Tribe; Melvin Daniels, General Manager, Muckleshoot Indian Bingo, Muckleshoot Indian Tribe; Charles Lombardo, Sr. Vice-President for Gaming Operations, Seminole Tribe of Florida.

To date, the advisory committee has held six (6) meetings: May 13, 2004 in Washington, DC; August 2–3, 2004, Washington, DC; September 13–14, 2004, Cherokee, North Carolina; December 1–3, 2004, Oklahoma City, Oklahoma; January 12–13, 2005, Palm Springs, California; and March 11, 2005, Chicago, Illinois. During these meetings, all of which were open to the public, the committee discussed the various characteristics of Class II and Class III games of chance, their play, and related gaming technology and methods. In addition, the committee also discussed, reviewed, critiqued and commented on four (4) different, successive preliminary working drafts of the proposed Class II classification standards, which were prepared by the Commission representatives on the committee.

The seven tribal committee representatives provided early tribal input and valuable insight, advice, and assistance to the Commission in developing each of the respective working drafts, as well as the current proposed regulations. Although there were many instances of accord, there were also many times during the development of the proposed regulations that the tribal committee representatives strongly disagreed with decisions made by the Commission.

In particular, tribal representatives strongly advocated no change to the current regulation definition of ''electronic or electromechanical facsimile'' of games of chance. While understanding the tribal representatives' position on this issues, the Commission is bound by Congress's intent, as expressed in IGRA, to promulgate rules that clearly distinguish technologically-aided Class II games from Class III ''electronic or electromechanical facsimiles of any game of chance'' or ''slot machines of any kind.'' Accordingly, the Commission concluded that it could not accept some of the tribal representatives' recommendation in formulating the proposed rule.

The Commission's establishment of the joint Federal-Tribal advisory committee was the subject of a legal challenge while the Commission was preparing the proposed rule for publication. On March 10, 2005, nearly one year after the Commission established the committee, the Confederated Salish and Kootenai Tribes of the Flathead Nation and the Santa Rosa Rancheria Indian Community filed suit against the Commission alleging that several of the committee members were not eligible to participate on the committee. Following a hearing in federal court at which the request for temporary restraining order was denied, the Commission determined that it should proceed to publish the proposed rule for comment while the legal standing of the committee was further litigated. The Commission also sought clarification from those tribes that nominated the Committee members concerning the member's role as an official representative of the Tribe. As a result of this clarification, and, out of an abundance of caution, the Commission regretfully requested that two members of the Committee step down.

The third component of the Commission's effort to consult with tribes during the development of these proposed regulations was to make the various preliminary working drafts of the proposed regulations available to all tribes and their leaders for review and comment independent of the joint Federal-Tribal advisory committee. All four preliminary drafts were published on the Commission's website. In addition, the third and fourth preliminary drafts were successively mailed to each tribe inviting written comment. Many tribes and the public submitted written comments on these respective working drafts. The tribal comments were shared with the members of the advisory committee for their review and carefully considered by the Commission in formulating these proposed regulations.

In addition to forming the Advisory Committee, scheduling and conducting individual tribal consultation meetings and Advisory Committee meetings, and requesting and considering written tribal comments on preliminary drafts of the proposed regulations, the Commission also facilitated further pre-rulemaking consultation with tribes by

other means. In particular, the Commission attended and addressed several different assemblies of tribal leaders and tribal gaming operators and regulators at meetings and conferences between January 2003 and March 2006 organized by state and regional tribal gaming associations, the National Indian Gaming Association, and the National Congress of American Indians. At these meetings and conferences, the Commission advised tribal leaders of its intention and plan to develop these regulations and provided periodic updates regarding the progress and status of the regulations development. The Commission also made itself available at these meetings to answer any questions from tribal leaders regarding the proposed regulations.

In addition, the Commission also met individually with several tribes and their leaders in its Washington, DC, offices, at each tribe's request, to discuss these proposed regulations and their formulation and implementation.

Through each of these various means, the Commission actively endeavored to provide all tribes with a reasonable and practical opportunity over the past twenty-two months to meet and consult with the Commission on a government-to-government basis and provide early and meaningful tribal input regarding the formulation and implementation of these proposed regulations. This proposed change to the definition of ''electronic or electromechanical facsimile'' was part of the process outlined above.

By April of 2005, the Commission was prepared to send the fifth draft to the **Federal Register** for publication as a proposed rule. However, the Department of Justice (DOJ) contacted the Commission and expressed concern that the draft regulations might not be consistent with the Johnson Act. The Commission spent five months meeting with DOJ to resolve its concerns. As a result of these meetings, the DOJ drafted amendments to the Johnson Act. Following several consultation sessions with Tribes, the DOJ sent the draft amendments to the Office of Management and Budget earlier this year. So much time has elapsed that it is not likely that the proposed legislation will pass during the 109th Congress. The need to regulate Class II technologic aids has not diminished and the Commission is compelled to proceed with these regulations. The proposed regulations differ from the fifth draft that was provided to the public in April of 2005. From a procedural standpoint, as previously explained, the definition of ''electronic or electromechanical facsimile'' has been placed in regulations separate from the classification standards. The changes to that draft are a result of the Commission addressing the concerns of DOJ that these regulations clearly distinguish between Class II and Class III games. The only change to these definitions is the addition of the word ''fundamental.''

Purpose and Scope

The definition for ''electronic or electromechanical facsimile'' has been misconstrued by some as allowing for bingo facsimiles. Under IGRA, a facsimile is Class III. The proposed change to the definition for the term ''electronic or electromechanical facsimile'' will clarify that facsimiles of bingo are not permissible Class II games under IGRA.

Changes to the Definition of ''Electronic or Electromechanical Facsimile'' in Part 502

a. ''Electronic or Electromechanical Facsimile''

The Commission proposes to revise the definition for ''electronic or electromechanical facsimile'' contained in § 502.8. Some have misinterpreted the 2002 revision and argued that facsimiles of bingo were properly classified as Class II. The revision makes clear that all games including bingo, lotto and ''other games similar to bingo,'' when played in an electronic medium, are facsimiles when they incorporate all of the fundamental characteristics of the game. In making this change, the Commission also wishes to emphasize that even bingo, lotto, and ''other games similar to bingo'' are ''electronic or electromechanical facsimiles'' of a game of chance when the format for the game either has players playing against a machine rather than broadening participation among multiple players, or fully incorporates the fundamental characteristics of these games electronically and requires no competitive action or decision making.

Regulatory Flexibility Act

This proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The Commission has determined that this proposed rule does not impose an unfunded mandate on state, local, or tribal governments or on the private sector of more than $100 million per year. Thus, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.* The Commission has determined that this proposed rule may have a unique effect on tribal governments, as this rule applies to tribal governments, whenever they undertake the ownership, operation, regulation, or licensing of gaming facilities on Indian lands as defined by the Indian Gaming Regulatory Act. Thus, in accordance with section 203 of the Unfunded Mandates Reform Act, the Commission implemented a small government agency plan that provides tribal governments with adequate notice, opportunity for meaningful consultation, and information, advice, and education on compliance.

The Commission's plan includes the formation of a Tribal Advisory Committee and request for input from tribal leaders through government-to-government consultations and through written comments to draft regulations that are provided to the tribes. Section 204(b) of the Unfunded Mandates Reform Act exempts from the Federal Advisory Committee Act (5 U.S.C. App.) meetings with tribal elected officials (or their designees) for the purpose of exchanging views, information, and advice concerning the implementation of intergovernmental responsibilities or administration. In selecting Committee members, consideration was placed on the applicant's experience in this area, as well as the size of the tribe the nominee represented, geographic location of the gaming operation, and the size and type of gaming conducted. The Commission attempted to assemble a committee that incorporates diversity and is representative of tribal gaming interests. The Commission will meet with the Advisory Committee to discuss the public comments that are received as a result of the publication of this proposed rule and make

recommendations regarding the final rule. The Commission also plans to continue its policy of providing technical assistance, through its field offices, to tribes to assist in complying with classification issues.

Takings

In accordance with Executive Order 12630, the Commission has determined that this proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

Paperwork Reduction Act

This proposed rule does not require information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, and is therefore not subject to review by the OMB.

National Environmental Policy Act

The Commission has determined that this proposed rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

List of Subjects in 25 CFR Part 502

Gambling, Indian-lands, Indian-tribal government, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, the Commission proposes to amend its regulations in 25 CFR part 502 to read as follows:

PART 502—DEFINITIONS OF THIS CHAPTER

1. The authority citation for part 502 continues to read as follows:

Authority: 25 U.S.C. 2071 *et seq.*

2. Revise § 502.8 to read as follows:

§ 502.8 Electronic or electromechanical facsimile.

(a) *Electronic or electromechanical facsimile* means a game played in an electronic or electromechanical format that replicates a game of chance by incorporating the fundamental characteristics of the game.

(b) Bingo, lotto, and other games similar to bingo are facsimiles when:

(1) The electronic or electromechanical format replicates a game of chance by incorporating all of the fundamental characteristics of the game, or

(2) An element of the game's format allows players to play with or against a machine rather than broadening participation among competing players.

Dated: May 18, 2006.

Philip N. Hogen,

Chairman.

Cloyce V. Choney,

Commissioner.

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Part III

Department of the Interior

National Indian Gaming Commission

25 CFR Parts 502 and 546

Classification Standards; Class II Gaming; Bingo, Lotto, et al.; Proposed Rule

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Parts 502 and 546

RIN 3141–AA31

Classification Standards for Bingo, Lotto, Other Games Similar to Bingo, Pull Tabs and Instant Bingo as Class II Gaming When Played Through an Electronic Medium Using ''Electronic, Computer, or Other Technologic Aids''

AGENCY: National Indian Gaming Commission (''NIGC'' or ''Commission'').

ACTION: Proposed Rule.

DATES: Submit comments on or before August 23, 2006.

Consultation: The Commission will be conducting government-to-government consultations with Tribes on this proposed rule at the following times:

July 10–11	Minneapolis, Minnesota
July 12–13	Denver, Colorado
July 18–19	Washington, DC
July 24–25	Tacoma, Washington
July 26–27	Ontario, California
August 8–9	Oklahoma City, Oklahoma

Invitations will be mailed out to Tribal leaders in the coming weeks. These consultation meetings will be transcribed. To schedule a consultation please contact Natalie Hemlock, Special Assistant to the Commission, at (202) 632–7003.

ADDRESSES: Mail comments to ''Comments on Class II Classification Standards'' National Indian Gaming Commission, Suite 9100, 1441 L Street, NW., Washington, DC 20005, Attn: Penny Coleman, Acting General Counsel. Comments may be transmitted by facsimile to 202–632–0045, or mailed or submitted to the above address.

FOR FURTHER INFORMATION CONTACT: Penny Coleman or John Hay, Office of General Counsel, Telephone 202–632–7003. This is not a toll free call.

SUMMARY: The proposed rule clarifies the terms Congress used to define Class II gaming under the Indian Gaming Regulatory Act, 25 U.S.C. 2701, et seq. (''IGRA'' or ''Act''). First, the proposed rule further revises the definitions for ''electronic or electromechanical facsimile'' and ''other games similar to bingo'' that appear in part 502 of Commission regulations (25 CFR part 501 *et seq.*). The Commission defined these terms in 1992, revised the definitions in 2002, and proposed further revisions to the term ''electronic or electromechanical facsimile'' separate from this proposed revision. The proposed rule offers further revision that would incorporate the new part 546 into the definitions. The Commission adds a new Part to its regulations (part 546) that explains the basis for determining whether a game of bingo or lotto, ''other game similar to bingo,'' or a game of pull-tabs or ''instant bingo,'' meets the IGRA statutory requirements for Class II gaming, when such games are played electronically, primarily through an ''electronic, computer or other technologic aid,'' while distinguishing them from Class III ''electronic or electromechanical facsimiles.'' This new part also establishes a process for assuring that such games are Class II before placement of the games in a Class II tribal gaming operation. This process contains information collection requirements subject to the Paperwork Reduction Act of 1995. The Commission has submitted the information collection request to OMB for approval.

SUPPLEMENTARY INFORMATION:

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I. Background

The Indian Gaming Regulatory Act, 25 U.S.C. 2701–21 (IGRA), enacted by the Congress in 1988, establishes the NIGC and sets out a comprehensive framework for the regulation of gaming on Indian lands. The Act establishes three classes of Indian gaming.

''Class I gaming'' means social games played solely for prizes of minimal value or traditional forms of Indian gaming played in connection with tribal ceremonies or celebrations. 25 U.S.C. 2703(6). Indian tribes are the exclusive regulators of Class I gaming.

''Class II gaming'' means the game of chance commonly known as bingo, whether or not electronic, computer, or other technologic aids are used in connection therewith, including, if played in the same location, pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and various card games so long as they are not house banking games. 25 U.S.C. 2703(7)(A). Specifically excluded from Class II gaming, however, are banking card games such as blackjack, electronic or electromechanical facsimiles of any game of chance, and slot machines of any kind. 25 U.S.C. 2703(7)(B). Indian tribes and the NIGC share regulatory authority over Class II gaming. Indian tribes can engage in such gaming without any state involvement.

''Class III gaming'' includes all forms of gaming that are not Class I gaming or Class II gaming. 25 U.S.C. 2703(8). Class III gaming thus includes all other games of chance, including most forms of casino-type gaming such as slot machines of any kind, electronic or electromechanical facsimiles of any game of chance, roulette, banking card games such as blackjack, and pari-mutuel wagering. Class III gaming may be conducted lawfully only if the state in which the tribe is located and the tribe reach an agreement called a tribal-state compact. Alternatively, a tribe may operate Class III gaming under gaming procedures issued by the Secretary of the Interior if the tribe and the state have not reached agreement or if the state has refused to negotiate in good faith toward an agreement. The tribal-state compact or Secretarial procedures may contain provisions for concurrent state and tribal regulations of Class III gaming. In addition, the NIGC also exercises regulatory authority over Class III gaming under IGRA, and the United States Department of Justice and United States Attorneys possess exclusive

criminal jurisdiction over Class III gaming on Indian lands and also possess certain civil jurisdiction over such gaming.

As a legal matter, Congress defined the parameters for game classification when it enacted IGRA. As a practical matter, however, the Congressional definitions were general in nature and specific terms within the broad gaming classifications were not explicitly defined. The Commission adopted regulations in 1992 that included definitions for many terms used in the statutory classification scheme, including ''electronic or electromechanical facsimile'' (25 CFR 502.7), ''electronic computer or other technologic aid'' (25 CFR 502.8), and ''other game similar to bingo'' (25 CFR 502.9). The Commission revised the definitions in 2002. See 67 FR 41166 (June 17, 2002) for an extensive discussion of the reasons for the Commission's decision to revise these key terms. However, the Commission did not define the many other terms used in conjunction with the various Class II games.

A recurring question as to the proper scope of Class II gaming involves the use of electronics and other technology in conjunction with bingo and lotto as well as pull tabs, instant bingo, and other games similar to bingo that may be Class II if played in a location where Class II bingo is played. In IGRA, Congress recognized the right of tribes to use ''electronic, computer or other technologic aids'' in connection with these forms of Class II gaming. Congress provided, however, that ''electronic or electromechanical facsimiles of any game of chance or slot machines of any kind'' constitute Class III gaming. Because a tribe wishing to conduct Class III gaming may do so only in accordance with an approved tribal-state compact, it is important to distinguish the two classes.

Currently, the distinction between an electronic ''aid'' to a Class II game and an ''electronic facsimile'' of a game of chance, and therefore a Class III game, is often unclear. With advances in technology, the line between the two has blurred. When in IGRA, Congress defined ''the game of chance commonly known as bingo,'' 25 U.S.C. 2703(7)(A), it could not have foreseen the technological changes that would affect all games of chance. Likewise, by allowing electronic aids to the game of bingo, Congress could not have foreseen that some vendors and gaming operators would be unable or unwilling to distinguish between Class II games, which tribes regulate, and Class III facsimiles, which require compacts between tribes and states. The Commission is concerned that the industry is dangerously close to obscuring the line between Class II and III. It believes that the future success of Indian gaming under IGRA depends upon tribes, states, and manufacturers being able to recognize when games fall within the ambit of tribal-state compacts and when they do not.

Against this backdrop, the Commission has determined that it is in the best long term interest of Indian gaming to issue classification standards clarifying the distinction between ''electronic, computer, and other technologic aids'' used in the play of Class II games and other technologic devices that are ''electronic or electromechanical facsimiles of a game of chance'' or slot machines.

This approach is somewhat different from the approach taken by the previous Commission when it proposed a rule on Classification of Games in November 1999 (See 64 FR 61234). After considering the comments of tribes and the public to the proposal, the Commission withdrew the proposed rule in July 2002 (See 67 FR 46134). At that time, the Commission expressed the view that the proposed rule would have more likely satisfied the concerns of all had there been greater opportunity for tribal input during its development. The Commission recommended that for any future such rulemaking, a tribal advisory committee be established to advise the Commission as to the nature and content of such a rule.

As the Commission worked through a process to develop these classification standards, it became apparent that the revised definitions issued by a divided Commission in June 2002 (See 67 FR 41166) did not provide the clarity that had been a goal in that rulemaking. Accordingly, the Commission proposes further revisions to the definitions for the terms ''electronic or electromechanical facsimile'' in a separate rulemaking, as well as revisions to the definitions of facsimile herein that incorporate part 546.

In a related matter, the Commission is also developing specific technical standards for Class II ''electronic, computer and other technologic aids'' utilized in Indian gaming operations. These technical standards will be presented in a separate proposed rule.

II. Development of the Proposed Rule Through Consultation With Indian Tribes

In recognition of tribal sovereignty and the fundamental importance of game classification to the operation and regulation of gaming on Indian lands under IGRA, the Commission developed a policy and process for consultation with Indian tribes that would provide opportunity for early and meaningful tribal input regarding formulation of these proposed Class II gaming regulations.

In particular, while initially advising tribes of the Commission's intention to develop these Class II Game Classification Standards, the Commission also actively consulted with tribes regarding formulation of the Commission's first-ever official government-to-government tribal consultation policy. After several months of consultation with tribes, the Commission's official tribal consultation policy was adopted and published in the **Federal Register** on March 31, 2004 (See 69 FR 16973). The Commission purposely established this policy in order to have consultation policy guidelines in place for pre-rulemaking tribal consultation on the Class II classification standards and other planned Commission rulemaking initiatives.

The Commission's tribal consultation policy calls for the Commission, to the extent practicable and permitted by law, to engage in regular, timely, and meaningful government-to-government consultation with Indian tribes when formulating proposed new or revised administrative regulations that may substantially affect the operation or regulation of gaming on Indian lands. To fulfill this policy commitment to consult with tribes on these proposed Class II regulations, the Commission devised a three-part plan to afford tribes a reasonable and practicable opportunity to consult with the Commission and to provide early input in formulation of the regulations before they were published as proposed new rules in the **Federal Register** and the actual rulemaking process began.

First, the Commission endeavored to consult in person at least twice with each gaming tribe between May 2003 and March 2006 regarding development of these proposed regulations. During this time period, the Commission sent out over 500 separate invitations to individual tribes to consult with the Commission and provide input. Many tribes accepted one or more of the Commission's invitations to consult during this pre-rulemaking period and participated in separate government-to-government consultation meetings with the Commission regarding the proposed regulations and other matters. While some tribes declined the Commission's invitation(s) to consult, between May 2003 and March 2006 the Commission conducted over 300 separate

government-to-government consultation meetings with individual tribes and their leaders or representatives regarding development and formulation of these proposed regulations.

Second, the Commission established a joint Federal-Tribal advisory committee on March 31, 2004, composed of both Commission and tribal representatives to assist the Commission in formulating these proposed Class II gaming regulations. In January 2004, the Commission requested all gaming tribes across the country to nominate tribal representatives to serve on this advisory committee. From the tribal nominations received, the Commission selected the following seven tribal representatives on March 31, 2004, to serve on the committee: Norm Des Rosiers, Gaming Commissioner, Viejas Band of Kumeyaay Indians; Joseph Carlini, Gaming Commission Executive Director, Agua Caliente Band of Cahuilla Indians; Kenneth Ermatinger, Gaming Commission Executive Director, Sault Ste. Marie Tribe of Chippewa Indians of Michigan; Jamie Hummingbird, Gaming Commission Director, Cherokee Nation, Oklahoma; Mark Garrow, Gaming Commission Inspections Manager, St. Regis Mohawk Tribe; Melvin Daniels, General Manager, Muckleshoot Indian Bingo, Muckleshoot Indian Tribe; Charles Lombardo, Sr. Vice-President for Gaming Operations, Seminole Tribe of Florida.

To date, the advisory committee has held six (6) meetings: May 13, 2004, in Washington, DC; August 2–3, 2004, Washington, DC; September 13–14, 2004, Cherokee, North Carolina; December 1–3, 2004, Oklahoma City, Oklahoma; January 12–13, 2005, Palm Springs, California; and March 11, 2005, Chicago, Illinois. During these meetings, all of which were open to the public, the committee discussed the various characteristics of Class II and Class III games of chance, their play, and related gaming technology and methods. In addition, the Committee also discussed, reviewed, critiqued and commented on four (4) different, successive preliminary working drafts of the proposed Class II classification standards, which were prepared by the Commission representatives on the committee.

The seven tribal committee representatives provided early tribal input and valuable insight, advice, and assistance to the Commission in developing each of the respective working drafts, as well as the current proposed regulations. Although there were many instances of accord, there were also many times during the development of the proposed regulations that the tribal committee representatives strongly disagreed with decisions made by the Commission.

In particular, tribal representatives strongly advocated automatic daubing (covering) for the entire game of bingo; elimination of any time delays for either adding players or covering in bingo; elimination of any requirement for multiple bingo draws or releases; authorization of wholly electronic pull-tab games; and no change to the current rule definition of ''electronic or electromechanical facsimile'' of games of chance. While understanding the tribal representatives' position on these issues and their general desire to assure that the games are economically viable, the Commission is bound by Congress's intent, as expressed in IGRA, to promulgate rules that clearly distinguish technologically-aided Class II games from Class III ''electronic or electromechanical facsimiles of any game of chance'' or ''slot machines of any kind.'' Accordingly, the Commission concluded that it could not accept some of the tribal representatives' recommendations in formulating proposed rule.

The Commission's establishment of the joint Federal-Tribal advisory committee was the subject of a legal challenge while the Commission was preparing the proposed rule for publication.

On March 10, 2005, nearly one year after the Commission established the committee, the Confederated Salish and Kootenai Tribes of the Flathead Nation and the Santa Rosa Rancheria Indian Community filed suit against the Commission alleging that several of the committee members were not eligible to participate on the committee. Following a hearing in Federal court, at which the request for temporary restraining order was denied, the Commission determined that it should proceed to publish the proposed rule for comment while the legal standing of the committee was further litigated. The Commission also sought clarification from those tribes nominating the committee members concerning the member's role as an official representative of the tribe. As a result of this clarification, and, out of an abundance of caution, the Commission regretfully requested that two members of the Committee step down.

The third component of the Commission's effort to consult with tribes during the development of these proposed regulations was to make the various preliminary working drafts of the proposed regulations available to all tribes and their leaders for review and comment independent of the joint Federal-Tribal advisory committee. All five preliminary drafts were published on the Commission's Web site. In addition, the third and fourth preliminary drafts were successively mailed to each tribe inviting written comment. Many tribes and the public submitted written comments on these respective working drafts. The tribal comments were shared with the members of the advisory committee for their review and carefully considered by the Commission in formulating these proposed regulations.

In addition to forming the advisory committee, scheduling and conducting individual tribal consultation meetings and advisory committee meetings, and requesting and considering written tribal comments to preliminary drafts of the proposed regulations, the Commission also facilitated further pre-rulemaking consultation with tribes by other means. In particular, the Commission attended and addressed several different assemblies of tribal leaders and tribal gaming operators and regulators at meetings and conferences between January 2003 and March 2006 organized by state and regional tribal gaming associations, the National Indian Gaming Association, and the National Congress of American Indians. At these meetings and conferences, the Commission advised tribal leaders of its intention and plan to develop these regulations and provided periodic updates regarding the progress and status of the regulations development. The Commission also made itself available at these meetings to answer any questions from tribal leaders regarding the proposed regulations or their formulation.

In addition, the Commission also met individually with several tribes and their leaders in its Washington, DC, offices, at each tribe's request, to discuss these proposed regulations and their formulation and implementation.

Through each of these various means, the Commission actively endeavored to provide all tribes with a reasonable and practical opportunity over the past twenty-six months to meet and consult with the Commission on a government-to-government basis and provide early and meaningful tribal input regarding the formulation and implementation of these proposed regulations.

By April of 2005, the Commission was prepared to send the fifth draft to the **Federal Register** for publication as a proposed rule. However, the Department of Justice (''DOJ'') contacted the Commission and expressed concern that the draft regulations might not be consistent with the Johnson Act. The Commission spent five months meeting

with DOJ to resolve its concerns. As a result of these meetings the DOJ drafted amendments to the Johnson Act. Following several consultation sessions with Tribes the DOJ sent the draft amendments to the Office of Management and Budget earlier this year. So much time has elapsed that it is not likely that the proposed legislation will pass the 109th Congress. The need to regulate Class II technologic aids has not diminished and the Commission is compelled to proceed with these regulations. The proposed regulations differ from the fifth draft that was provided to the public in April of 2005. The changes to that draft are a result of the Commission addressing the concerns of DOJ that these regulations clearly distinguish between Class II and Class III games. These changes relate to the size of the bingo card as well as the time period for the release of numbers. Additionally, the proposed changes require a fixed written notification to the player that the game they are playing is a game of bingo, a game similar to bingo, or a game of pull tabs. Finally, they prohibit pull tab machines from paying winnings in any form.

III. Purpose and Scope

The proposed revision to the current definitions regulation and the proposed classification regulation are intended to clarify terms used by the Congress to define Class II gaming under IGRA. Through a separate regulation, the Commission has proposed to revise the current definitions. The change to the definition for the terms ''electronic or electromechanical facsimile'' and ''other games similar to bingo'' provides consistency and clarity in understanding Class II gaming concepts intended by Congress. The classification standards serve to distinguish the use of ''electronic, computer, or other technologic aids'' in the play of Class II bingo, lotto, ''other games similar to bingo,'' pull tabs, and instant bingo from the play of Class III gaming machines.

These standards focus on the play of bingo, lotto, and ''other games similar to bingo'' when these games are played through an electronic medium using ''electronic, computer, or other technologic aids.'' The Commission's intent with classification standards is not to prescribe rules for how a tribal gaming operation conducts its live session bingo. The only exception to this general approach is when a tribal gaming operation conducts its live session bingo exclusively through networked electronic player stations when these devices essentially perform all the functions of bingo play normally undertaken by the players. Games played in such a manner on these electronic player stations are included within the parameters of bingo, lotto, and ''other games similar to bingo'' games played through an electronic medium addressed in the Classification Standards.

These standards apply only in bingo, lotto, other games similar to bingo, pull-tabs, and instant bingo played primarily through an electronic medium. They apply only to the electronic format because in an electronic format it becomes too easy to use features such as the instantaneous, rather than serial, release of numbers and the automatic covering (daubing) of those numbers on a player's electronic card as a pretext to fundamentally change or distort the nature of the game such that it becomes an ''electronic facsimile'' of the game. In live session bingo, the pace and style of the game will normally preclude such distortions.

In many respects, the current generation of electronic bingo games shows features that turn bingo on its head. Many games offer players the opportunity to play with as few as one other player in games where the object is to obtain and cover one or more ''interim'' prize patterns which offer significant monetary reward. The game-winning pattern is more often than not a pattern with a low-value, inconsequential prize. The machines, offered as ''technologic aids'' to the play of bingo, are often designed to play close to the line by using alternative displays of the game results to resemble the experience of a slot machine for the player. This is not inherently wrong nor does it necessarily make such machines Class III devices. But it does make them more difficult to distinguish from Class III devices.

Faced with the explosion of these ''technologic aids'' on the floors of Class II gaming facilities, or on the floors of Class III gaming facilities as an exception to the number of slot machines authorized for the facility under a tribal-state compact, the Commission has determined that some bright-line classification standards must be developed to distinguish Class II games from the slot machines they mimic. The standards interpret in operational terms Congress's prescribed legal criteria for Class II bingo, lotto, and other games similar to bingo. As to pull-tabs and instant bingo, the standards fully embrace the Federal court decisions that have dealt with the technologic aids to the game. The standards demand in some cases, and prohibit in others, certain play features. In short, the purpose in describing play features is to distinguish the play of these ''technologic aids'' from the play of ''electronic facsimiles of a game of chance or slot machines of any kind,'' which is Class III gaming under the IGRA. The standards clarify the terms Congress used when it defined Class II gaming, not knowing the full potential of modern technology that could be brought to the industry.

IGRA defines Class II bingo with three statutory criteria. It is the game of chance commonly known as bingo

* * *

(1) Which is played for prizes, including monetary prizes, with cards bearing number or other designations;

(2) In which the holder of the card covers such numbers or other designations when objects, similarly numbered or designated, are drawn or electronically determined; and

(3) In which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards[.]

25 U.S.C. 2703(7)(A). The game of ''lotto'' and ''other games similar to bingo'' were not defined in the Act. The terms were defined in 1992 by the Commission as having the same requirements as bingo. The term ''other games similar to bingo'' was also defined by the 1992 Commission as requiring that the games could not be house-banked. In reviewing the definition of ''other games similar to bingo,'' the 2002 Commission retained this non-house-banked requirement but only described these games as a variant of bingo. What constituted a ''variant'' was not explained. Furthermore, the Commission in its advisory opinions has been unable to identify what constitutes a variant of bingo. It has only described what is not a variant—*e.g.*, a pre-drawn bonanza bingo game.

IGRA also allows for advances in technology to aid the way the game is played. Speaking on another aspect of the game, the U.S. Court of Appeals for the Ninth Circuit observed that bingo is not necessarily the ''traditional'' game that ''was played in our childhoods or home towns.'' 223 F.3d 1091,1096 (9th Cir. 2000). At the same time, IGRA has not changed. In it, Congress delegated to NIGC the task of implementing the Act's provisions. The three statutory criteria for bingo must continue to be the fundamental principles on which a Class II classification is based. It is this balance between capitalizing on technological advances while continuing to give IGRA's definitions meaning that the NIGC is attempting to strike in these Classification Standards. These standards explain the statutory criteria and represent the Commission's

effort to distinguish Class II bingo, lotto, and ''other games similar to bingo'' from Class III gaming.

The Commission also addresses the games of pull tabs and ''instant bingo'' in the classification standards. These games are not defined in IGRA, but have been discussed in Federal court cases. These cases provide guidance for distinguishing the Class II versions of these games from ''electronic and electromechanical facsimiles'' of the games which are Class III. The Classification Standards specifically rely on this case law.

Finally, these regulations address a problem highlighted by the Commission in 2002, but left unresolved. As noted by the Commission, the process for classifying games has been an imperfect process. Under the current informal process, the Commission's Office of General Counsel issues advisory classification opinions. Often these are obsolete as soon as they are released. Looking forward, electronic games change much too rapidly to encourage dependence on a small legal staff to provide the appropriate classification guidance. The advisory opinions also suffer from major drawbacks. For example, it is sometimes difficult to identify whether the games described in the advisory opinions are the same games as those that are offered for play in a tribal gaming facility. In addition, the advisory opinions are not final agency action and therefore are not subject to judicial review.

A second method for classifying games, the issuance of a Notice of Violation and Closure Order, while subject to judicial review, also has drawbacks. This formal enforcement process is often slow and expensive, forces tribes to defend games they often believe in good faith are permissible games, and can result in decisions that have little impact on the new games that replace those that are the subject of the enforcement action.

A third method, leaving the decision entirely to tribal gaming commissions, has other problems. Decisions are sometimes inconsistent with those of other commissions. Disagreements between tribes and states arise, and all of the concerned parties, including manufacturers, as a practical matter need a central authority to decide what games can be played as Class II.

Definitions in Part 502

a. ''Electronic or Electromechanical Facsimile''

The Commission proposes to revise the definition for ''Electronic or electromechanical facsimile'' contained in § 502.8. The revision clarifies that games under this section that comply with part 546 are not electronic or electromechanical facsimiles of any game of chance.

b. ''Other Games Similar to Bingo''

The Commission proposes to revise the definition for ''other games similar to bingo'' contained in § 502.9. The revision to the definition shifts the focus for the classification determination in an other game similar to bingo from whether the game is house-banked to whether the game has players competing against other players for the prizes. The revision removes the requirement, not present in IGRA, that these games not be house-banked. The revision also strengthens the requirement that the games involve players competing against other players for a common prize or prizes.

As to house banking, IGRA defines as Class II bingo and, if played in the same location, pull-tabs, punch boards, tip jars, and games similar to bingo, but makes no requirement that any of these games be house-banked, or not be housed-banked. IGRA's only requirement about the banking of Class II games is to exclude house-banked card games from the definition and make them Class III. Congress has, in other words, defined both bingo and games similar to bingo as Class II, regardless of how they are banked. Some, but not all bingo games are played in a house-banked format. Accordingly, the Commission proposes to remove the limitation on house-banking for games similar to bingo as inconsistent with IGRA.

The revision maintains that part of the definition that describes ''other games similar to bingo'' as variants of bingo. Proposed Part 546 explains what variants are contemplated.

IV. Definitions for 25 CFR Part 546

The Commission proposes definitions for terms not previously defined in its regulations. These definitions apply only to these terms as used in the proposed Part 546 and do not necessarily have other general application.

The Commission defines what is a ''game'' of the ''game of chance commonly known as bingo'' or ''other games similar to bingo'' so that a player will know when the game begins, when the game ends, and what the player must do to participate and win in an individual game. Each bingo game should have a distinct reference number visible on the screen at each player station and used subsequent to the game to track game play and results.

The Commission has previously defined the game of ''lotto'' as a game played in the same manner as bingo. 25 CFR 502.3. Accordingly, the classification standards for bingo apply to ''lotto'' the same as they apply to defining bingo. The term ''lotto'' does not mean ''lottery'' in general or the type of lottery operated by various states and denominated ''lotto'' or some derivative thereof.

The Commission defines ''the game of pull tabs'' and ''electronic pull tab'' using terminology commonly accepted in the federal courts. *See Cabazon Band* v. *NIGC,* 827 F. Supp. 26, 28 n. 2(D.D.C. 1993), *aff'd* 14 F.3d 633 (D.C. Cir. 1994).

The Commission defines the term ''instant bingo'' by relying on federal case law. See *Julius M. Israel Lodge of B'nai B'rith* v. *Commissioner of Internal Revenue,* 98 F.3d 190 (5th Cir. 1996). In its decision, the court set out some fundamental differences between bingo and instant bingo. Using common definitions of bingo from dictionaries, the court stated:

> The taxpayer's Instant Bingo is devoid of the critical element of bingo that runs through these ordinary, everyday definitions—that players place markers over randomly called numbers in an attempt to form a preselected pattern. Instant Bingo involves only the player's purchase of a prepackaged card * * *, and winning cards are those in which the preprinted appearance of numbers on the front of the card * * * matches the preprinted winning arrangement indicated on the reverse side of the card * * *.

Julius M. Israel Lodge of B'nai B'rith, 98 F. 3d at 192–93.

The Commission defines the terms ''bonus prize'' and ''progressive prize'' in bingo, lotto, or other games similar to bingo to distinguish them from the game-winning prize. See the discussion below on prizes generally.

V. Criteria for Meeting the Class II Requirements for Bingo, Lotto, and Other Games Similar to Bingo Established by IGRA

IGRA establishes three requirements in defining the game of bingo as a Class II gaming activity. The intent of the proposed rule is to clarify the terms used in this statutory definition when the game is played primarily though ''electronic, computer, or other technologic aids.'' In drafting the standards, the Commission has been careful to derive criteria from the statutory language.

VI. Bingo, Lotto, and Other Games Similar to Bingo Are Games Played for Prizes, Including Monetary Prizes, With Cards Bearing Numbers or Other Designations

This section of the proposed rule deals with two essential elements of bingo, lotto and ''other games similar to bingo'': Cards and prizes. It offers criteria for the card so that it is visible and useful to the game. It explains criteria for prizes but permits a wide variety of prizes for a game.

Cards

Central to the game of bingo is that participants play the game on bingo-faced cards and compete against other players to win prizes in the game. Pursuant to IGRA's second statutory element, players cover numbers or other designations on their cards ''when'' those numbers or other designations are drawn. This necessarily means that the player has the card in her possession before the numbers are drawn. This also means that players cannot change cards once the game begins and the numbers are being drawn and displayed, although they certainly may do so before a new game starts.

There is no statutory requirement that bingo be played with paper cards as in a traditional bingo game. In fact, case law and NIGC's regulations provide that Class II bingo games may be played with electronic cards. The U.S. Court of Appeals for the Tenth Circuit, in *U.S.* v. *162 Megamania Gambling Devices*, 231 F. 3d 713 (10th Cir. 2000), ruled that a game, Megamania, was Class II because it met the three statutory criteria for bingo, among them, that the game ''is played with an electronic card that looks like a regular paper bingo card containing a grid of numbers * * *'' *Id.* at 719. The Ninth Circuit also affirmed the Class II status of Megamania, observing that the game consisted of ''electronic game 'cards.''' *U.S.* v. *103 Electronic Gambling Devices*, 223 F. 3d 1091, 1093 (10th Cir. 2000). NIGC's regulation on technologic aids, 25 CFR 502.7(c), explicitly names ''electronic cards for participants in bingo games'' as an example of an aid, which is allowable for Class II games under 25 CFR 502.3(a).

Because bingo is a game played with the cards, the cards must be clearly visible to the player on the video screen of the ''electronic, computer, or other technologic aid'' displaying the card. In order to ensure visibility the Commission proposes that the screen always display a card that is at least one half the available space on the screen. A larger card would be useful for better visibility, but the Commission recognizes that the stated minimum size serves the purpose of having a visible card and at the same time allows flexibility for placing other information and features on the video screen.

In the traditional ''game of chance commonly known as bingo,'' the card contains a grid of 25 spaces in 5 horizontal rows and 5 vertical columns. This is not clearly stated in the statute although it is the norm for the game. The Commission believes that a game using other than 25 spaces placed in a 5 by 5 grid would more properly be considered an ''other game[s] similar to bingo.'' While a previous Commission explained that the bingo game would not be limited to a grid of 5 rows and 5 columns, in giving meaning to the term ''other games similar to bingo,'' the Commission now believes Congress had in mind a traditional bingo card when it drafted the sections on Class II bingo since it expressly referred to ''the game of chance commonly known as bingo'' when listing the statutory elements of the game.

As a major variant from the game of bingo, for other games similar to bingo, the card has many possibilities. The only stated restriction is that each card must have at least three (3) spaces to be covered, in addition to any ''free space,'' because a winning pattern in the game must have at least three (3) spaces, as explained elsewhere in this preamble.

Each card must have unique numbers or other designations that appear only once on the card. This means a number could appear twice, so long as a qualifying factor such as color established the unique character, e.g., a ''blue 5'' and a ''red 5'' could both appear on the card but each would be unique. The unique number or designation can appear only once in order to give meaning to game play. The term ''other designations'' includes letters, figures or symbols.

Except as noted below, the card must always be displayed for the player in a clear and visible manner. If multiple bingo cards are in use by a player, the player station must have capability to display for the player on the video screen any of the bingo cards being used by the player in the game during play. Before game play, a single card may be shown. During game play, if only one card is shown, the default card being shown will be the card closest to a bingo win or the card with the highest value prize, if a winning card, with each such card display meeting the specified visibility requirements. At the end of the game, a player must have the option of reviewing all the cards used by the player in the game.

An exception to the requirement that the card must always be shown is made for alternative display during a graphical display presented as a second screen during a bonus prize round which is intended for entertainment only. The screen will return to its normal display, including a card, at the conclusion of the round.

The card may contain one free (covered) space without a specified number or other designation, provided the free space is located identically on every card in play or available to be played in the game.

When the Commission issued regulations in 1992, it recognized that Congress did not intend to limit bingo to its classic form and that, if it had, Congress could have spelled out further requirements such as cards having the letters B I N G O across the top with numbers 1–15 in the first column, etc. See 57 FR 12382 (April 9, 1992). This early rulemaking was not specifically directed at distinguishing between play of bingo on electronic player stations from the play of a Class III electronic facsimiles or slot machines. The Commission also found that in defining Class II to include games similar to bingo, Congress intended to include more than bingo in its classic form in that class.

This interpretation, however, begs the question of what IGRA meant by the phrase ''game of chance commonly known as bingo.'' In differentiating between bingo and other games similar to bingo, the Commission now understands that Congress did intend bingo to be played in its ''classic form'' (i.e., its common form) which includes the traditional 25 space card but that tribes should also be able to take advantage of modern technology to play the game. Accordingly, the proposed rule clarifies that bingo played in an electronic medium through an ''electronic, computer or other technologic aid'' will be played on the classic bingo card, but this may be an electronic card.

''Other games similar to bingo'' are games that are bingo-like and would not necessarily be played on the classic form of bingo card. With the corresponding change to the definition of ''other games similar to bingo'' set out in this proposed rule, the Commission believes it is not taking a step back on what is included within Class II but giving correct meaning to the terminology. Bingo is played on a classic card; games that are similar to bingo, but still Class II, can be played on non-traditional cards.

This is consistent with the holdings in the MegaMania cases. As the Tenth Circuit noted:

> In this case, MegaMania meets these three criteria. Specifically it is played with an electronic card that looks like a regular paper bingo card containing a grid of numbers and the first persons to cover a previously designated arrangement of numbers—in this case five straight line spaces and the necessary corner spaces—wins a monetary prize.

U.S. v. *162 Megamania Gambling Devices*, 231 F. 3d 713, 719 (10th Cir. 2000).

Prizes

Because bingo is ''played for prizes'' and ''won by the first player'' covering, the winning prize must have meaningful value compared to the entry fee for the game. The Commission believes that while this prize need not be the highest value prize in the game, or be greater than the amount wagered, it should have significant value. Accordingly, the Commission places a value of at least 20% of the amount wagered and one cent as the minimum value for a game-winning prize.

Other prizes, referred as to ''bonus prizes'' and ''progressive prizes,'' to distinguish them from ''game winning prize,'' may also be awarded based on a player completing another pre-designated pattern during the game. Each such designated pattern or arrangement must also be disclosed to the players upon request before the game begins.

A bonus prize is a prize awarded in a game in addition to the game-winning prize. The prize may be based on different pre-designated and pre-announced patterns than the game-winning pattern, may be based on achieving a winning pattern in a specified quantity of numbers or designations drawn or electronically determined and released, or based on a combination of these conditions. The bonus prize may also be limited by game rule to obtaining the required pre-designated pattern in a specified quantity of numbers or other designations released before the game-winning pattern is obtained by a player in the game. Bonus prizes take two forms: Interim and consolation. Interim prizes are prizes won before or at the same time the game winning prize is won but based on the player covering a pre-designated pattern other than the pre-designated winning pattern. Consolation prizes are won by another player in the game after the winning player successfully covers the pre-designated game-winning pattern. The difference is that consolation prizes require an additional release of numbers or other designations.

In bingo, lotto, and ''other games similar to bingo,'' the game is ''won'' by the first player covering the pre-designated winning pattern. Consequently play must stop, or pause, when the last number or other designation that forms the pre-designated game-winning pattern is released to the players for the game-winning player to cover the pattern, announce bingo, and claim the win. A player may win an interim prize using the quantity of numbers or other designations necessary to form the game winning pattern or a lesser quantity of such numbers or other designations and claim that prize at the same time the game-winning player claims the game-winning prize. However, another release of numbers or designations is required for the players remaining in the game to receive the numbers or other designations that appear on their card(s) and try to obtain the pre-designated pattern for a consolation prize(s), assuming the game does not end with the award of the game-winning prize and continues through one or more consolation prize rounds.

Under the proposed regulation, each game must provide an equal chance of obtaining any winning pattern for each card played by an active player in the game. The probability of achieving any particular pre-designated winning pattern must be the same for all cards played in a game and may not vary based on the amount wagered except that a minimum wager may be established as a condition of eligibility to win a progressive prize. All prizes in the game must be fixed in amount or established by formula and disclosed to all participating players in the game. Prizes that are not fixed or established by formula, i.e., prizes that are random or unpredictable, are not permitted.

The Commission recognizes that game designers may establish various wagering levels in a game. This is permissible provided that all players in the game are eligible to compete for all winning patterns in the game. The higher wager or entry fee can result in a higher value prize but that prize must be based on a pattern or patterns available to all players. For example a player entering a game at the one credit wager level could cover a particular pattern and win a five (5) credit prize, but another player entering at the ten (10) credit level could win a higher multiple of the prize based on covering the same pattern.

A multiplier to the prize or other bonus based on a winning pattern containing a specified number or other designation is permitted. Similarly, the order of, or quantity of, numbers or other designations randomly drawn or electronically determined may affect the prize awarded for completing any previously designated winning pattern in a game.

Prizes may not be based on an event not directly related to bingo play, such as the spinning of a wheel with eligibility to spin having been determined by a player obtaining and covering a specific pattern in the game. This subsequent ''chance'' event is not bingo, lotto, or an ''other game[s] similar to bingo'' and is not a Class II gaming activity. Consequently, it follows that prizes must be established before the game begins. A ''second screen'' or ''bonus round'' feature is permitted, however, provided the round is for entertainment only and the prize was determined through the play of the underlying game of bingo, lotto or other game similar to bingo before the bonus round commenced. An alternative display may show the award of free games.

A progressive prize is an established prize for a game, funded by a percentage of each player's buy-in or wager, that is awarded to a player for obtaining a specified pre-designated and pre-announced pattern within a specified quantity of numbers or designations randomly drawn and released or electronically determined, or randomly drawn and released or electronically determined in a specified sequence. If the progressive prize is not won in a particular game, the prize must be rolled over to each subsequent game until it is won. The progressive prize is thus increased from one game to the next based on player buy-in or wager contributions from each qualifying game played in which the prize is not won. All contributions to the progressive prize jackpot must be awarded to the players. A winning pattern for a progressive prize is not necessarily the same as the game-winning prize pattern.

The method of determining the winner of a progressive prize in a game must be based only on the play of the game of bingo and may not be based on events outside the random selection of numbers or other designations and the action of the competing players to cover such numbers or other designations on their respective cards to achieve the pre-designated winning patterns in the game. As an example, an acceptable basis for awarding a progressive prize would be for the winning player to obtain a winning bingo pattern in the first five numbers drawn in the exact order in which they are drawn.

A pattern used to establish the progressive prize must be a pre-designated pattern that can be obtained by all players in the game. The game may provide that only players wagering at or above a certain entry level are eligible to win the progressive prize associated with that pattern. However, other participants in the game not playing at the required minimum entry level to win the progressive prize must be eligible to win some other prize if the pre-designated pattern is obtained and covered by that player, and the prize claimed.

Progressive awards with only one participating player station, usually called ''stand-alone progressives'' or ''personal progressives,'' are not permitted in Class II bingo, lotto, or other games similar to bingo played through an electronic medium. In ''personal progressives,'' eligibility to participate and win is based upon some identifying factor, such as a player tracking card. As an example, a prize for the lone eligible player might be greater on the player's 1000th game or a game between 500 and 600 as determined by a random number generator. These formats introduce an additional element of chance into the prize award not involved in the play of the game by all the participants in the game and, thus, fall outside the definition of Class II gaming.

''Mystery Jackpots,'' where winners are determined from events outside the play of game, e.g., a format in which a player's bet causes a hidden jackpot amount to be exceeded thus enabling the player to play for that jackpot, are not permitted. In this format, an event outside the play of bingo, lotto, or an other game similar to bingo triggers the unique prize award for that player.

A ''gamble feature,'' sometimes called a double up, double play, or double pay, etc., may not be used with Class II bingo, lotto, or other games similar to bingo played through an electronic medium. They are a pretext to alter the fundamental concepts under the IGRA by which prizes in a bingo or lotto game or an other game similar to bingo are awarded. These prize multipliers provide the opportunity, after the completion of the game, for a separate ''double or nothing'' wager. As such, they do not fall within the definition of Class II games.

Similarly, a separate game or wager to convert the fractional amount left in player credits to either the coin value of the game or nothing, often called ''residual credit removal,'' does not fall within the definition of Class II gaming. These credits must stay on the player station credit meter for use by the current or a subsequent player until their accumulated value reaches the coin value of the game.

The award of additional ''free'' games as a marketing tool is permitted so long as all players that participated in the game that initiated the prize of a free game or games receive the same number of free games. This is not considered to be the award of a prize outside the play of the game. Essentially, as part of its marketing program, the house determines that all players in a particular game will receive additional game credits to use in later games.

Finally, a tribal gaming operation may in its discretion offer extraneous marketing prizes such as a ''good neighbor prize'' awarded to the player sitting next to a player winning a large jackpot progressive prize. This prize is not the result of consideration paid by the player winning the progressive or by the player winning the good neighbor prize. It is merely the gaming operation exercising a marketing decision.

VII. Bingo, Lotto, and Other Games Similar to Bingo Are Games in Which the Holder of the Card Covers the Numbers or Other Designations on the Player's Card When Objects Similarly Numbered or Designated Are Drawn or Electronically Determined

In the game of chance commonly known as bingo, numbers or other designations are drawn from a pool of 75 such numbers or other designations. The term ''designations'' can mean letters or figures and may include attributes such as color which provide a unique quality to a number, letter, or figure that is used more than once in the game. The random draw or electronic determination of the numbers or other designations must be from a non-replaceable pool, meaning that, for each game, the numbers or other designations randomly drawn or electronically determined are not put back in the pool to be drawn again in that game. For example, if the number B–15 is drawn or electronically determined, it cannot be used again in that game. At the end of the game, all numbers or other designations are returned to the pool to be drawn in the next game.

In bingo and lotto, the use of a non-replaceable pool of 75 numbers or other designations is matched with a card containing 25 non-repeating spaces. For ''other games similar to bingo'' the Commission believes that the non-replaceable pool of numbers or other designations must consist of a number greater than the number of spaces on the card to be used in the game.

A common draw or electronic determination of numbers or designations may be utilized for separate games that are played simultaneously.

In bingo, lotto, and ''other games similar to bingo'' played through an electronic medium, cards containing pre-covered numbers or designations cannot be used. The term ''pre-covered numbers or designations'' means that the numbers or designations were selected before an individual game begins or before players accept the card or cards each will play and are marked as having been covered. Accordingly, the proposed rule provides that numbers must be selected in real time during the game, as part of the game, and not drawn early and stored for later use. No exception is made for ''bonanza bingo'' style games, although the Commission acknowledges that this form of play may be found in live session bingo play.

Under IGRA, a game is Class II bingo only if players are required to cover the numbers or other designations on their cards in ''real time'' (the actual time that it takes a process to occur) or ''near real time'' response to those numbers or other designations being drawn, and if the first person to cover a designated pattern of those numbers or other designations on a card held by that player wins the game. The requirement that a player cover when objects are drawn means that games that use pre-drawn numbers cannot constitute bingo or an other game similar to bingo. Some have argued that for the purposes of IGRA ''when'' means ''after'' and that it should not matter how long after balls are drawn that the card is daubed, thus allowing for pre-drawn numbers. This is contrary to the common meaning of the word ''when.'' Webster's Collegiate Dictionary (10th ed.) defines the conjunction ''when'' as:

> 1a: at or during the time that: WHILE * * * b: just at the moment that * * * c: at any or every time that * * * 2: in the event that: IF * * * 3a: considering that * * * b: in spite of the fact that: ALTHOUGH * * * 4: the time or occasion at or in which * * *.

This definition is counter to the proposition that ''when'' means ''at any point after.''

The random draw by either a bingo blower or some other method where numbers are ''electronically determined'' must occur in real time or very near in real-time to the actual play of the particular bingo game. The act of covering the numbers must occur in close proximity to the drawing of those numbers or in real time. Allowing a game time to distribute numbers through a network of terminals to help ensure continuity of fast paced

electronic bingo games would be logical. In the Commission's view, however, consistent with statutory intent, such ''near real-time'' play contemplates only the lapse of a minimal period of time necessary to accomplish these objectives. This time period would be measured in seconds, not minutes or hours.

In games with pre-selected numbers or designations, the numbers or other designations are chosen by a random number generator at some time prior to the cards being sold and then the completed games are stored in the host computer and sold to players. By the time the player begins participating, the game has been played within the machine or a server for the network and the machine distributes the completed game to the player. The winning cards are determined at the time the computer draws the numbers and matches them against the existing deck, not during the course of play. Therefore, the bingo player is not ''covering'' a previously designated arrangement and the ''covering'' is not happening ''when'' the objects are drawn.

An acceptable ''electronic, computer, or other technologic aid'' to the play of bingo, lotto, or ''other games similar to bingo'' could include the capability for the player to cover all of the numbers or other designations drawn and released to the point the player instructs the aid to perform the cover action on the electronic card used by that player in the game. In other words, the player does not have to touch each number or other designation on the card to cover the number, or use an electronic pen or ''dauber'' to mark each number or designation. Instead, the player can touch the screen or a designated button to perform this function. This action must occur after each release of numbers or other designations in the game because players must cover ''when'' numbers or designations are released, as discussed above. (The numbers may be released in rounds, each round containing one number or a set of numbers. In a game designed in this manner, the required cover action by players must occur after each round or release of a set of numbers.)

An ''electronic, computer or other technologic aid'' cannot employ a feature whereby the ''aid'' accepts instruction from the player at the beginning of the game to later cover (daub) the numbers that will be drawn in later rounds or releases of numbers or other designations This is sometimes referred to as total ''auto-daub'' meaning a feature incorporated into an aid to the play of bingo, lotto, or an other game similar to bingo that automatically performs the requirements for the player to cover (daub) numbers or designations on the player's electronic card. Use of this feature would mean players were not covering ''when'' those numbers were drawn and released. Similarly, the equipment would lose its character as an ''electronic, computer, or other technologic aid'' to Class II gaming and would become an ''electronic facsimile'' of the game if it performed all of the ''cover'' functions for the player without specific player direction or if it performed those functions following an instruction from the player to cover at some later point ''when'' and if the numbers other designations were drawn. The device would essentially play the game for the player. The player would merely start the game, watch play unfold, and be paid any amounts won without further action.

It follows that a player should have a reasonable opportunity to cover the numbers or other designations after those numbers or other designations are released before forfeiting the use of the covered numbers or designations. The Commission believes a minimum time of two (2) seconds is appropriate in each round for players to have an opportunity to accomplish this function. If all players have covered sooner, the game may proceed.

To ''sleep'' or to ''sleep a bingo'' means that a player fails, within the time allowed by the game: (i) To cover (daub) the previously released numbers or other designations on that player's card(s) constituting a game-winning pattern or other pre-designated winning pattern, or (ii) to claim the prize to which the player is entitled, having covered (daubed) a previously designated winning pattern thereby resulting in the forfeiture of the prize to which the player would otherwise be entitled.

Because each game of bingo, lotto, or other game similar to bingo must have a winning player (game is ''won by the first player'' covering a pre-designated pattern), it follows that a player who fails to cover the game-winning pattern on that player's card(s) under the time permitted by the rules of the game ''sleeps'' that game-winning pattern, and the game must continue for some player in the game to win following a subsequent release of numbers or designations. Game rules may specify a time period of not less than two seconds for this cover opportunity to facilitate movement in the game and speed play. If the game waited endlessly for a non-attentive player to cover, other players would be stuck in the game waiting for additional numbers or other designations to be drawn and released, and the opportunity to play the subsequent round. A player who fails to cover the numbers or designations making up that game-winning pattern released in the first round or in a subsequent round may later cover those numbers or designations (''catch-up'') and still remain eligible to win the game-winning prize, provided that prize has not been awarded to another player who covered the numbers or other designations making up the pattern and claimed the prize. However, a player failing to cover (daub) those numbers or designations within the permitted time loses the opportunity to make a pattern from those numbers or designation that could result in a bonus or progressive prize.

VIII. Bingo, Lotto, and Other Games Similar to Bingo Are Games Won by the First Person Covering a Previously Designated Arrangement of Numbers or Other Designations on the Card or Cards Held by the Player

Key to understanding IGRA's third statutory element is an examination of the term ''first person.'' The Commission understands Congress's use of this term to indicate that bingo, lotto, and ''other games similar to bingo'' must be played by more than one person if there is to be a ''first person.'' In the Commission's view, bingo, lotto and ''other games similar to bingo'' are games where broad participation is favored, although the Commission recognizes that a simplistic reading of the IGRA requirements would allow the game to be played only by two (2) players. Furthermore, players must be competing for all available winning patterns in the game including all patterns associated with the bonus prizes and the progressive prize, if any, in the game. In other words, the game and all prize patterns associated with it must be played by more than one (1) person and preferably by many players.

The need for multiple players is also a factor distinguishing ''electronic, computer, or other technologic aids'' from electronic facsimiles of a game of chance in that an ''aid'' facilitates broad participation in the game. Accordingly, the Commission wants to make clear that a network of linked player stations for the play of bingo, lotto, or other games similar to bingo must be designed to facilitate broad participation and not limit play to two (2) players. In an effort to quantify this for game design, the Commission proposes that games encourage play with six (6) or more participants. It has drafted the rule to allow a short but reasonable period for these additional players to enter the game after the first player enters. If six

(6) players do not enter within two (2) seconds, the game can begin with a minimum of two players.

When played with electronic player stations, players must be linked through a networked system. Participating linked player stations may be located adjacent to or separately from one another at each location at which a common game is played. The networked system may also extend to electronic player stations at multiple tribal gaming locations. Players at electronic player stations in different locations may be linked into a common game.

The location of any ''electronic, computer, or other technologic aid'' assisting game play by providing the random draw or electronic determination of numbers or designations used in the game, controlling a progressive game, or allowing a player to participate in the game must be located on ''Indian lands'' as that term is defined in the IGRA. Electronic, computer, or other technologic systems which only monitor game revenue may be located elsewhere.

The patterns or arrangement of numbers or designations which the players strive to cover in the game have minimum requirements under the proposed rule. A game-winning pattern will have at least three spaces on the card in addition to any free space used. Other winning patterns will have at least two (2) spaces on the card in addition to any free space used. The maximum number of spaces for any winning pattern in a game is the number of spaces on the card.

A game may have more than one game-winning player. In other words, ties are permitted. To constitute a tie, each game-winning player must use the same number or other designation drawn and released in the game that finalizes the game-winning pattern for each player and must cover and claim the prize under the procedures described.

The requirement that there must be a ''first person must cover'' a pattern also has important implications for the game. Participants must take an active role during the competition in covering the numbers or other designations on their cards when the numbers are drawn.

The third statutory requirement also means that there must be at least two (2) releases of numbers before a winning game-ending pattern is created. The statutory language, ''won by the first person,'' describes a contest or race among players to be the first to win. Central to ''the game of chance commonly known as bingo'' is the competition built up over the course of successive ball draws, as each player covers matching numbers or designations in an attempt to be the first to cover the winning pattern. No such challenge exists where all of the balls are revealed at once. Said differently, if all the balls necessary to produce a game-winning pattern are drawn at once, the game will likely end with only one ball draw, thereby removing the contest element.

This interpretation of the statutory definition, requiring balls to be released in multiple rounds during the course of the game, is supported by case law. In the Ninth and Tenth Circuits' opinions on MegaMania, the courts found that the game was Class II. *U.S.* v. *103 Electronic Gambling Devices,* 223 F.3d 1091 (9th Cir. 2000); *U.S.* v. *162 MegaMania Gambling Devices,* 231 F. 3d 713 (10th Cir. 2000). The courts reached their decisions after an analysis of the play of the game for whether it met the statutory criteria for bingo. According to the courts, in MegaMania numbers are drawn by a bingo blower and released three balls serially at a time. If a player wants to continue playing the game after the first three balls are drawn, the player pays additional money to stay in the game for the release of the next three balls. The game is won by the first person to cover a five-space straight line on an electronic bingo card.

Intrinsic to the play of MegaMania were the successive rounds that a player must engage in to win the game. The game cannot be won after a single release or numbers or other designations. The Ninth Circuit's ruling-limited as it was to the facts-recognized an inherent character of bingo: that the game requires a player to participate in a process of numbers being revealed. MegaMania could be won by two successive releases and so the Commission does not require more than two releases of one or more numbers or other designations. However, the Commission's interpretation of IGRA's definition of bingo, with the winner being the first to cover, does require more than one release. Consequently, the quantity of numbers or other designations released in the first round must be some number less than the number of balls required for a player to achieve the win, that is, cover the game-winning pattern.

Furthermore, in Megamania, the balls, although released in clusters of three, they each rolled out one at a time. They did not pop out three at a time. This roll out of each individual ball allowed players to track the balls and the game. We believe that this serial release of the balls is a practical approach for allowing players to identify what numbers they are covering. The requirement that the release take 2 seconds also allows the player a minimum time to view the balls as they are released.

The Commission is wholly cognizant of the Ninth Circuit's caveat that, ''Whatever a nostalgic inquiry into the vital characteristics of the game as it was played in our childhood or home towns might discover, IGRA's three explicit criteria constitute the sole legal requirements for the game to count as class II bingo. '' *103 Electronic Gambling Devices,* 223 F.3d at 1096. This interpretation of the third statutory element, consistent with both case law and the statutory definition, respects what the Commission understands ''the game of chance commonly known as bingo'' to be. As previously discussed, the Commission is concerned that the lines between what constitute Class II and Class III games are being blurred by technological advances that Congress could not have foreseen and did not explicitly address in 1988 when it enacted IGRA, with its three simple statutory criteria for what constituted bingo. The Commission nonetheless must continue to distinguish Class II from Class III games because Congress distinguished between them. The Committee Report on the bill that became IGRA noted that ''both state and tribal governments have significant governmental interests in the conduct of class III gaming.'' S. Rep. 100–446, p. 13. Having weighed the merits of different interpretations of the third statutory requirement, the Commission believes that requiring multiple ball releases, in the format described, is in keeping with the statutory language, case law, and with its concern that play of bingo must be distinguishable from the play of a slot machine, over which Congress intended tribes and states to compact.

IX. Use of ''Electronic, Computer or Other Technologic aids'' in the Play of Bingo, Lotto, and ''Other Games Similar to Bingo'' Through an Electronic Medium.

In light of the Commission's understanding of IGRA's statutory requirements as well as the distinction between ''aids'' and ''facsimiles,'' the Commission believes the following steps describe the play of bingo, lotto, or ''other games similar to bingo'' in an electronic medium, as Class II gaming.

(1) A request for entry into the game;

(2) A release of a group of balls, one at a time, in no less then two seconds;

(3) A first cover (daub) opportunity of at least two seconds for all competing players in the game to cover (daub) the numbers or other designations on their cards that correspond to the numbers or

other designations drawn and released in the first round and action by the players to cover (daub) the numbers or other designations on their cards following this release;

(4) A second cover (daub) opportunity of at least two seconds for all competing players in the game to cover (daub) the numbers or other designations on their cards that correspond to the numbers or other designations drawn and released in the second round and an action by the players to cover (daub) the numbers or other designations on their cards following this second release together with an action to claim any prize won.

The minimum two-second opportunity for covering (daubing) the selected numbers or other designations in each release that appear on players' cards may be shortened, and the game may proceed, if all players in the game cover (daub) their cards in less time.

One or more additional releases and cover (daub) opportunities may be necessary, if there is not a winner in the game following the second release and cover (daub) opportunity. A game design may provide for more than two releases prior to a winner being determined.

Using these three steps, permissible Class II game play for bingo, lotto, or other games similar to bingo utilizing linked player stations as ''electronic, computer or other technologic aids will proceed as follows:

(1) To enter and begin the game, each player accepts the card or cards to be used by that player and requests entry into the game by selecting an amount to wager and pressing or touching a button showing the word ''play'' or other similar designation. The cards must meet the requirements specified in Part 546 and any Technical Standards issued by the Commission.

(2) After the game begins, one or more unique numbers or other designations must be randomly drawn or electronically determined, without replacement, from a finite pool of numbers or other designations. For example, if the number B–15 is drawn or electronically determined, it cannot be used again in that game.

(3) Each game must permit the random draw and release or electronic determination of all numbers or designations in the non-replacement pool of such numbers or other designations. Numbers or other designations must be selected and used immediately in real time by the competing players in the game for which they are drawn or electronically determined, that is they cannot be selected and released until all players have entered and the game has actually commenced. Selected numbers or other designations must be used in the sequence in which they are drawn or electronically determined.

(4) Numbers or other designations will be randomly drawn or electronically determined and released to players in separate multiple rounds. Each round may consist of one number or other designation or a set of numbers or other designations. The numbers or other designations selected must be displayed to the player in the sequence they are used in the game. When each release of numbers or designations occurs, the technologic aid may highlight the numbers or designations on the card that a player should cover (daub) by a change of color that changes again when the player covers (daubs) those numbers or designations.

(5) Prizes cannot be won in the first release of numbers or other designations, meaning that players are required to participate and compete through the random determination and release of at least two rounds as part of the contest to be the first to cover the winning pattern.

(6) All players must have an opportunity to cover (daub) their cards after each release to reflect their participation in a common game. Players may cover (daub) each card they have in play by touching the video screen at the player station or a button showing the word ''cover'' or other similar designation. A minimum time of two seconds, or a lesser time if all players have covered, must be available for each player to accomplish the cover (daub) action. Following this action by a player, the video screen at that player station must display a different color or other marking on the number or designation on that player's card if that number or designation has been properly covered (daubed) by the player. Players must be notified that they should cover (daub) their cards when the numbers or designations are revealed. For each cover opportunity, the game must wait (indefinitely) until at least one player performs the cover (daub) action.

(7) After the first release and cover (daub) opportunity by all players, a subsequent number or set of numbers or other designations must be released. The quantity of numbers or designations released in each subsequent round may not extend beyond the quantity of numbers or other designations necessary to form the first available eligible game-winning pattern on a card in play in the game. Following each subsequent release, all players must again have the opportunity to cover (daub) the spaces on their cards that contain any of the numbers or designations randomly drawn and released or electronically determined. Numbers or other designations covered (daubed) by a player must stay covered throughout the play of the game.

(8) A player wins the game by being the first player(s) in the game to cover (daub) a pre-designated game-winning pattern or arrangement of numbers or other designations and, after the release of at least the second set of numbers or other designations, claiming the win by touching the screen or a button showing the word ''cover,'' ''daub,'' ''claim'' or other similar designation within the time allowed by the rules of the game which must be at least two seconds.

(9) A player who ''sleeps'' a potentially winning pattern or fails to timely claim that winning pattern and thereby forfeits the win based on that pattern, must be informed by an indication on the player station video screen that the player has ''slept'' the win. Numbers or other designations that have been slept must be clearly and uniquely marked on the player's card. Note that a player who fails to cover (daub) the numbers or other designations drawn and released in the first round, or a subsequent round, within the time allowed may not later use those numbers or other designations in a prize-winning pattern other than the game-winning pattern. The player may later cover (daub) the numbers or designations (''catch-up'') and be awarded the game-winning prize provided the player is the first player(s) in the game to cover (daub) the numbers or other designations making up the game-winning pattern and claim the win.

(10) A bingo game cannot end until a player in the game wins the game winning prize i.e. obtains a pre-designated game-winning pattern, timely covers (daubs) all of the numbers or other designations in the pattern, and timely claims the win in the manner prescribed by the rules of the game. The game may end at this point or other additional criteria for the end of the game may apply, such as the additional release(s) of randomly drawn or electronically determined numbers or other designations for a consolation prize(s), provided such criteria are clearly stated in the rules available to the players.

(11) After all available numbers or designations have been randomly drawn or electronically determined and released that could lead to a game winning prize (i.e. no more balls could be drawn that would assist in the formation of a game winning prize), the game may allow an unlimited length of

time to complete the last required cover (daub) and claim the prize, or be declared void and wagers returned to players and prizes canceled—the latter action is only to be permitted under strict security control of the gaming facility.

(12) Each player in a game must take overt action to cover (daub) the player's card(s) during play of the game by touching the screen or a designated button one time after each set of numbers or other designations is released. Each released number or designation does not have to be covered individually by the player, i.e., the player need not touch each specific space on the electronic bingo card where the called number or designation is located, but the player must overtly touch the screen or a designated button at least one time to cover (daub) the numbers or designations drawn and released in each round that appear on the player's card. When each release of numbers or other designations occurs, the technologic aid may highlight the numbers or designations on the card that a player should cover (daub) by a change of color that changes again when the player covers (daubs) those numbers or designations.

X. Alternative Display of the Results of the Game on the Video Screen at the Player Station.

An electronic player station may offer an alternative technologic display of the results of the game in addition to the display of the game results on the electronic bingo card. The game results may be shown on a video screen using a game theme display such as spinning reel icons. If the alternative display is presented, the video screen must continue to display the bingo card and results to the player. The alternative display of bingo game results may also be shown on a secondary display screen.

The alternative technologic display of bingo game results may be shown on a technologic aid using mechanical reels, but only if there is also a screen which is a component of the technologic aid which always shows the results of the bingo game as well as other important player information such as the current bet amount.

Alternative result display options may only be utilized for entertainment or amusement purposes and may not be used to independently determine a winner of the game or the prizes awarded or change the results of the bingo game in any way.

Each game must give the player the option to select only the bingo card display on a video screen and to play the game using that display alone. The video screen may revert to the combined screen with alternative display if the credit meter reaches zero.

If both the electronic bingo card and the additional depiction of the results using a game theme display are presented simultaneously, the bingo card must be displayed in a manner (size, color, location, etc.) that allows the player to clearly see the numbers or other designations on the bingo card and any results of covering (daubing). At the conclusion of a game, the screen must reflect whether the player has won and the value of any win without reference to the alternative display.

XI. The Relationship of ''Other Games Similar to Bingo'' as Class II Gaming to the Requirements for Bingo Specified by IGRA

IGRA does not define ''other games similar to bingo.'' The Commission initially defined the term to mean any game that met all the requirements for bingo and was not a house-banking game. See 57 FR 12382 (April 9, 1992). In 2002, the Commission revised the definition as:

> Any game played in the same location as bingo * * * constituting a variant on the game of bingo, provided that such game is not house banked and permits players to compete against each other for a common prize or prizes.

25 CFR 502.9.

In the preamble comment to the 2002 revision, the Commission explained that under the previous definition, ''other games similar to bingo'' were games that met the same precise statutory criteria set for bingo. Such a definition would be illogical, the Commission said, because a game that met each of the statutory requirements of bingo would simply be bingo, making a class of games similar to bingo unnecessary. Instead, the Commission said, games similar to bingo should be understood to be games:

> that are bingo-like, but that do not fit the precise statutory definition of bingo. * * * ''[O]ther games similar to bingo'' constitute a ''variant'' on the game and do not necessarily meet each of the elements specified in the statutory definition of bingo.

67 FR 41171 (June 17, 2002). In its 2002 revised definition, the Commission did not include the statement that such games similar to bingo ''do not necessarily meet each of the elements specified in the statutory definition of bingo.'' It relegated that idea instead to the preamble commentary. The Commission also did not define the term ''variant.''

Application of the 2002 definition has been limited and difficult. Subsequent to the definition's publication, the Commission endeavored to clarify exactly what statutory requirements ''other games similar to bingo'' would or would not include. In Bulletin 03–03, for example, the Commission determined that at least some of the statutory requirements for bingo also had to be met by ''other games similar to bingo'':

> The question before us then is whether any characteristics of bingo are so fundamental that a game without them cannot even be said to rise to the level of a variant of bingo and, if so, whether numbers drawn after the player enters the game is one of them.
>
> We conclude that there are characteristics of bingo that are so critical that games lacking them cannot even be said to be a variant or bingo-like.

In NIGC Bulletin 03–03 (September 23, 2003), p. 5. the Commission concluded that having numbers drawn after game play commenced was so critical to the character of bingo that games with pre-drawn numbers could not even be said to be a game similar to bingo. IGRA requires that a player cover when the numbers or objects are drawn [25 U.S.C. 2703(7)(A)(i)(II)], the Commission observed. The act of covering the numbers must occur in close proximity to the drawing of those numbers or in ''real time.'' Covering numbers substantially later than numbers are drawn or determined is not consistent with the dictionary definition of ''when.'' As a result, games in which numbers are not drawn and covered after play begins do not meet the second statutory criterion and are not bingo, the Commission reasoned. Neither can these games be ''other games similar to bingo,'' it stated.

The Commission continues to believe that pre-drawn numbers are anathema to games similar to bingo. The Commission also believes that the other IGRA requirements are so critical to bingo that games lacking them cannot be ''other games similar to bingo'' within the definition for Class II gaming. For example, the Commission views the requirement that the game is won by the first to cover a pre-designated pattern or arrangement of numbers or other designations to be a characteristic of bingo so critical that games lacking this feature cannot be games similar to bingo.

While the Commission believes it cannot dispense with these important statutory criteria when evaluating ''other games similar to bingo'' for Class II determination, it also believes there can be a variation in applying the statutory criteria. This approach gives

meaning to the category of games to which Congress referred in IGRA as ''other games similar to bingo'' within Class II but which were not specifically defined.

The proposed regulation on ''games similar to bingo,'' born out of the Commission's experience with past definitions, its desire to clarify what constitutes a ''variant,'' and its observations about advancing bingo technology, thus has the following effect. ''Other games similar to bingo'' will not include games with pre-selected numbers, although such games may be ''pull-tabs'' or ''instant bingo.'' (These are games distinct from ''other games similar to bingo.'') Players also must cover the numbers or other designations on their cards, whatever the size or shape of the card may be, ''when'' numbers or other designations are randomly determined and released and the winning player will be the first to cover a pre-designated pattern on the card. Games in which players do not play for pre-designated patterns or do not require the winning player to be the first player to cover numbers or other designations making up a pre-designated game-winning pattern on a card cannot be Class II bingo, lotto, or an ''other game similar to bingo'' under the IGRA definition.

Under the revised definition for ''other games similar to bingo,'' the game of ''keno'' will continue to be viewed by the Commission as a Class III game because it is not played with pre-designated patterns as an objective and players are not competing against each other to be the player to cover a pre-designated winning pattern. In keno players simply bet that they have selected the winning numbers to be drawn from a pool of such numbers, usually 80.

The proposed regulation also departs from the previous definition in that it deletes the requirement that ''other games similar to bingo'' not be a house-banked game. The proposed regulation also emphasizes that the format of the game must require players to compete against each other for a common prize or prizes rather than merely permitting player competition.

In short, the Commission believes that a ''variant'' of the game of bingo is a game that is bingo-like but is played on a card displaying numbers or other designations that is not the classic bingo card format. Additionally, the winning numbers will be drawn from a pool no larger then 75. In other words, under the revised definition, all of the statutory requirements for bingo would be present, but the game would be played on a variant of the typical bingo card. This interpretation of the term ''variant,'' along with elimination of the requirement that the game not be house-banked, will mean that bingo, lotto, and ''other games similar to bingo'' will be treated equally for purposes of defining the limits of Class II gaming. The fundamental aspects of each game as Class II gaming under the IGRA definition will be the same. Game designers will have the opportunity to design games that are not tied to a classic bingo card, but the games will always be played in a bingo-like manner.

XII. Use of State Law in Determining Whether a Game is Bingo, Lotto, or an ''Other Game Similar to Bingo'' Under IGRA

As noted in Commission Bulletin 03–03, the holding in *Julius M. Israel Lodge of B'nai B'rith* v. *Commissioner of Internal Revenue,* 98 F. 3d 190 (5th Cir. 1996) also supports the Commission's view that state laws allowing play of games do not affect the analysis of what constitutes bingo, lotto, or an ''other game similar to bingo'' under IGRA. The taxpayer in the case argued that bingo and instant bingo were authorized under Texas law. The Fifth Circuit dismissed the argument, saying ''As a threshold matter, we dismiss the taxpayer's contention that we must look to Texas state law in determining whether Instant Bingo is exempt from federal taxation under the federal tax code.'' 98 F. 3d at 191, n. 2.

States may designate whatever games are legal within their borders. That some state codes describe, for example, bonanza bingo as a pre-drawn game and allow it for play as it would a bingo game does not address the question of what constitutes bingo, lotto, and ''other games similar to bingo'' for the purposes of IGRA.

XIII. Additional Comment Regarding Player Against Player Competition in Bingo, Lotto, and ''Other Games Similar to Bingo.''

The Commission believes that Congress intended the play of Class II bingo, lotto, and ''other games similar to bingo'' to involve competition among players to determine the winner. In other words, players do not compete against the house to win but against others playing the game simultaneously. This application is simple enough in live session bingo in which the house sponsors a game at a particular time, sells bingo-faced cards, calls numbers, and awards a prize to the first player covering a pre-designated pattern on the card held by the player. The application is more difficult when the players engage in a fast play game on electronic player stations with electronic cards. The conclusion that Congress intended Class II bingo to be a competition with and against other players is also key to the distinction between Class II bingo using ''electronic, computer, or other technologic aids,'' in which players actively play against each other throughout the course of the game, and Class III electronic facsimiles of a game, in which players play against a machine.

The Commission notes the trend in ''electronic bingo'' games using technologic aids is to offer a player the opportunity to compete against other players for a pre-designated ''game-winning'' pattern (referred to in some game designs as a ''game-ending'' pattern) while at the same time offering players the opportunity to compete for higher value, pre-designated, ''interim prize'' patterns. In these games players ostensibly compete against one or more other players to be the first to obtain the necessary numbers and then cover the pre-designated ''game-winning'' pattern. The result is that the game ends and the winning player registers the credits associated with that pattern on the credit meter at his or her player station. More often than not, this prize has only minimum value. More important to the player, the games offer the opportunity to win larger value prizes if the player is successful in obtaining one or more of the many other pre-designated bonus—prize winning patterns rather than the ''game-winning'' or ''game-ending'' pattern offering minimum prizes. There is a fine line between whether play for these other patterns is play against the machine or the controlling game server, which is a Class III gaming activity, and competition against other players, which is Class II.

In an effort to preserve the sense that these games involve player against player competition, the Commission interprets the statutory requirements for bingo, lotto, and ''other games similar to bingo'' to mean that all players in an individual ''game'' must be competing for the same set of these other pre-designated winning patterns and each player's successful quest for these patterns must be accomplished by the time the first player obtaining the so-called ''game-winning'' pattern obtains and then covers the numbers on the card producing that pattern. In other words, the competition for the patterns producing the higher value ''interim prizes'' must be in sync with the competition for the game-winning pattern. If it is not, the players are not in competition with one another but in

competition with the controlling game server, and in that respect, the house. This would make the game an ''electronic facsimile'' of a lottery.

XIV. Classification Standards for Pull Tabs, Electronic Pull-Tabs and ''Instant Bingo''

The proposed regulation includes definitions for the terms ''Pull-tabs'' and ''Instant Bingo.'' The definitions used by the Commission are drawn from federal case law.

The definition of a pull-tab game is drawn from the definition used by the Court in *Cabazon Band* v. *NIGC,* 827 F. Supp. 26, 28 (n. 2)(D.D.C. 1993), aff'd 14 F.3d. 633 (D.C. Cir. 1994) wherein the Court described the game as follows:

> The game of pull-tabs is a game of chance played traditionally as a paper game. Players purchase outwardly identical cards from a stack of cards (the ''deal''). The deal includes a pre-determined number of winning and losing cards. The player opens the tab and finds out if the card is a winner.

Under IGRA and Commission regulations, the paper game of pull-tabs is Class II when played in the same location as bingo. See 25 U.S.C. 2703 (7)(A)(i)(III) and 25 CFR 502.3(b).

A wholly electronic version of pull-tabs is played with a similar underlying concept, but without any tangible or paper pull-tab deals. A player obtains an electronic ''card'' or ''ticket'' that is displayed for the player on a video monitor from a ''stack'' of similar ''cards'' or ''tickets'' stored electronically. Using the electronic equipment available to the player, the player ''opens'' the electronic pull-tab and examines the combinations on the video screen to determine if she has a winning combination. As with paper pull-tabs, the ''deal'' is finite which is to say that the numbers of winning and losing tickets are known when the ''deal'' is loaded electronically into the gaming equipment. In some versions, the deal is contained in a cartridge or series of cartridges that are loaded individually into a single player terminal. In others, the deal is loaded into a central computer that can be accessed through a number of individual player terminals.

In either of these instances, the game does not exist in paper format or any other tangible format, but only in an ''electronic'' format. As such, the game becomes an ''electronic facsimile'' game of paper pull-tabs and, by the statutory definition, cannot be a class II game. See 25 U.S.C. 2703(7)(B)(ii).

This analysis finds support in *Cabazon Band of Mission Indians* v. *National Indian Gaming Commission,* 14 F.3d 633, 636 (D.C. Cir. 1994) (*Cabazon II*) wherein the Court noted:

> There is now a computerized version of pull-tabs. The computer randomly selects a card for the gambler, pulls the tab at the gambler's discretion, and displays the result on the screen. The computer version, like the paper version has a fixed number of winning cards in each deal. The computer may be interconnected so that each gambler simultaneously plays against other gamblers in pods or banks of as many as forty machines.
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> * * * * *
>
> [T]he tribes concede that the video version of pull-tabs is the same game as the paper version. * * * Because class II gaming does not include ''electronic or electromechanical facsimiles of any game of chance'' (25 U.S.C. § 2703(7)(B)(ii)), this concession alone demonstrates that the video game is not in the class II category. ''By definition, a device that preserves the fundamental characteristics of a game is a facsimile of the game.'' *Sycuan Band of Mission Indians* v. *Roach,* (S.D. Cal. 1992). As commonly understood, facsimiles are exact copies or duplicates. Although there may be room for a broader interpretation of ''facsimile,'' the video version of pull-tabs falls within the core meaning of electronic facsimile. It exactly replicates the paper version of the game, and if that is not sufficient to make it a facsimile, we doubt * * * that anything could qualify.
>
> * * * * *
>
> * * * [T]he Act's exclusion of electronic facsimiles removes games from the class II category when those games are wholly incorporated into an electronic or electromechanical version.

Cabazon II, 14 F.3d, at 636.

See also *Sycuan Band* v. *Roache,* 54 F.3d 535 (9th Cir. 1995) which considered an electronic pull-tab device known as the Autotab Model 101 and found the device to be class III. (''The 'Autotab Model 101 electronic pull-tab dispenser' is a self-contained unit containing a computer linked to a video monitor and a printer. The player electronically reveals concealed numbers to determine whether he or she is a winner. * * * The game retains the fundamental characteristics of the paper version of pull-tab: the video pull tab machine is supplied with a computer chip cartridge that insures a predetermined and known number of winning tickets from a finite pool of tickets with known prizes * * *''. *Sycuan,* 54 F.3d. at 541.)

While the *Cabazon II* and *Sycuan* cases deal with pull-tabs in electronic format, other important cases decided by the United States Courts of Appeals for the District of Columbia Circuit, Tenth Circuit, and Eighth Circuit discuss ''paper'' pull-tabs played with ''electronic, computer, or other technologic aids.''

In *Diamond Game Enterprises* v. *Reno,* 230 F.3d 365 (D.C. Cir. 2000), United States Court of Appeals for the District of Columbia Circuit concluded that a gaming device known as the Lucky Tab II was a technological aid to the play of paper pull-tabs and a Class II device under the IGRA. There is, however, a substantial difference in how the Lucky Tab II game described in *Diamond Game* is played compared to the game in *Cabazon II.* The Lucky Tab II device uses a paper roll of pull-tabs that are read by optical scanner and then displayed on a video monitor. The Court concluded that the game was not an electronic facsimile of the paper game and thus was not excluded from the Class II definition. The Lucky Tab II machine was described by the court as follows:

> The machine dispenses pull-tabs from a roll containing approximately 7500 tabs. About 100 rolls comprise a deal, within which winning pull tabs are randomly distributed. The machine cuts the pull-tab from the roll and drops it in a tray. A bar code scanner inside the machine automatically reads the tab and then displays its contents on a video screen. A placard on the machine informs players that ''video images may vary from actual images on pull tabs. Each tab must be opened to verify.'' To collect prizes, players must present the actual winning tab to a clerk. We think the Lucky Tab II is quite different from the machine at issue in *Cabazon II.* To begin with, the Lucky Tab II is not a ''computerized version'' of pull-tabs. Although the Lucky Tab II has a video screen, the screen merely displays the contents of a paper pull-tab. Instead of using a computer to select patterns, the Lucky Tab II actually cuts tabs from paper rolls and dispenses them to players. In other words, the game is in the paper rolls, not as in the case of the *Cabazon* machine, in the computer.

Diamond Game v. *Reno,* 230 F. 3d at 367–368.

Thus, the court concluded that ''the machine functions as an aid—it 'helps or supports,' or 'assists' the paper game of pull-tabs.'' Consequently, the court ruled that the game played with Lucky Tab II is not a facsimile of paper pull-tabs, but it is paper pull-tabs.

The Eighth Circuit Court of Appeals has also held that Lucky Tab II was a Class II technological aid. *United States* v. *Santee Sioux Tribe,* 324 F.3d 607 (8th Cir. 2003), *cert. denied*, 2004 U.S. Lexis 1807 (U.S. Mar. 1, 2004). The court's analysis was that:

> Operation of the Lucky Tab II machines does not change the fundamental fact that the player receives a traditional paper pull-tab from a machine, and whether he or she decides to pull the tab or not, must present that card to the cashier to redeem winnings. * * * the machines do not replicate pull-

tabs; rather, the player using the machines is playing pull-tabs.

Santee Sioux Tribe, 324 F.3d at 615.

The Magical Irish Instant Bingo Dispenser System, identical to the Lucky Tab II system, was also held to be a ''technologic aid.'' *See Seneca-Cayuga Tribe of Okla.* v. *NIGC*, 327 F.3d 1019, 1042–44 (10th Cir. 2003), *cert. denied,* 2004 U.S. Lexis 1651 (U.S. Mar. 1, 2004). The Tenth Circuit Court of Appeals decided that the Magical Irish machine was a Class II aid because:

> The Machine (1) cuts tabs from paper rolls and dispenses them to players, and when its ''verify'' feature is enabled, displays the contents of the paper pull-tab on the video screen; (2) does not use a computer to select the patterns of the pull-tabs it dispenses; and (3) requires players to peel each pull-tab to confirm the result and provide the pull-tab to a clerk for inspection prior to receiving any prize.

Seneca-Cayuga Tribe, 327 F.3d at 1043. Therefore, the court concluded that the ''Machine is not the game of pull-tabs; rather, the Machine facilitates the playing of pull-tabs, the game is in the paper rolls.''

The Commission understands that courts have concluded that the Lucky Tab II and the Magical Irish machines are ''technological aids'' because they assist players in playing actual paper pull-tabs. *See, e.g., Diamond Game,* 230 F.3d at 370 (''the machine functions as an aid—it helps or supports, or assists the paper game of pull-tabs''); *Seneca-Cayuga Tribe,* 327 F.3d at 1043 (the ''Machine facilitates the playing of pull-tabs, the game is in the paper rolls''). These machines do not alter the format of the game—the game remains in the actual paper pull-tabs, not in a computer or electronic format. *See, e.g., Seneca-Cayuga Tribe,* 327 F.3d at 1043; *Diamond Game,* 230 F.3d at 370; *Santee Sioux Tribe,* 324 F.3d at 615.

The proposed regulation relies specifically on the developed federal case in this area, as discussed above.

The Commission recognizes that gaming technology has moved forward in the ten years since the *Cabazon II* and *Sycuan* cases were decided. Nevertheless, the Commission believes these cases continue to represent the state of the law for the play of pull-tabs that do not exist in tangible format readily accessible to the player. Consequently, the proposed regulation requires the pull-tabs or ''instant bingo'' tickets exist in tangible medium readily accessible to the player at the player station. Pull-tabs that exist in tangible medium remote from the player, such as in a controlled storage room at or near the gaming facility where the game is played and which are converted to electronic images for display at the player station are not immediately available to the player. In this method of play, the game is not in the paper, as the courts require for Class II play, but is in the computer or electronic format, which the courts find to be a Class III electronic facsimile.

Under the proposed regulation, the game may not accumulate credits for the player. The player station may not dispense winnings in any form. Additionally, the pull-tabs themselves must exist in tangible format at the player station and be available for the player and the gaming operation to validate the game results and prize, if desired.

The proposed regulation also permits alternative display of game results. The results may appear on a screen using game theme graphics, spinning reels, or other imagery. The alternative display of pull-tab game results may be shown on a primary screen or on a secondary display screen. The alternative display of pull-tab game results may also be shown on a technologic aid using mechanical reels but only if there is also a screen which is a component of the technologic aid which always shows the contents and results of the pull-tab game as well as other important player information such as current bet amount.

XV. Process for Certification of Games and ''Electronic, Computer, and Other Technologic Aids'' as Meeting the Classification Standards

The Commission recognizes that Indian tribes are the primary regulators for Indian gaming. Accordingly, this proposed regulation provides that a Tribe's gaming regulatory authority will be the entity authorizing specific games and gaming systems for use in that Tribes' gaming operation. From its standpoint, however, the Commission believes that establishing uniform minimum classification standards for Class II ''electronic, computer, or other technologic aids'' is part of its oversight role. Before permitting operation and play of Class II ''aids'' in its gaming operation, the Tribe's gaming regulatory authority must ensure that a game or ''aid'' to the play of bingo, lotto, or ''other games similar to bingo,'' or pull-tabs or ''instant bingo'' is certified as meeting the criteria established by the Commission's Classification Standards by an independent testing laboratory recognized as qualified to perform such testing. The testing laboratory does not ''classify'' the game or ''aid'' or otherwise usurp the authority of the Tribe's gaming regulatory authority. Rather, the testing laboratory merely provides a report that it has tested and evaluated the game or ''aid'' and that the game or ''aid'' meets the Commission's Classification Standards. The Tribe may rely on this certification. The Tribe may adopt additional classification standards that do not undermine the Commission's minimum standards, if it so desires, and require testing and certification to the Tribe's additional standards as a condition to operation and play of the game or ''aid'' in the Tribe's gaming operation.

The Commission believes that, as a condition of being recognized to perform these important evaluations, a testing laboratory must be required to demonstrate its integrity, independence, and financial stability by providing evidence that it has been licensed in a competent jurisdiction that required a thorough background investigation as part of the licensing process. The testing lab must also demonstrate its technical skill and capability by providing evidence that it has conducted suitable testing to standards established by other jurisdictions. The NIGC will conduct an onsite review of the testing lab's facilities prior to recognizing a lab as qualified and competent to perform evaluation and testing under its standards. The Commission may extend provisional recognition to a new testing laboratory that has not undergone a background investigation review for a license or that has not previously provided testing and evaluation to comparable standards.

A testing laboratory recognized by the NIGC should expect to demonstrate its continuing level of technical skill through a Key Performance Indicator (KPI) analysis evaluated yearly as a condition to maintaining its recognition. This KPI analysis will take into account:

(1) Accuracy of evaluation of Class II Classification and Technical standards conducted through periodic audit by the NIGC of the testing laboratory's recommendations.

(2) Reports of serious classification or technical faults in games and associated equipment placed in operation in tribal gaming facilities following certification by the testing laboratory. To assist with this evaluation, tribal gaming regulatory authorities are encouraged to report serious classification or technical faults to the NIGC Chairman as they become known.

The Commission recognizes that in some unique circumstances, a testing laboratory may have questions about aspects of the Classification Standards. Accordingly, the process set out in the proposed regulation provides that the laboratory may seek to resolve questions with the gaming developer or manufacturer, the sponsoring tribe, or

with the NIGC Chairman. The Commission expects these discussions will normally resolve any question.

In even more unique circumstances, a testing laboratory may not properly apply the Classification Standards or may misinterpret those standards when it issues a report.

In these circumstances, the NIGC Chairman may object to a certifying laboratory report and require its withdrawal. The Chairman will provide notice to the testing laboratory, the requesting party submitting the game for evaluation, and the sponsoring tribe, and attempt to resolve the matter through negotiation. If the Chairman continues to have objection following these discussions, the Chairman will issue a determination. This determination by the Chairman may be reviewed by the full Commission on appeal from the testing laboratory, the requesting party, or the sponsoring tribe. A Commission decision upholding the Chairman's objection will constitute a ''final agency action'' that may be appealed to federal court.

Regulatory Matters

Regulatory Flexibility Act

This proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies or geographic regions and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The Commission has determined that this proposed rule does not impose an unfunded mandate on state, local, or Tribal governments or on the private sector of more than $100 million per year. Thus, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.* The Commission has determined that this proposed rule may have a unique effect on Tribal governments, as this rule applies to Tribal governments, whenever they undertake the ownership, operation, regulation, or licensing of gaming facilities on Indian lands as defined by the Indian Gaming Regulatory Act. Thus, in accordance with section 203 of the Unfunded Mandates Reform Act, the Commission implemented a small government agency plan that provides Tribal governments with adequate notice, opportunity for meaningful consultation, and information, advice, and education on compliance.

The Commission's plan includes the formation of a Tribal Advisory Committee and request for input from Tribal leaders through government-to-government consultations and through written comments to draft regulations that are provided to the Tribes. Section 204(b) of the Unfunded Mandates Reform Act exempts from the Federal Advisory Committee Act (5 U.S.C. App.) meetings with Tribal elected officials (or their designees) for the purpose of exchanging views, information, and advice concerning the implementation of intergovernmental responsibilities or administration. In selecting Committee members, consideration was placed on the applicant's experience in this area, as well as the size of the Tribe the nominee represented, geographic location of the gaming operation, and the size and type of gaming conducted. The Commission attempted to assemble a committee that incorporates diversity and is representative of Tribal gaming interests. The Commission will meet with the Advisory Committee to discuss the public comments that are received as a result of the publication of this proposed rule and make recommendations regarding the final rule. The Commission also plans to continue its policy of providing technical assistance, through its field offices, to Tribes to assist in complying with classification issues.

Takings

In accordance with Executive Order 12630, the Commission has determined that this proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed rule requires information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, and is subject to review by the OMB. The title, description, and respondent categories are discussed below, together with an estimate of the annual information collection burden.

With respect to the following collection of information, the Commission invites comments on: (1) Whether the proposed collection of information is necessary for proper performance of its functions, including whether the information would have practical utility; (2) the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Process for Certification of games and ''electronic, computer, and other technologic aids'' as meeting the Classification Standards,'' proposed 25 CFR 546.11.

Summary of information and description of need: This provision in the proposed rule establishes a process for assuring that Bingo, lotto, other games similar to bingo, pull tabs, and instant bingo, played through or using electronic aids, are in fact Class II before their placement on the casino floor in a Class II operation.

This process requires a Tribe's gaming regulatory authority to require that all such games or aids, or modifications of such games or aids, be submitted by the manufacturer to a qualified, independent testing laboratory for review and analysis. That submission includes a working prototype of the game or aid and pertinent software, all with functions and components completely documented and described. In turn, the laboratory will certify that the game or aids do or do not meet the requirements of the proposed rule, and any additional requirements adopted by the Tribe's gaming regulatory authority, for a Class II game. The laboratory will provide a written certification and report of its analysis and conclusions, both to the Tribal gaming regulatory authority for its approval or disapproval of the game or aid, and to the Commission for its review. In the circumstance that a laboratory has

misinterpreted the applicable regulations, the NIGC Chairman may object to a certifying laboratory report and require its withdrawal. This action may be reviewed by the full Commission on appeal from a Tribe or manufacturer submitting the game for its certification. A Commission decision upholding the Chairman's objection will constitute a ''final agency action'' that may be appealed to federal court.

This process is necessary because the distinction between an electronic ''aid'' to a Class II game and an ''electronic facsimile'' of a game of chance, and therefore a Class III game, is often unclear. With advances in technology, the line between the two has blurred. The Commission is concerned that the industry is dangerously close to obscuring the line between Class II and III and believes that the future success of Indian gaming under IGRA depends upon Tribes, States, and manufacturers being able to recognize which games fall within the ambit of tribal-state compacts and which do not. The information collection requirements are an essential component of the process. Laboratories cannot conduct meaningful evaluation and analysis of games without documentation from the manufacturers. Tribes cannot make meaningful classification determinations without reports from the laboratories. The Commission cannot meaningfully review the process and, if necessary, object to a laboratory's findings, without reports.

Respondents: The respondents are developers and manufacturers of Class II games and independent testing laboratories. The Commission estimates that there are 20 such manufacturers and 5 such laboratories. The frequency of responses to the information collection requirement will vary.

During the first 6 to 12 months after adoption of the proposed rule, all existing games or aids in Class II operations that fall within this rule must be submitted and reviewed if they are to continue in Class II operations. Following that period, the frequency of responses will be a function of the Class II market and the need or desire for new games or aids. Thus, the Commission estimates that the frequency of responses will range over an initial period of frequent submissions, settling down into infrequent and occasional submissions during periods when there are a few games, aids, or modifications brought to market, punctuated by fairly steady periods of submissions when new games and aids are introduced. In any event, the Commission estimates that submission will number approximately 200 during the first year after adoption and approximately 75 per year thereafter.

Information Collection Burden: The preparation and submission of documentation supporting submissions by developers and manufacturers (as opposed to the game or aid hardware and software per se) is an information collection burden under the Paperwork Reduction Act, as is the preparation of certifications and reports of analyses by the test laboratories. The amount of documentation or size of a laboratory certification and report is a function of the complexity of the game, equipment, or software submitted for review. Minor modifications of software or hardware that a manufacturer has already submitted and that a laboratory has previously examined is a matter of little time both for manufacturer and laboratory, while the submission and review of an entirely new game platform can be quite time consuming.

The practice of submission and review set out in the proposed rule, however, is not new. It is already part of the regulatory requirements in Tribal, State, and Provincial gaming jurisdictions throughout North America and the world. Manufacturers already have significant compliance personnel and infrastructure in place, and the very existence of private, independent laboratories is due to these requirements.

Accordingly, the Commission estimates that a gathering and preparing documentation for a single submission requires, on average, 8 hours of an employee's time for a manufacturer and that following examination and analysis, writing a report and certification requires, on average, 12.5 hours of an employee's time for a laboratory. In the first year after adoption, then, the Commission estimates that the information collection requirements in the proposed rule will be a 1600-hour burden on manufacturers during the first year after adoption and a 600-hour burden thereafter. The Commission estimates that the information collection requirements in the proposed rule will be a 2500-hour burden on laboratories during the first year after adoption and a 940-hour burden thereafter. The following table summarizes:

Provision	Respondents	Number of respondents	Collections, 1st year	Hours per collection	Total hours	Collections, year 2 forward	Hours per collection	Total
25 CFR 546.11 ..	Laboratories	5	200	12.5	2500	75	12.5	937.5
25 CFR 546.11 ..	Manufacturers	20	200	8	1600	75	8	600

Comments: Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3507(d), the Commission has submitted a copy of this proposed rule to OMB for its review and approval of this information collection. Interested persons are requested to send comments regarding the burden, estimates, or any other aspect of the information collection, including suggestions for reducing the burden (1) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for National Indian Gaming Commission, 725 17th St. NW., Washington DC, 20503, and (2) to Penny J. Coleman, Acting General Counsel, National Indian Gaming Commission, 1441 L. Street NW., Washington DC 20005.

National Environmental Policy Act

The Commission has determined that this proposed rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et. seq*).

List of Subjects in 25 CFR Parts 502 and 546

Gambling, Indian lands, Indian tribal government, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, the Commission proposes to amend its regulations in 25 CFR part 502 and add a new part 546 to read as follows:

PART 502—DEFINITIONS OF THIS CHAPTER

1. The authority citation for part 502 continues to read as follows:

Authority: 25 U.S.C. 2701 *et seq.*

2. Amend § 502.8 by adding paragraph (c) to read as follows:

§ 502.8 Electronic or electromechanical facsimile.

* * * * *

(c) Bingo, lotto, other games similar to bingo, pull tabs, and instant bingo games that comply with Part 546 of this chapter are not electronic or electromechanical facsimiles of any game of chance.

3. Revise § 502.9 to read as follows:

§ 502.9 Other games similar to bingo.

Other games similar to bingo means any game played in the same location as bingo (as defined in 25 U.S.C. 2703(7)(A)(i)) that constitutes a variant on the game of bingo, provided that such game requires players to compete against each other for a common prize or prizes.

4. Add a new part 546 to read as follows:

PART 546—CLASSIFICATION STANDARDS FOR BINGO, LOTTO, OTHER GAMES SIMILAR TO BINGO, PULL TABS AND INSTANT BINGO AS CLASS II GAMING WHEN PLAYED THROUGH AN ELECTRONIC MEDIUM USING ''ELECTRONIC, COMPUTER, OR OTHER TECHNOLOGIC AIDS''

Sec.

546.1 What is the purpose of this part?
546.2 What is the scope of this part?
546.3 What are the definitions for this part?
546.4 What are the criteria for meeting the first statutory requirement that the game of bingo, lotto, or other games similar to bingo be ''played for prizes, including monetary prizes, with cards bearing numbers or other designations?''
546.5 What are the criteria for meeting the second statutory requirement that bingo, lotto, or other games similar to bingo be one ''in which the holder of the card covers such numbers or other designations when objects similarly numbered or designated are drawn or electronically determined?''
546.6 What are the criteria for meeting the third statutory requirement that bingo, lotto, or other games similar to bingo be ''won by the first person covering a previously designated arrangement of numbers or designations on such cards?''
546.7 What are the criteria for meeting statutory requirement that Class II pull-tabs or instant bingo not be ''electronic or electromechanical facsimiles?''
546.8 When is a pull tab or instant bingo game an ''electronic or electromechanical facsimile?''
546.9 What is the process for approval, introduction, and verification of ''electronic, computer, or other technologic aids'' under the classification standards established by this part?
546.10 What are the steps for a compliance program administered by a tribal gaming regulatory authority to ensure that ''electronic, computer, or other technologic aids'' in play in Class II tribal gaming facilities meet the classification standards of this part?

Authority: 25 U.S.C. 2701 *et seq.*

§ 546.1 What is the purpose of this part?

This part clarifies the terms Congress used to define Class II gaming under the Indian Gaming Regulatory Act, 25 U.S.C. 2701, *et seq.* (IGRA or ''Act''). Specifically, this part explains the criteria for determining whether a game of bingo or lotto, an ''other game similar to bingo,'' or a game of pull-tabs or ''instant bingo,'' meets the statutory requirements when these games are played primarily through an ''electronic, computer or other technologic aid.'' This part also establishes a process for establishing Class II certification of ''electronic, computer, or other technologic aids'' and the games they facilitate. These standards for classification are intended to ensure that Class II gaming using ''electronic, computer, or other technologic aids'' can be distinguished from forms of Class III gaming that employ ''electronic or electromechanical facsimiles'' of a game of chance or slot machines.

§ 546.2 What is the scope of this part?

This part is intended to address only games played with electronic components. It does not address live session bingo unless that game is played exclusively through electronic components.

§ 546.3 What are the definitions for this part?

(a) What is a ''*game*'' of bingo or other game similar to bingo? A ''game'' of the ''game of chance commonly known as bingo'' or an ''other game similar to bingo'' consists of the random draw or electronic determination and release of numbers or other designations necessary to form the pre-designated game-winning pattern on a card held by the winning player and the participation of competing players to cover (daub) the numbers or other designations which appear on their card(s) when the selected numbers or other designations are released for play. A ''game'' ends when a participating player(s) claims the win after obtaining and covering (daubing) the pre-designated game-winning pattern and consolation prizes, if any, are awarded in the game.

(b) What is ''*Lotto*''? The term ''Lotto'' means a game of chance played in the same manner as the game of chance commonly known as bingo.

(c) What is a ''*bonus prize*'' in the game commonly known as bingo or ''other game similar to bingo''? A bonus prize is a prize awarded in a game in addition to the game-winning prize. The prize may be based on different pre-designated and pre-announced patterns than the game-winning pattern, may be based on achieving a winning pattern in a specified quantity of numbers or designations drawn or electronically determined and released, or a combination of these conditions. A bonus prize may be awarded as an ''interim prize'' while players are competing for the game-winning prize or as a ''consolation prize'' after a player has won the game-winning prize.

(d) What is a ''*progressive prize*'' in the game commonly known as bingo? A progressive prize is an established prize for a game, funded by a percentage of each player's buy-in or wager, that is awarded to a player for obtaining a specified pre-designated and pre-announced pattern within a specified quantity of numbers or designations randomly drawn and released or electronically determined, or randomly drawn and released or electronically determined in a specified sequence. If the progressive prize is not won in a particular game, the prize must be rolled over to each subsequent game until it is won. The progressive prize is thus increased from one game to the next based on player buy-in or wager contributions from each qualifying game played in which the prize is not won. All contributions to the progressive prize jackpot must be awarded to the players. A winning pattern for a progressive prize is not necessarily the same as the game-winning prize pattern.

(e) What does it mean to ''*sleep*'' in the game of bingo or an ''other game similar to bingo''? To ''sleep'' or to ''sleep a bingo'' means that a player fails, within the time allowed by the game:

(1) to cover (daub) the previously released numbers or other designations on that player's card(s) constituting a game-winning pattern or other pre-designated winning pattern; or

(2) to claim the prize to which the player is entitled, having covered (daubed) a previously designated game-winning pattern or other winning pattern, thereby resulting in the forfeiture of the prize to which the player would otherwise be entitled.

(f) What is the ''*game of pull-tabs*''? In the game of pull-tabs, players purchase cards from a set of cards known as the ''deal.'' Each deal contains a finite number of pull-tab cards that includes a pre-determined number of winning cards. Each individual pull-tab within a deal is a paper or other tangible card with hidden or covered symbols. When those symbols are revealed, there is an

arrangement of numbers or symbols indicating whether the player has won a prize. Winning cards with pre-established prizes are randomly spaced within the pre-arranged deal. One deal consists of all of the pull-tabs in a given game that could be purchased.

(g) What is an ''*electronic pull-tab*''? An electronic pull-tab is an electronic facsimile of a pull-tab that is displayed on a video screen.

(h) What is ''*instant bingo*''? In ''instant bingo,'' a player purchases a card containing a pre-selected group of numbers or designations; the winning cards are those in which the pre-selected group of numbers or designations on the card matches the preprinted winning arrangement indicated elsewhere on the card. The game is functionally the same as pull-tabs.

§ 546.4 What are the criteria for meeting the first statutory requirement, as stated at 25 U.S.C. 2703 (7)(A)(i)(I), that the game of bingo, lotto, or other games similar to bingo be ''played for prizes, including monetary prizes, with cards bearing numbers or other designations?''

(a) Each player in the game must play with one or more cards. Each player in the game must obtain the card or cards to be used by that player in the game before numbers or other designations for the game are randomly drawn or electronically determined. Players cannot change cards once play of a particular bingo game has commenced. Electronic cards are permissible.

(b) Electronic cards in use by a player must be displayed prominently on a video screen of the electronic player station utilized by the player and must be clearly visible to that player at all times during game play. If multiple electronic cards are used by a player, the game must offer the player the capability of seeing each one of his or her cards. At the conclusion of the game, each player must see his or her card with the highest value prize or, if no prize was won, the card closest to a bingo win. At no time shall an electronic card measure less than 2 (two) inches by two (2) inches or four (4) square inches if other than a square card is used. When displayed, the game of bingo, or other games similar to bingo, including the electronic card but excluding any alternative displays, shall fill at least ½ of the total space available for display.

(c) For a game of bingo, each card must contain a five (5) by five (5) grid of spaces. Each space will contain a unique number or other designation which may not appear twice on the same card. The card may contain one ''free space'' without a specified number or other designation, provided the free space is in the same location on every card in play or available to be played in the game.

(d) Each technologic aid shall prominently display the following message: ''THIS IS A GAME OF BINGO'' or ''THIS IS A GAME SIMILAR TO BINGO.'' Each letter of the display must measure at least two (2) inches in height.

(e) As a variant of bingo, in an ''other game similar to bingo,'' each card must contain at least three (3) equally sized spaces. Each space will contain a unique number or other designation which may not appear twice on the same card. One space may be designated a ''free space'' provided the card has at least three (3) other spaces.

(f) When a number or other designation is covered, the covering must be indicated on the card by a change in the color of the space, a strike-out through the space, or some other readily apparent visual means.

(g) All prizes in the game, except for progressive prizes, must be fixed in amount or established by formula and disclosed to all participating players in the game. Random or unpredictable prizes are not permitted.

(h) Other patterns may be designated for the award of bonus prizes in addition to the prize to be awarded based on the game-winning pattern. Each such designated pattern or arrangement must also be disclosed to the players upon request before the game begins.

(i) The designated winning patterns and the prizes available must be explained in the rules of the game, which must be made available to the players upon request.

(j) Each game must have a winning player and a game-winning prize must be awarded in every game. The pattern designated as the game-winning pattern does not need to pay the highest prize available in the game. A game-winning prize may be less than the amount wagered, provided that the prize is no less than 20% of the amount wagered by the player on each card and at least one cent.

(k) A bonus prize in a game that is designated as an ''interim prize'' must be awarded in a random draw or electronic determination and release of numbers or other designations that is no more than the exact quantity of numbers or designations that are needed for the game-winning player to achieve the game-winning pattern.

(l) A bonus prize in a game that is designated as a ''consolation prize'' may be awarded after the game-winning pattern is achieved and claimed by a player but only after a subsequent release of randomly drawn or electronically determined numbers or other designations has been made.

(m) A progressive prize may be awarded only if the game also provides a game-winning prize as described elsewhere in this Part.

(n) All prizes in a game, including progressive prizes, must be awarded based on the outcome of the game of bingo and may not be based on events outside the selection and covering of numbers or other designations used to determine the winner in the game and the action of the competing players to cover the pre-designated winning patterns. The prize structure must not rely on an additional element of chance other than the play of bingo.

(o) A player station may offer an alternative display of the results of the game in addition to the display of the game results on the electronic bingo card, provided that the player has the option to not view the alternative display and play using only the electronic card display. An alternative display may include game theme graphics, spinning reels, or other imagery. The results may also be displayed on mechanical reels. In no instance may the alternative display fill more than ½ of the total display space.

§ 546.5 What are the criteria for meeting the second statutory requirement, as stated at 25 U.S.C. 2703 (7)(A)(i)(II), that bingo, lotto, or other games similar to bingo be one ''in which the holder of the card covers such numbers or other designations when objects similarly numbered or designated are drawn or electronically determined?''

(a) In a game of bingo, the numbers or other designations used in the game must be randomly drawn or determined electronically from a non-replaceable pool containing 75 such numbers or other designations and used in the sequence in which they are drawn. Each game will permit the random draw and release or electronic determination of all numbers or designations in the pool. A common draw or electronic determination of numbers or designations may be utilized for separate games that are played simultaneously.

(b) As a variant of bingo, in an ''other game similar to bingo,'' the numbers or other designations used in the game must be randomly drawn or determined electronically from a non-replaceable pool of such numbers or other designations which is greater than the number of spaces on the card used in the game.

(c) All numbers or other designations used in the game must be randomly

drawn or electronically determined after the cards to be used in the game have been assigned to or selected by the players in the game. The cards cannot have pre-covered numbers or other designations.

(d) The numbers or other designations randomly drawn or electronically determined must be used in real time and not stored for later use. The numbers or other designations must be used in the sequence in which they are drawn.

(e) To ''cover,'' a player in a game must take overt action after numbers or designations are released. A player covers (daubs) by touching either the screen or a designated button on the player station at least one time in each round after a set of numbers or other designations is released.

(f) Players must have an opportunity to cover (daub) after every release. Each released number or designation does not have to be covered (daubed) individually by the player, i.e., the player need not touch each specific space on the electronic bingo card where the called number or designation is located. However, the player must have to opportunity to cover (daub) by touching the screen or a designated button at least one time in each round when those numbers or other designations are released, if those numbers or other designations appear on the player's card. Following this action by a player, the video screen at that player station will display a different color on the number or designation on that player's card, a strike-out through the space, or some other readily apparent visible characteristic if that number or designation has been properly covered (daubed) by the player. Players must be notified that they should cover (daub) their cards when the numbers or designations are revealed.

(g) Games may not include a feature whereby covering (daubing) after a release occurs automatically or without overt action taken by the player following the release.

(h) All players in a game, and not just a winning player, must be required by the rules of the game to cover (daub) the selected numbers or other designations that appear on their card when those numbers or other designations are released as an indication of their participation in a common game.

(i) A minimum of two (2) seconds must be provided after the completion of each release of numbers or other designations for players to complete each cover (daub) opportunity. The game may not proceed until at least one player has covered (daubed) the selected numbers or other designations appearing on the player's card, but, in any event may not proceed in less than two (2) seconds.

(j) Players must cover after each release in order to achieve any winning pattern, except that a player may later cover numbers or designations slept following a previous release (''catch up'') for use in obtaining the game-winning pattern. Failure to cover after each release results in the player forfeiting use of those numbers or other designations in any other pattern in the game. For bonus prizes and progressive prizes, if a player ''sleeps,'' i.e. fails to cover one or more numbers or other designations, that player cannot be awarded such prize based on a winning pattern which contains one or more of the numbers or other designations slept by the player. For game-winning prizes, if a player sleeps, the player may later cover the number(s) or other designations and win such prize if that player is the first player to cover all other numbers or designations making up the game-winning pattern.

(k) If a player sleeps the game-winning pattern, the game must continue until a player subsequently obtains and covers (daubs) and claims the game-winning pattern.

(l) All numbers or other designations slept by a player must be clearly and uniquely identified as such by displaying them in a unique color, by drawing a strikeout through them, or by other readily visible means. A player who sleeps a winning pattern must be notified by visible message on the video screen that the pattern was slept. Players who fail to cover (daub) numbers or other designations that establish patterns yielding bonus or progressive prizes also must be notified by visible message on the video screen that the pattern was slept.

(m) After all available numbers or designations that could lead to a game winning prize have been randomly drawn or electronically determined and released (i.e. no more balls could be drawn that would assist in the formation of a game winning prize), the game may allow an unlimited length of time to complete the last required cover (daub) and claim of the prize, or it may be declared void and wagers returned to players and prizes canceled.

(n) The gaming facility or its employees may not play as a substitute for a player.

§ 546.6 What are the criteria for meeting the third statutory requirement, as stated at 25 U.S.C. 2703 (7)(A)(i)(III), that bingo, lotto, or other games similar to bingo be ''won by the first person covering a previously designated arrangement of numbers or designations on such cards?''

(a) Because the game must be won by the ''first person,'' each game must be played by multiple players. Players in an electronic game must be linked through a networked system. The system must require a minimum of two players for each game, but not limit participation to two players, and must be designed to broaden participation in each common game by providing reasonable and sufficient opportunity for at least six players to enter the game. Games cannot begin until two (2) seconds have elapsed from the time that the first player elects to play, unless six players enter. Nothing in this section is intended to limit games to six players.

(b) In order for players to participate in a common game, and to meet the requirements for the minimum number of players, each player must be eligible to compete for all winning patterns in the game. A game may offer players the opportunity to play at different entry wagers, and the prizes in the game may be increased, or a progressive prize offered, based on a higher entry wager, so long as all prizes are based on achieving pre-designated winning patterns common for all players.

(c) To establish the game as a contest in which players play against one another the game must provide for two or more the releases of selected numbers or other designations. Each release will provide one or more numbers or other designations randomly selected or electronically determined. Each release must take a minimum of two (2) seconds. Numbers or other designations must be released one at a time. The game may end after the second release or after subsequent releases, when the game winning-pattern is covered (daubed) and claimed. After the game-winning pattern is covered and claimed, there may be additional releases of randomly drawn or electronically determined numbers or other designations for a consolation prize(s).

(d) During the first release, the maximum amount of numbers or characters to be revealed is one less than the number required for a game winning pattern.

(e) Each game must have one game-winning pattern or arrangement, which may be won by multiple players simultaneously. Each game-winning pattern or arrangement must consist of at least three (3) spaces, not counting any free spaces used. The game-winning

pattern or arrangement must be available to players before the game begins.

(f) Other patterns or arrangements consisting of at least two (2) spaces each, not counting free spaces, may be used for the award of bonus or progressive prizes, if the patterns or arrangements are designated and made available to players before the game begins.

(g) Events outside the play of bingo may not be used to determine the eligibility for a prize award or the value of a prize.

(h) The set of selected numbers or other designations in the first release may not contain all of the numbers or other designations necessary to form the game-winning pattern on a card in play in the game. The set may contain the numbers or other designations necessary to form other winning patterns for bonus or progressive prizes. The quantity of numbers or designations in the second or subsequent release may not extend beyond the quantity of numbers or other designations necessary to form the first available eligible game-winning pattern on a card in play in the game. There may be additional releases to allow for additional bonus prizes.

(i) Prizes cannot be claimed following the first release of numbers or other designations. Two or more releases are required before a player can claim any prize in any game.

(j) Bonus or progressive prizes may be awarded based on pre-designated patterns provided the award of these prizes is based on the play of bingo in the same manner as for the game-winning prize. Bonus or progressive prizes may be based on different pre-designated and pre-announced patterns, on achieving a winning pattern in a specified quantity of numbers or designations drawn or electronically determined and released, on the order in which numbers or designations are drawn or electronically determined and released, or on a combination of these criteria. Bonus or progressive prizes may be awarded as interim prizes, before or as the game-winning prize is awarded, or as consolation prizes after the game winning prize is awarded.

(k) An ''ante-up'' format, in which a player is required to wager before each release as a condition of remaining in the game, is permissible, provided the game maintains at least two participating players. If only one player remains after one or more releases, that player will be declared the winner of the game-winning prize, and the game will end, provided that player obtains and covers (daubs) the game-winning pattern. If all players leave the game before a game-winning pattern is obtained and covered (daubed) by a player, the game will be declared void and wagers returned to players.

(l) Each game must provide an equal chance of obtaining any winning pattern for each card played by an active player in the game. The probability of achieving any particular pre-designated winning pattern for a participating player in the game may not vary based on the amount wagered by that player.

(m) The use of a paytable is permitted. The order of, or quantity of, numbers or other designations randomly drawn or electronically determined may affect the prize awarded for completing any previously designated winning pattern in a game. A multiplier to the prize based on a winning pattern containing a specified number or other designation is permitted.

(n) A game-winning prize must be awarded in every game. If the first player or a subsequent player obtaining the pre-designated game-winning prize pattern sleeps that pattern, the game must continue until a player achieves the game-winning pattern. The same value prize must be awarded to a subsequent game-winning player in the game.

(o) Alternative result display options may only be utilized for entertainment or amusement purposes and may not be used to independently determine a winner of the game or the prizes awarded or change the results of the bingo game in any way.

§ 546.7 What are the criteria for meeting the statutory requirement that pull-tabs or instant bingo not be an ''electronic or electromechanical facsimile?''

(a) Every pull-tab card or instant bingo ticket must exist in a tangible medium such as paper. Hereafter, the term ''pull tabs'' also includes the term ''instant bingo.'' A pre-printed pull-tab must be distributed to the player as paper, plastic, or other tangible medium at the time the pull-tab is purchased. The pull-tab presented to the player must contain the information necessary for the player to determine if that player has won a prize in the game. The information must be presented to the player in a readable format.

(b) A pull-tab card may contain more than one arrangement of numbers or symbols, but each arrangement must comport with the requirements of this section. The player must pay for all of the arrangements on that pull-tab card in advance of its being dispensed.

(c) Pull-tabs that exist in a tangible medium may also be sold to players with assistance of a ''technologic aid'' that assists in the sale. The ''technologic aid'' may also read and display the contents of the pull-tab as it is distributed to the player. The results of the pull-tab may be shown on a video screen that is part of or adjacent to the technologic aid assisting in the sale of the pull-tab.

(d) The player may also purchase a pull-tab from a person or from a vending unit and place the pull-tab in a separate ''technologic aid'' that reads and displays the contents of the pull-tab.

(e) If pull-tabs contain multiple arrangements of numbers or numbers or symbols, the rules for game play must indicate the disposition of a pull-tab in a technologic aid that is only partially played, i.e. all arrangements have not been viewed in the technologic aid.

(f) A ''technologic aid'' may also show pull-tab results on a video screen using alternative displays, including game-theme graphics, spinning reels, or other imagery. The results may also be displayed on mechanical reels. Options for players found in this alternative display may not determine a winner of the game or the prizes awarded or change the results of the pull-tab game in any way.

(g) If the pull-tab is a winning card, it must be redeemable for a prize when presented at the location in the gaming facility designated by the gaming operator.

(h) A pull-tab may not be generated or printed at the player station.

(i) The machine cannot pay out winnings to the player, nor dispense vouchers or receipts representing such winnings.

(j) For technologic aids that are larger than the pull-tab, the machine shall prominently display the following message: ''THIS IS THE GAME OF PULLTABS.'' Each letter of the display must measure at least two (2) inches in height.

(k) The winning results on the pull-tab shall be no smaller than an 8 point font.

§ 546.8 When is a pull tab or instant bingo game an ''electronic or electromechanical facsimile?''

(a) A pull tab game is an ''electronic facsimile'' if the pull tab does not exist in paper, plastic, or other tangible medium at the point of sale and is displayed only electronically.

(b) Pull-tabs that exist in a tangible medium but that are electronically or optically read and transformed into an electronic medium and made available to the player only as depictions on a video screen (and not presented directly to the player in the tangible medium) are ''electronic facsimiles.''

§ 546.9 What is the process for approval, introduction, and verification of ''electronic, computer, or other technologic aids'' under the classification standards established by this part?

(a) An Indian tribe or a supplier, manufacturer, or game developer sponsored by a tribe (hereafter, the ''requesting party'') wishing to have games and associated ''electronic, computer, or other technologic aids'' certified as meeting the classification standards established by this part must submit the games and equipment to a testing laboratory recognized by the Commission under this part. The requesting party must support the submission with materials and software sufficient to establish that the game and equipment meets classification standards and provide any other information requested by the testing laboratory.

(b) For an ''electronic, computer, or other technologic aid'' to be accepted as certified as meeting the classification standards under this part, the tribe shall require the following.

(1) The testing laboratory will evaluate and test the submission to the standards established by this part. Issues that concern an interpretation of the standards or the certification procedure identified during the evaluation or testing process, if any, will initially be discussed between the testing laboratory and the requesting party. In the event of impasse, the requesting party and the testing laboratory may jointly submit questions concerning the issue to the Chairman, who may decide the issue. Questions regarding additional tribal standards will be addressed to the appropriate tribal gaming regulatory authority.

(2) At the completion of the evaluation and testing process, the testing laboratory will provide a formal written report to the requesting party setting forth its findings and conclusions. The testing laboratory will also forward a copy of its report to the Commission. The report may be made available upon request to any interested tribal gaming regulatory authority by the requesting party or by the testing laboratory.

(3) Each report from a testing laboratory must state the name of the requesting party; the type of game evaluated; name(s) and version(s) of the game played with the ''electronic, computer, or other technologic aid'' being evaluated; all associated game themes under which the game will be played on the ''technologic aid'' being evaluated; findings regarding game features and manner of play; a checklist of the standards established by this part together with an indication of the results of testing and evaluation to each particular standard; and a summary conclusion as to whether the gaming conducted with the aid meets the requirements of this part. A supplemental report addressing additional game themes or other non-play features may follow as necessary, and will contain a statement verifying that gaming conducted with the aid continues to meet the requirements of this part.

(4) Each report will also provide one or more unique signatures or checksum values for the operating programs used with the ''electronic, computer, or other technologic aid.'' In the case of disk-based machines, a standard directory checking program and the data files and documentation to verify the correct operational software will be provided. In the case of EPROMs, a unique signature or checksum will be provided based upon standard algorithms. The purpose of the unique signature(s) or checksum values is to permit later verification that the games and the ''electronic, computer or other technologic aids'' in play in a Tribe's gaming operation(s) are the games and aids certified by the testing laboratory, by comparison of the signature(s) or checksum values.

(5) In certifying a game or ''an electronic, computer, or other technologic aid'' for Class II play, a requesting party or a tribe may not rely on a report from a testing laboratory owned or operated by that requesting party or that tribe.

(c) The Commission will maintain a generalized listing of games and ''electronic, computer, or other technologic aids'' certified by recognized testing laboratories as meeting the classification standards established by this part. Each testing laboratory will maintain a detailed listing of the ''electronic, computer or other technologic aids'' it certifies. The Commission will make its listing available on its Web site. Portions of reports containing trade secrets and commercial or financial information relating to the ''electronic, computer, or other technologic aid'' that are considered privileged or confidential will not be made available for public review.

(d) *Additional requirements established by a tribal gaming regulatory authority.* (1) A tribal gaming regulatory authority may establish additional classification standards that extend and/or exceed the standards established by this part. It may require additional testing and certification to its own extended standards as a condition to operation of the game and associated ''electronic, computer, or other technologic aid'' in a gaming facility it regulates.

(2) A tribal gaming regulatory authority may elect to provide its extended testing standards to the testing laboratories and require additional tests and certification reports applicable to its own certification of a game or ''electronic, computer or other technologic aid.'' A requesting party wishing to meet the specific tribal requirements will submit additional supporting materials and documentation to the testing laboratory as may be necessary to meet the specific tribal requirements. A testing laboratory evaluating a game and associated equipment will include in its report to the requesting party information relevant to the specific additional tribal requirements and provide a copy of the report to that tribal gaming regulatory authority and the Commission.

(e) *Objections to a testing laboratory certification.* (1) The Chairman or a designee will review the certifications and accompanying reports received from testing laboratories and may interpose an objection to any certification issued by a testing laboratory by notification to the testing laboratory, the requesting party, and the sponsoring tribe within 60 days of receipt of the certification and report. In the absence of objection within 60 days, the parties may assume the Chairman does not interpose an objection. The Chairman may object to a testing laboratory certification subsequent to the 60-day period upon good cause shown.

(2) The Chairman or a designee will conduct additional discussions with the testing laboratory, the requesting party, and the sponsoring tribe on any game or ''electronic, computer, or other technologic aid'' to which the Chairman has objection and attempt to resolve the dispute within 30 days after receiving notice of the Chairman's objection. The Chairman and the requesting party and sponsoring tribe may agree to the appointment of a mediator or other third party to review the laboratory's certification and the Chairman's objection and provide a recommendation on the matter within this 30-day period. Following the discussions and receipt of the recommendation of the mediator or other third party, if any, the Chairman will decide the issue and inform the testing laboratory, the requesting party, and the sponsoring tribe of his determination.

(3) Within 30 days after receiving notice of Chairman's determination, the

testing laboratory, the requesting party, or the sponsoring tribe may appeal the Chairman's objection to the full Commission by providing written notice of appeal along with documents and other information in support of the appeal. The appeal will be decided by the Commission based on the record developed by Chairman or designee and on written submissions by the testing laboratory, the requesting party, and the sponsoring tribe, unless the Commission requests additional information. The appeal will not include a hearing under Part 577 of this chapter unless directed by the Commission.

(4) If the testing laboratory, the manufacturer, or the sponsoring tribe does not appeal the Chairman's determination, or if the objection is upheld after review by the Commission following an appeal, the testing laboratory and the requesting party will notify any tribal gaming regulatory authority to which it has provided a certification and report on the game and associated equipment that the Chairman has objected to the certification and that the certification is no longer valid.

(5) An objection by the Chairman or a designee, upheld after review by the Commission, will be a final agency action for purposes of suit under the Administrative Procedure Act by the requesting party.

(f) *Recognition of Testing Laboratories.* (1) The Commission will maintain a listing of testing laboratories recognized as qualified to perform testing and evaluation for games played using ''electronic, computer, or other technologic aids'' that are offered for use in Class II gaming. To obtain Commission recognition a testing laboratory will demonstrate its integrity, independence and financial stability by providing evidence of licensing obtained from a competent jurisdiction that has conducted a thorough background check of the testing laboratory.

(2) The testing laboratory will demonstrate its relevant technical skill and capability by providing evidence of suitable testing previously conducted for state or tribal regulatory authorities. The Commission will conduct an onsite review of the testing laboratory's facilities as part of its evaluation and will be satisfied that the testing laboratory is qualified and competent to perform the testing required by this part before recognizing the testing laboratory.

(3) A testing laboratory recognized by the Commission will notify the Commission immediately if any license issued by a state or tribe is revoked or not renewed.

(4) The Commission may offer provisional recognition to a new testing laboratory that does not meet the requirements of paragraphs (f)(1) and (2) of this section based on its own review of suitability and technical qualifications of the testing laboratory.

§ 546.10 What are the steps for a compliance program administered by a tribal gaming regulatory authority to ensure that ''electronic, computer, or other technologic aids'' in play in Class II tribal gaming facilities meet the classification standards of this part?

(a) In regulating Class II gaming, a tribal gaming regulatory authority will institute a compliance program that ensures bingo, lotto, and other games similar to bingo and pull-tabs and instant bingo in use in its gaming facilities, which are operated and played with ''electronic, computer, or other technologic aids'' required to be certified by this part meet the requirements of this part and any additional tribal standards adopted by the tribal gaming regulatory authority. The program must include the following elements:

(1) Determination by the tribal gaming regulatory authority that ''electronic, computer, or other technologic aids,'' along with the games played thereon, required to be certified as meeting the standards established by this part, meet the standards before the equipment is placed for use in the gaming operation.

(2) Internal controls that prevent unauthorized access to game control software to preclude modifications that would cause the ''electronic, computer, or other technologic aid'' and the games played therewith to no longer meet the standards established by this part.

Note: Emergency changes to a game are permitted prior to certification so long as the change does not affect the classification of the game.

(3) Periodic testing of the all of the servers and a random sample of the electronic player stations to validate that the equipment continues to meet the standards established by this part.

(b) In authorizing particular Class II gaming within a gaming facility it licenses, a tribal gaming regulatory authority shall, at a minimum, require a finding and certification by an independent gaming testing laboratory, recognized by the NIGC under this Part, that each ''electronic, computer, or other technologic aid'' used in connection with such gaming meets the standards of this part. If the tribe's gaming regulatory authority has established classification standards that apply additional criteria, the tribe shall require additional findings consistent with the additional standards as a condition to authorizing a technologic aid for use and play in gaming facility it regulates.

(c) The Tribal gaming regulatory authority shall affix a seal or other label on each server and each individual client machine (player terminal) it has authorized for play under the classification standards established by this Part, indicating that all games played thereon meet the classification standards established by this Part and any additional standards established by the Tribe. The seal or other label will show the version number(s) or other unique identifier(s), as established by the manufacturer or other entity providing the game operating software, for the games authorized for play on the equipment by the Tribal gaming regulatory authority and as documented in a certification report(s) issued by a testing laboratory. The seal or other label shall conform to the requirements for ''stickers'' established in Part 547 of this chapter. The seal or other label shall be promptly removed from the server and any individual client machine when the version number(s) of the games played thereon are changed and a new seal or other label affixed showing the versions of the game in play, provided the new version(s) meet the Classification Standards established by this Part and any additional standards established by the Tribe.

(d) The Tribal gaming regulatory authority shall maintain a current listing of each server, each individual client machine (player terminal), and each game program it has authorized for play under the classification standards established by this Part, indicating that all such games meet the classification standards established by this Part and any additional standards established by the Tribe. The listing will show the asset number(s) of each server and client machine (player terminal) and the version number(s) or other unique identifier(s), as established by the manufacturer or other entity providing the game operating software, for the games authorized for play as documented in a certification report(s) issued by a testing laboratory.

(e) Effective date for operation of games under the classification standards.

(1) For Class II gaming operations open on the effective date of this part or that open within six months of the effective date, certification of the ''electronic, computer, or other technologic aids'' must be completed and authorization provided by the tribal gaming regulatory authority within six months of the effective date. Games and

associated equipment not certified within that period must be removed until certification is obtained and authorization given. The Commission Chairman may extend the period for obtaining certification for one or more periods of six months at the request of a tribal gaming regulatory authority based on good cause shown.

(2) For Class II gaming operations opening six months after the effective date, certification and authorization to operate by the tribal gaming regulatory authority must be completed before opening.

(3) Games played with ''electronic, computer, or other technologic aids,'' subject to certification under this part and not in a tribe's operation prior to the effective date, must be authorized for use as Class II by the tribal gaming regulatory authority using the processes described in this Part prior to play in that tribe's gaming operation.

Dated: May 18, 2006.

Philip N. Hogen,

Chairman.

Cloyce V. Choney,

Commissioner.

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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.

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Land Remote Sensing Policy Act of 1992:

Private land remote-sensing space systems; licensing requirements; published 4-25-06

ENERGY DEPARTMENT

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Nuclear power plants; transmission system safety and reliability; transmission providers' communications; clarification order; published 5-25-06

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Motor vehicle management; published 5-12-06

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Cooper River, SC; published 5-25-06

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Meats, prepared meats, and meat products; certification and standards:

Federal meat grading and certification services; fee changes; comments due by 5-30-06; published 3-29-06 [FR E6-04519]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

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Commodity Credit Corporation

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AGRICULTURE DEPARTMENT

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Faith-based and community organizations participation; data collection requirement; comments due by 6-1-06; published 3-3-06 [FR 06-01985]

AGRICULTURE DEPARTMENT

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COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

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Elkhorn coral and staghorn coral; comments due by 6-2-06; published 5-9-06 [FR 06-04321]

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Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands king and tanner crab; comments due by 5-30-06; published 3-31-06 [FR E6-04749]

Northeastern United States fisheries—

Summer flounder, scup, and black sea bass; comments due by 5-30-06; published 5-15-06 [FR E6-07357]

Marine mammals:

Incidental taking—

Monterey Bay National Marine Sanctuary, CA; California sea lions and Pacific harbor seals incidental to coastal fireworks displays; comments due by 5-31-06; published 5-1-06 [FR E6-06504]

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ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 4297/P.L. 109–222

Tax Increase Prevention and Reconciliation Act of 2005 (May 17, 2006; 120 Stat. 345)

H.J. Res. 83/P.L. 109–223

To memorialize and honor the contribution of Chief Justice William H. Rehnquist. (May 18, 2006; 120 Stat. 374)

S. 1382/P.L. 109–224

To require the Secretary of the Interior to accept the conveyance of certain land, to be held in trust for the benefit of the Puyallup Indian tribe. (May 18, 2006; 120 Stat. 376)

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