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

WHEN: Tuesday, August 8, 2006
9:00 a.m.-Noon

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

RESERVATIONS: (202) 741-6008



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Federal Register

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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 25

[Docket No. NM350, Special Conditions No. 25-320-SC]

Special Conditions: Gulfstream Aerospace Corporation Model G-1159 Gulfstream II Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream Aerospace Corporation Model G-1159 Gulfstream II airplanes modified by Gulfstream Aerospace Corporation, Dallas, Texas. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual electronic attitude direction indicators (ADI) and dual horizontal situation indicators (HSI). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is July 20, 2006. We must receive your comments by August 30, 2006.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-

113), Docket No. NM350, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. You may deliver two copies to the Transport Airplane Directorate at the address indicated above. You must mark your comments Docket No. NM350. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is unnecessary as the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective on issuance; however, the FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

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

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

If you want the FAA to acknowledge receipt of your comments on these

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

Background

On May 19, 2006, Gulfstream Aerospace Corporation, Dallas, Texas, applied for a supplemental type certificate (STC) to modify the Model G-1159 Gulfstream II airplanes. These airplanes are low-wing, pressurized transport category airplanes with two fuselage-mounted jet engines. They are capable of seating up to 19 passengers, with a crew of two pilots. The modification incorporates the installation of dual electronic ADI and dual HSI. These systems have a potential to be vulnerable to HIRF external to the airplane.

Type Certification Basis

Under 14 CFR 21.101, Gulfstream Aerospace Corporation must show that the Model G-1159 Gulfstream II airplanes, as modified to include dual electronic ADI and dual HSI, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate (TC) No. A12EA or the applicable regulations in effect on the date of application for the change. We commonly refer to the regulations incorporated by reference in the TC as the "original type certification basis." The specific regulations are the Civil Aviation Regulations (CAR) 4b, as amended by Amendments 4b-1 through 4b-14.

If the Administrator finds that the applicable airworthiness regulations (i.e., CAR 4b as amended) do not contain adequate or appropriate safety standards for the Model G-1159 Gulfstream II airplanes, because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

Besides the applicable airworthiness regulations and special conditions, the Gulfstream Aerospace Corporation Model G-1159 Gulfstream II airplanes, must comply with the fuel vent exhaust emission requirements of 14 CFR part 34. It must also comply with the noise certification requirement of 14 CFR part 36.

We issue special conditions, as defined in 14 CFR part 11.19, under § 11.38 and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Gulfstream Aerospace Corporation apply later for an STC to modify any other model included on TC No. A12EA to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

As noted earlier, the modified Model G-1159 Gulfstream II airplanes, modified by Gulfstream Aerospace Corporation, will incorporate dual electronic ADI and dual HSI that will perform critical functions. These systems may be vulnerable to HIRF external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from adverse affects of HIRF. Therefore, we consider these systems to be novel or unusual design features.

Discussion

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

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Model G-1159 Gulfstream II airplanes. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

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

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of

electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

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

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

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

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

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

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

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

Applicability

As discussed above, these special conditions are applicable to the Model G-1159 Gulfstream II airplanes. Should Gulfstream Aerospace Corporation apply later for an STC on another model included on TC No. A12EA to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under § 21.101.

Conclusion

This action affects only certain novel or unusual design features on the Model G-1159 Gulfstream II airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. The FAA is requesting comments to allow interested people to put in views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the modified Gulfstream Aerospace Corporation Model G-1159 Gulfstream II airplanes:

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

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on July 20, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. E6-12139 Filed 7-28-06; 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; Amendment 39-14698; AD 2006-15-17]

RIN 2120-AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 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 Fokker Model F.28 Mark 0070 and 0100 airplanes. This AD requires 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 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.

DATES: This AD becomes effective September 5, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 5, 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 Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1137; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Fokker Model F.28 Mark 0070 and 0100 airplanes. That NPRM was published in the **Federal Register** on May 25, 2006 (71 FR 30072). That NPRM proposed to 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.

Comments

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

Conclusion

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

Costs of Compliance

This AD will affect about 10 airplanes of U.S. registry. The required actions will 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 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 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):

2006-15-17 Fokker Services B.V.:
Amendment 39-14698. Docket No. FAA-2006-24868; Directorate Identifier 2006-NM-103-AD.

Effective Date

- (a) This AD becomes effective September 5, 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 Fokker Manual Change Notification—Maintenance Documentation MCNM F100-098, dated May 9, 2005, and 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

Fokker 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.

Material Incorporated by Reference

(i) You must use Fokker Service Bulletin SBF100-30-027, dated May 9, 2005; including Fokker Manual Change Notification—Maintenance Documentation MCNM F100-098, dated May 9, 2005; and the Fokker drawings identified 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 this document in accordance

with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, 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.—ATTACHED DRAWINGS INCORPORATED BY REFERENCE

Fokker 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.

Issued in Renton, Washington, on July 20, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. E6-12092 Filed 7-28-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-387-AD; Amendment 39-14696; AD 2006-15-15]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas airplane models, that requires a one-time inspection for chafing or signs of arcing of the wire bundle for the auxiliary hydraulic pump, and other specified and corrective actions, as applicable. This AD also requires that, for certain airplanes, installation of additional protective sleeving on the upper portion of the auxiliary hydraulic pump wire assembly. This AD results from reports of shorted wires and evidence of arcing on the power cables of the auxiliary hydraulic pump, as well as a fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent shorted wires or arcing at the auxiliary hydraulic pump, which could result in loss of auxiliary hydraulic power, or a fire in the wheel well of the airplane. The actions specified by this AD are also intended to reduce the potential of an ignition source adjacent to the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: Effective September 5, 2006.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of September 5, 2006.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service

Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT:

Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5344; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION: A

proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 airplanes, was published as a second supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on March 14, 2006 (71 FR 13050). That action proposed to require a one-time inspection for chafing or signs of arcing of the wire bundle for the auxiliary hydraulic pump, and other specified and corrective actions, as applicable. That action also proposed to require, for certain airplanes, installation of additional protective sleeving on the upper portion of the auxiliary hydraulic pump wire assembly.

Comments

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

Explanation of Changes to the Second Supplemental NPRM

In paragraph (a) of the second supplemental NPRM we inadvertently referred to Configurations 1 through 3 when we should have referred to Configurations 1 through 4. It was our intent that the requirements of paragraph (a) apply to Configurations 1 through 4 airplanes, as described in the referenced Boeing Alert Service Bulletin MD80-29A070, Revision 1, dated July 28, 2005. As described in the preamble of the second supplemental NPRM, we added paragraph (c) to this AD to give credit for actions done before the effective date of this AD in accordance with the original issue of Boeing Alert Service Bulletin MD80-29A070, dated August 3, 2004, except that the

additional requirements of paragraph (b) of this AD must be done on airplanes in Configuration 4, as defined in Boeing Alert Service Bulletin MD80-29A070, Revision 1. Therefore, we have revised paragraph (a) of this AD accordingly. We also have clarified the Cost Impact section of this AD in regard to the airplane configurations.

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.

Cost Impact

There are approximately 1,063 airplanes of the affected design in the worldwide fleet. We estimate that 732 airplanes of U.S. registry (i.e., airplane Configurations 1 through 4; we do not know how many airplanes are in Configuration 4) will be affected by this AD, that it will take up to 12 work hours per airplane to accomplish the required inspection and other specified actions, and that the average labor rate is \$65 per work hour. Required parts will cost up to \$524 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be up to \$954,528, or up to \$1,304 per airplane.

For airplanes in Configuration 4, as defined in Boeing Alert Service Bulletin MD80-29A070, Revision 1, it will take approximately 2 work hours to accomplish the required additional wiring protection, at an average labor rate of \$65 per work hour. Required parts will cost approximately \$40 per airplane. Based on these figures, the cost impact of this action on an affected airplane is estimated to be \$170 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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 Impact

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding the following new airworthiness directive:

2006-15-15 McDonnell Douglas:

Amendment 39-14696. Docket 2001-NM-387-AD.

Applicability: Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 airplanes; certificated in any category; as identified in Boeing Alert Service Bulletin MD80-29A070, Revision 1, dated July 28, 2005.

Compliance: Required as indicated, unless accomplished previously.

To prevent shorted wires or arcing at the auxiliary hydraulic pump, which could result in loss of auxiliary hydraulic power, or a fire in the wheel well of the airplane; and to reduce the potential of an ignition source adjacent to the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane; accomplish the following:

One-Time Inspection

(a) For airplanes in Configurations 1 through 4, as defined in Boeing Alert Service Bulletin MD80-29A070, Revision 1, dated July 28, 2005: Within 18 months after the effective date of this AD, do a one-time general visual inspection for chafing or signs of arcing of the wire bundle for the auxiliary hydraulic pump, and do all applicable corrective and other specified actions, in accordance with the Accomplishment Instructions of the service bulletin. Accomplish all applicable corrective actions before further flight after the inspection.

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."

Installation of Additional Wiring Protection

(b) For airplanes in Configuration 4, as defined in Boeing Alert Service Bulletin MD80-29A070, Revision 1, dated July 28, 2005: Within 18 months after the effective date of this AD, install additional protective sleeving on the upper portion of the auxiliary hydraulic pump wire assembly in accordance with the procedures under Configuration 4 in the Accomplishment Instructions of the service bulletin.

Actions Accomplished Previously

(c) Actions accomplished before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80-29A070, dated August 3, 2004, are acceptable for compliance with paragraph (a) of this AD, except that the additional requirements of paragraph (b) of this AD must be done on airplanes in Configuration 4, as defined in Boeing Alert Service Bulletin MD80-29A070, Revision 1, dated July 28, 2005.

Alternative Methods of Compliance

(d)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

(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.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions must be done in accordance with Boeing Alert Service Bulletin MD80-29A070, Revision 1, dated July 28, 2005. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of this service information, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). To inspect copies of this service information, go to the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; to the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or to 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.

Effective Date

(f) This amendment becomes effective on September 5, 2006.

Issued in Renton, Washington, on July 20, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-12094 Filed 7-28-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2004-19245; Directorate Identifier 2004-NM-108-AD; Amendment 39-14699; AD 2006-15-18]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737-300, -400, -500, -600, -700, -700C, -800, and -900 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 737-300, -400, -500, -600, -700, -700C, -800, and -900 series airplanes. This AD requires modifying the wiring for the master dim and test system. For certain airplanes, this AD also requires related concurrent actions as necessary. This AD results from a report that the master dim and test system circuit does not have wiring separation of the test ground signal for redundant equipment in the flight compartment. We are issuing this AD to prevent a single fault failure in flight from simulating a test condition and showing test patterns instead of the selected radio frequencies on the communications panels, which could inhibit communication between the flightcrew and the control tower,

affecting the continued safe flight of the airplane.

DATES: This AD becomes effective September 5, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 5, 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: Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6485; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 737-300, -400, -500, -600, -700, -700C, -800, and -900 series airplanes. That supplemental NPRM was published in the **Federal Register** on May 26, 2006 (71 FR 30346). That supplemental NPRM proposed to require modifying the wiring for the master dim and test system. For certain airplanes, the supplemental NPRM also proposed to require related concurrent actions as necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the single comment received. The commenter, Boeing, supports the supplemental NPRM.

Conclusion

We have carefully reviewed the available data, including the comment received, 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 2,868 airplanes of the affected design in the worldwide fleet. This AD will affect about 1,181 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Boeing Service Bulletin	Work hours	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
737-33-1132, Revision 2	14	\$80	Nominal	\$1,120	\$1,322,720
737-33-1133, Revision 3	3	80	Nominal	240	283,440

ESTIMATED CONCURRENT SERVICE BULLETIN COSTS

Boeing Service Bulletin	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
737-26A1083, Revision 1.	185	\$80	Between \$30,000 and \$36,400.	Between \$44,800 and \$51,200.	1	Between \$44,800 and \$51,200.
737-33-1121, Revision 1.	Between 5 and 6	\$80	Between \$200 and \$340.	Between \$600 and \$820.	83	Between \$49,800 and \$68,060.
737-77-1022, Revision 1.	72	\$80	No charge	\$5,760	4	\$23,040.
737-77-1023, Revision 1.	Between 1 and 3	\$80	Nominal	Between \$80 and \$240.	26	Between \$2,080 and \$6,240.
737-23-1102	77	\$80	\$22,164	\$28,324	0	No fleet cost unless an affected airplane is imported and placed on the U.S. register.

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):

2006-15-18 Boeing: Amendment 39-14699. FAA-2004-19245; Directorate Identifier 2004-NM-108-AD.

Effective Date

(a) This AD becomes effective September 5, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737-300, -400, and -500 series airplanes identified in Boeing Special Attention Service Bulletin 737-33-1132, Revision 2,

dated September 8, 2005; and Model 737-600, -700, -700C, -800, and -900 series airplanes identified in Boeing Service Bulletin 737-33-1133, Revision 3, dated September 8, 2005; certificated in any category.

Unsafe Condition

(d) This AD results from a report that the master dim and test system circuit does not have wiring separation of the test ground signal for redundant equipment in the flight compartment. We are issuing this AD to prevent a single fault failure in flight from simulating a test condition and showing test patterns instead of the selected radio frequencies on the communications panels, which could inhibit communication between the flightcrew and the control tower, affecting the continued safe flight of the airplane.

Compliance

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

Modification

(f) Within 48 months after the effective date of this AD: Modify the wiring for the master dim test system in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737-33-1132, Revision 2, dated September 8, 2005 (for Model 737-300, -400, and -500 series airplanes); and Boeing Service Bulletin 737-33-1133, Revision 3, dated September 8, 2005 (for Model 737-600, -700, -700C, -800, and -900 series airplanes); as applicable.

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

(g) Prior to or concurrently with accomplishment of paragraph (f) of this AD, do the actions specified in Table 1 of this AD, as applicable.

TABLE 1.—PRIOR/CONCURRENT ACTIONS

For—	Accomplish all actions associated with—	According to the Accomplishment Instructions of—
Group 57 airplanes identified in Boeing Special Attention Service Bulletin 737-33-1132, Revision 2, dated September 8, 2005.	Installing an engine instrument system (EIS) and	Boeing Service Bulletin 737-77-1022, Revision 1, dated October 26, 1989.
	Modifying the advisory system for the EIS	Boeing Service Bulletin 737-77-1023, Revision 1, dated November 9, 1989.
Group 37 and 46 airplanes identified in Boeing Service Bulletin 737-33-1133, Revision 3, dated September 8, 2005.	Installing wiring for the test system for the audio control panel lamp.	Boeing Service Bulletin 737-33-1121, Revision 1, dated December 19, 2002.
Group 2 airplanes identified in Boeing Service Bulletin 737-33-1121, Revision 1, dated December 19, 2002.	Installing splice SP896	Boeing Service Bulletin 737-26A1083, Revision 1, dated November 15, 2001.
Group 39 airplanes identified in Boeing Service Bulletin 737-33-1133, Revision 3, dated September 8, 2005.	Installing a smoke detection and fire extinguishing system in the cargo compartment.	Boeing Service Bulletin 737-26A1083, Revision 1, dated November 15, 2001.
Group 59 airplanes identified in Boeing Special Attention Service Bulletin 737-33-1132, Revision 2, dated September 8, 2005.	Replacing the very high frequency (VHF) and high frequency (HF) communications panels with radio control panels.	Boeing Service Bulletin 737-23-1102, dated June 3, 1999.

Actions Accomplished per Previous Issue of Service Bulletins the service bulletins identified in Table 2 of this AD are considered acceptable for compliance with the corresponding actions specified in this AD.

(h) Actions accomplished before the effective date of this AD in accordance with

TABLE 2.—PREVIOUS ISSUES OF SERVICE BULLETINS

Service Bulletin	Revision level	Date
Boeing Special Attention Service Bulletin 737–33–1133	Original	December 19, 2002.
Boeing Service Bulletin 737–33–1133	Revision 1	April 17, 2003.
Boeing Service Bulletin 737–33–1133	Revision 2	December 4, 2003.
Boeing Special Attention Service Bulletin 737–33–1132	Original	March 20, 2003.
Boeing Special Attention Service Bulletin 737–33–1132	Revision 1	March 4, 2004.

Alternative Methods of Compliance (AMOCs)

(i)(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 § 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 the service information identified in Table 3 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision level	Date
Boeing Service Bulletin 737–23–1102	Original	June 3, 1999.
Boeing Service Bulletin 737–26A1083	1	November 15, 2001.
Boeing Service Bulletin 737–33–1121	1	December 19, 2002.
Boeing Service Bulletin 737–33–1133	3	September 8, 2005.
Boeing Service Bulletin 737–77–1022	1	October 26, 1989.
Boeing Service Bulletin 737–77–1023	1	November 9, 1989.
Boeing Special Attention Service Bulletin 737–33–1132	2	September 8, 2005.

Boeing Service Bulletin 737–77–1022, Revision 1, dated October 26, 1989, contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3, 5–7, 10, 17, 28–55.	Revision 1	Oct. 26, 1989.
2, 4, 8, 9, 11–16, 18–27.	Original	June 15, 1989.

The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at <http://dms.dot.gov>; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on July 20, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–12099 Filed 7–28–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24694; Directorate Identifier 2006–NM–018–AD; Amendment 39–14697; AD 2006–15–16]

RIN 2120–AA64

Airworthiness Directives; Raytheon (Beech) Model 400 and 400A 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 Raytheon (Beech) Model 400 and 400A series airplanes. This AD requires, among other actions, reviewing the airplane logbook to determine whether

certain generator control unit (GCU) installation kits are installed, and replacing any incorrect GCU. This AD results from reports of over-voltage conditions of the direct current (DC) starter generator. We are issuing this AD to prevent such over-voltage conditions due to the incompatibility between certain GCUs, which could result in the loss of normal electrical power, damage to some electrical components, or blown fuses during flight, and consequent unrecoverable loss of some or all essential equipment.

DATES: This AD becomes effective September 5, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 5, 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 (Beech) Model 400 and 400A series airplanes. That NPRM was published in the **Federal Register** on May 9, 2006 (71 FR 26877). That NPRM proposed to require, among other actions, reviewing the airplane logbook to determine whether certain generator control unit (GCU) installation kits are installed, and replacing any incorrect GCU.

Comments

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

Conclusion

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

Costs of Compliance

There are about 43 airplanes of the affected design in the worldwide fleet.

This AD will affect about 40 airplanes of U.S. registry. The required inspection will take about 1 work hour per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is \$3,200, or \$80 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):

2006-15-16 Raytheon Aircraft Company (Formerly Beech): Amendment 39-14697. Docket No. FAA-2006-24694; Directorate Identifier 2006-NM-018-AD.

Effective Date

(a) This AD becomes effective September 5, 2006.

Affected ADs

(b) None.

Applicability

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

TABLE 1.—APPLICABILITY

Raytheon (Beech) model—	Serials—	On which—
(1) 400 series airplanes	RJ-1 through RJ-65 inclusive	Kit part number (P/N) 128-3004-1 P or 128-3004-3 P has been incorporated (Lucas Aerospace/Goodrich Direct Current (DC) Starter Generator).
(2) 400A series airplanes	RK-1 through RK-23 inclusive	Kit P/N 128-3004-1 P or 128-3004-3 P has been incorporated (Lucas Aerospace/Goodrich DC Starter Generator).

Unsafe Condition

(d) This AD results from reports of over-voltage conditions of the DC starter generator. We are issuing this AD to prevent over-voltage conditions of the DC starter generator due to the incompatibility between certain

generator control units (GCUs), which could result in the loss of normal electrical power, damage to some electrical components, or blown fuses during flight, and consequent unrecoverable loss of some or all essential equipment.

Compliance

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

Service Bulletin

(f) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Raytheon Service Bulletin SB 24-3713, dated November 2005.

Review of Logbook

(g) Within 200 flight hours or 6 months after the effective date of this AD, whichever occurs first, review the airplane logbook to determine whether GCU installation kit, P/N 128-3001-1 P or 128-3001-3 P, is installed, in accordance with the service bulletin.

Installation Kit Not Found Installed: Replacement of Shinko GCUs

(h) If no GCU installation kit, P/N 128-3001-1 P or 128-3001-3 P, is found installed or if the kit P/N cannot be conclusively determined during the review required by paragraph (g) of this AD: Within 200 flight hours or 6 months after the effective date of this AD, whichever occurs first, replace the Shinko GCUs with new Lucas Aerospace/Goodrich GCUs (installation kit P/N 128-3001-1 P or 128-3001-3 P), in accordance with the service bulletin.

Installation Kit Found Installed: Inspections of GCUs and Current Sense Transformers and Replacement of Transformers as Applicable

(i) If any GCU installation kit, P/N 128-3001-1 P or 128-3001-3 P is found installed during the review required by paragraph (g) of this AD: Within 200 flight hours or 6 months after the effective date of this AD, whichever occurs first, inspect to determine the P/N of both GCUs, in accordance with the service bulletin; and at the times specified in Table 2 of this AD, do the applicable action(s) in that table.

TABLE 2.—INSPECTION AND REPLACEMENT OF CURRENT SENSE TRANSFORMERS

If—	Then, within 200 flight hours or 6 months after the effective date of this AD, whichever occurs first—	If—	Then—
(1) Both GCUs have P/N 45AS88801-19 or -25.	Inspect to determine the P/N of both current sense transformers on the lower inboard quadrant of the left-hand and right-hand engine inlets, in accordance with the service bulletin.	Both current sense transformers have P/N 45AS88801-21. Either current sense transformer is not identified with P/N 45AS88801-21.	No further action is required by this AD. Within 200 flight hours or 6 months after the effective date of this AD, whichever occurs first, replace the current sense transformer with a new transformer, P/N 45AS88801-21, in accordance with the service bulletin.
(2) Either GCU does not have P/N 45AS88801-19 or -25.	Replace the GCU with a new GCU, P/N 45AS88801-19 or -25, and inspect to determine the P/N of both current sense transformers on the lower inboard quadrant of the left-hand and right-hand engine inlets, in accordance with the service bulletin.	Both current sense transformers have P/N 45AS88801-21. Either current sense transformer is not identified with P/N 45AS88801-21.	No further action is required by this AD. Within 200 flight hours or 6 months after the effective date of this AD, whichever occurs first, replace the current sense transformer with a new transformer, P/N 45AS88801-21, in accordance with the service bulletin.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Wichita 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.

Material Incorporated by Reference

(k) You must use Raytheon Service Bulletin SB 24-3713, dated November 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 July 20, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-12107 Filed 7-28-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2005-21691; Directorate Identifier 2005-NE-13-AD; Amendment 39-14701; AD 2006-16-01]

RIN 2120-AA64

Airworthiness Directives; Hamilton Sundstrand Model 14RF-19 Propellers

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Hamilton Sundstrand model 14RF-19 propellers. That AD currently requires replacing certain actuator yokes with improved actuator yokes. This AD requires the same actions. This AD results from the discovery of a part number (P/N) error in the applicability paragraph of AD 2006-12-19. We are

issuing this AD to prevent actuator yoke arms breaking during flight, which could cause high propeller vibration and contribute to reduced controllability of the airplane.

DATES: Effective August 30, 2006. The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulations as of July 18, 2006 (71 FR 34003; June 13, 2006).

We must receive any comments on this AD by September 29, 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.

Contact Hamilton Sundstrand, A United Technologies Company, Publication Manager, Mail Stop 1A-3-Z63, One Hamilton Road, Windsor Locks, CT 06096; fax 1-860-654-5107 for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238-7158; fax (781) 238-7170.

SUPPLEMENTARY INFORMATION: On June 6, 2006, the FAA issued AD 2006-12-19, Amendment 39-14645 (71 FR 34003, June 13, 2006). That AD requires replacing certain actuator yokes with improved actuator yokes on Hamilton Sundstrand model 14RF-19 propellers. That AD resulted from certain propeller system actuator yoke arms breaking during flight. That condition, if not corrected, could result in actuator yoke arms breaking during flight, which could cause high propeller vibration and contribute to reduced controllability of the airplane.

Actions Since AD 2006-12-19 Was Issued

Since that AD was issued, we discovered a P/N error in applicability

paragraph (c). Actuator assemblies P/N 790119-6 should be P/N 790199-6. AD 2006-12-19 technically cannot be complied with having an incorrect P/N. This AD superseding corrects that P/N.

Relevant Service Information

We have reviewed and approved the technical contents of Hamilton Sundstrand Service Bulletin 14RF-19-61-113, Revision 1, dated September 2, 2003, that describes procedures for installing a new propeller system actuator yoke arm, P/N 810436-3.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other Hamilton Sundstrand model 14RF-19 propellers of the same type design. We are issuing this AD to prevent actuator yoke arms breaking during flight, which could cause high propeller vibration and contribute to reduced controllability of the airplane. This AD requires replacing the actuator yoke arm, P/N 810436-2, on model 14RF-19 propellers with an improved actuator yoke arm, P/N 810436-3. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. FAA-2005-21691; Directorate Identifier 2005-NE-13-AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the

search function of the DMS 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 AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility 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 DMS receives them.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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 removing Amendment 39-14645 (71 FR 34003, June 13, 2006), and by adding a new airworthiness directive, Amendment 39-14701, to read as follows:

2006-16-01 Hamilton Sundstrand:

Amendment 39-14701. Docket No. FAA-2005-21691; Directorate Identifier 2005-NE-13-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 15, 2006.

Affected ADs

(b) This AD supersedes AD 2006-12-19.

Applicability

(c) This AD applies to Hamilton Sundstrand Model 14RF-19 propellers with propeller system actuator yoke arms, part number (P/N) 810436-2, which might be installed in actuator assemblies P/N 790199-6. These propellers are installed on, but not limited to, SAAB 340 airplanes.

Unsafe Condition

(d) This AD results from the discovery of a part number (P/N) error in the applicability paragraph of AD 2006-12-19. We are issuing this AD to prevent actuator yoke arms breaking during flight, which could cause high propeller vibration and contribute to reduced controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within

60 days after the effective date of this AD, unless the actions have already been done.

Install Improved Actuator Yoke Arms

(f) Using the Accomplishment Instructions of Hamilton Sundstrand Service Bulletin 14RF-19-61-113, Revision 1, dated September 2, 2003, replace all actuator yoke arms, P/N 810436-2, with improved actuator yoke arms, P/N 810436-3.

(g) Mark newly installed actuators using the Accomplishment Instructions of Hamilton Sundstrand Service Bulletin 14RF-19-61-113, Revision 1, dated September 2, 2003.

(h) After the effective date of this AD, do not install any actuator yoke arms, P/N 810436-2, into any propeller assembly.

Alternative Methods of Compliance

(i) The Manager, Boston 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

(j) None.

Material Incorporated by Reference

(k) You must use Hamilton Sundstrand Service Bulletin 14RF-19-61-113, Revision 1, dated September 2, 2003, to perform the replacements and marking required by this AD. The Director of the Federal Register previously approved the incorporation by reference of this service bulletin as of July 18, 2006 (71 FR 34003; June 13, 2006) in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Hamilton Sundstrand, A United Technologies Company, Publication Manager, Mail Stop 1A-3-Z63, One Hamilton Road, Windsor Locks, CT 06096; fax 1-860-654-5107, for a copy of this service information. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Burlington, Massachusetts, on July 24, 2006.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E6-12109 Filed 7-28-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 772 and 774

[Docket No. 060714193-6193-01]

RIN 0694-AD65

Revisions to the Export Administration Regulations Based on the 2005 Missile Technology Control Regime Plenary Agreements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to reflect changes to the Missile Technology Control Regime (MTCR) Annex that were agreed to by MTCR member countries at the September 2005 Plenary in Madrid, Spain. The amendments set forth in this rule also reflect a change to make one additional missile technology (MT) controlled item available for certain license exceptions.

DATES: *Effective Date:* This rule is effective: July 31, 2006.

ADDRESSES: Although this is a final rule, comments are welcome and should be sent to publiccomments@bis.doc.gov, fax (202) 482-3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694-AD65 in all comments, and in the subject line of email comments. Comments on the collection of information should be sent to David Rostker, Office of Management and Budget (OMB), by e-mail to David_Rostker@omb.eop.gov, or by fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Michael E. Rithmire, Nuclear and Missile Technology Controls Division, Bureau of Industry and Security, Telephone: (202) 482-6105.

SUPPLEMENTARY INFORMATION:

Background

The Missile Technology Control Regime (MTCR) is an export control arrangement among 34 nations, including the world's most advanced suppliers of ballistic missiles and missile-related materials and equipment. The regime establishes a common export control policy based on a list of controlled items (the Annex) and on guidelines (the Guidelines) that member countries follow to implement national export controls. The goal of

maintaining the Annex and the Guidelines is to stem the flow of missile systems capable of delivering weapons of mass destruction to the global marketplace.

While the MTCR was originally created to prevent the spread of missiles capable of carrying a nuclear warhead, it was expanded in January 1993 to also stem the flow of delivery systems for chemical and biological weapons. MTCR members voluntarily pledge to adopt the regime's export Guidelines and to restrict the export of items contained in the regime's Annex. The implementation of the regime's Guidelines is effectuated through the national export control laws and policies of the regime members.

Amendments to the Export Administration Regulations

This rule revises the Export Administration Regulations (EAR) to reflect changes to the MTCR Annex agreed to at the September 2005 Plenary in Madrid, Spain. Specifically, in § 740.2 (Restrictions on all License Exceptions), this rule amends paragraph (a)(5) which includes a general restriction on using license exceptions for MT controlled items, by adding an additional Export Control Classification Number (ECCN) 2A001 as one of the ECCNs for which certain license exceptions are available. Paragraph (a)(5) prohibits the use of license exceptions for items controlled for MT reasons, but exempts certain listed ECCNs from this prohibition. This rule makes the MT controlled commodities of ECCN 2A001 available for license exceptions TMP and RPL when those commodities are being exported or reexported as one-for-one replacement for equipment previously legally exported or reexported.

Because the scope of availability of this exception to the general restriction on MT controlled items is more broadly defined for License Exceptions TMP and RPL for ECCN 2A001 than for the other ECCNs listed in the first sentence of paragraph (a)(5), a new subparagraph (ii) is added to paragraph (a)(5) to clarify the scope of availability of License Exception TMP and RPL for ECCN 2A001. This new subparagraph (ii) creates an additional ECCN exception to the general restriction on using license exceptions for MT controlled items. Specifically, this new subparagraph (ii) states that MT controlled commodities described in ECCN 2A001 may be exported or reexported under § 740.9(a)(2)(ii) (License Exception TMP) and § 740.10 (License Exception RPL) as one-for-one replacement in equipment previously legally exported

or reexported. In addition, to comply with **Federal Register** drafting requirements, this rule redesignates the introductory text to paragraph (a)(5) as new subparagraph (i).

Additionally, the MT control placed on ball bearings controlled under ECCN 2A001 was added as a result of the 2004 Plenary in Seoul, South Korea (MTCR Annex change, Category II: Item 3(A)(7)) and implemented in an amendment to the EAR on March 10, 2005 (FR 70 11858).

Even though the U.S. Government had consulted with its technical advisory committees before making the proposal to control certain ball bearings for MT reasons under ECCN 2A001 at the Seoul Plenary in 2004, those consultations did not reveal that bearings meeting the MTCR specification have a predominant use in certain machine tools. Therefore, given this additional information that has come to light regarding the use of these ball bearings in certain machine tools, the U.S. Government is proposing License Exception RPL to be available only for replacing worn out bearings. In addition, this was done because the interagency community agreed that for MT concerns, license review of the MT controlled commodities described in ECCN 2A001 was unnecessary when those commodities are exported or reexported as one-for-one replacements in equipment previously approved by the U.S. Government. It is anticipated that the availability of this license exception will result in a decrease in license applications.

In § 772.1 (Definitions of Terms as Used in the Export Administration Regulations), this rule adds a new definition to define the term "repeatability" as used in the context of MTCR controls on accelerometers. This new definition will aid the public in understanding the two new parameters known as "scale factor repeatability" and "bias repeatability" that are added to ECCN 7A101 with this rule. In addition, this rule adds a new definition to define the term "production facilities". This new definition will aid the public in understanding the use of this term in ECCNs 7B103 and 9B116. Before the publication of this rule, the term "production facilities" was included in ECCNs 7B103 and 9B116 and was enclosed with quotation marks, which should have signified there was a definition for this term in § 772.1. However, due to an inadvertent omission, the definition of "production facilities" was not included in § 772.1. This rule corrects that omission by adding the definition of "production facilities" to § 772.1.

In addition, the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) is amended to reflect changes to the MTCR Annex agreed to at the September 2005 Plenary in Madrid, Spain. Specifically the following ECCNs are affected:

ECCNs 1C101, 7A102 and 7A103.b and c are amended to remove the quotation marks around the word missile. "Missile" is defined in the EAR, Part 772.1, as being capable of delivering at least a 500 kilogram payload to a range of at least 300 kilometers. However, items in 19.A. of the MTCR Annex do not contain a specific payload parameter for materials and components used therein. Therefore, the use of the word missile in the description of the items contained in these ECCNs no longer corresponds to the definition of "missile" in Part 772.1.

ECCN 1C107 is amended by adding the phrase "which can be machined to any of the following products" to the heading text (MTCR Annex Category II: Item 6(C)(3)). This phrase is being added to clarify that graphite shapes are still controlled by this ECCN when they are larger than the minimum dimensions specified in the entry. Prior to publication of this rule, ECCN 1C107 included specific minimum measurements for graphite pieces controlled by this ECCN, but it was unclear to the public and to BIS licensing officers whether certain graphite pieces exceeding these dimensions were controlled. By adding the phrase "which can be machined to any of the following products," it will be clear to the public and to licensing officers that graphite pieces are still controlled by this ECCN when they are larger than the minimum dimensions specified in the entry.

ECCN 1C107 is also amended by deleting the word "recrystallized" from 1C107.a (MTCR Annex Category II: Item 6(C)(3)). This amendment is a clarification to the CCL that deletes the obsolete term "recrystallized", which is a term that is no longer used by industry. This rule also replaces the word "particulate" with the word "grain" in paragraph (a) to correspond with language in the MTCR Annex. Lastly, this rule deletes the imperial measurement of 288 K in paragraph (a) in favor of only listing the control parameter in terms of metric measurements. This change is being made because metric measurements are more commonly used by industry.

ECCN 7A101 is amended by revising the control parameter in this ECCN, which is expected to result in a decrease in license applications. Specifically this

ECCN is amended by deleting the current parameters of “threshold” and “linearity error,” found in the heading, in favor of two new parameters known as “scale factor repeatability” and “bias repeatability.” For ease of use, these two new parameters, along with a new clarification note, are added to the “items” paragraph in the List of Items Controlled section instead of being added to the heading (MTCR Annex Change Category II: Item 9(A)(3)). These two new parameters will result in a more focused control on accelerometers of concern for “missiles.”

A note that is added to ECCN 7A101 to explain that bias and scale factor are determined by calculating the statistical average of repeated measurements over a one year period. This amendment is made to bring this entry in line with current industry practice for characterizing accelerometers. This focused control for accelerometers of concern will also result in a decontrol of accelerometers that are not usable for “missiles”. The change to the control parameters of this ECCN is expected to result in a decrease in license applications for approximately 29 different types of accelerometers.

The addition of one new MT controlled ECCN 9A103 is not expected to result in an increase in license applications submitted to BIS, because these commodities will be controlled by the Department of State under the International Traffic in Arms Regulations (ITAR). ECCN 9A103 is added to control liquid propellant tanks specially designed for the propellants controlled in ECCNs 1C011 or 1C111, or other liquid propellants used in “missiles.” (These commodities are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121) (MTCR Annex Change Category II: Item 3(A)(8)). This cross reference is being added to the EAR to make the public aware that these liquid propellant tanks are ITAR controlled. These liquid propellant tanks are being added to the EAR and also to the ITAR to diminish opportunities by countries involved in missile proliferation activities from acquiring these types of tanks for their “missile” programs.

ECCN 9A120 is amended to clarify that the control captures only those unmanned aerial vehicles incorporating, or designed or modified to incorporate, aerosol dispensing systems/mechanisms, to add specific Technical Notes to describe what is meant by an aerosol dispensing system/mechanism, and to note that 9A120 does not control

model aircraft specially designed for recreational or competition purposes.

ECCN 9B106 is amended by deleting the imperial measurements of 223 K and 398 K in subparagraphs a.2.b. and b.2.b in favor of only listing the control parameters in terms of metric measurements. This change is being made because metric measurements are more commonly used by industry. (MTCR Annex Category II: Item 15(B)(4)) This rule change also adds a new note 2 to ECCN 9B106 to clarify the meaning of the term bare table in the context of MTCR-controlled environmental chambers. Before this rule, there was some question by the public regarding what constituted a bare table. This additional note will clarify that a bare table means “a flat table, or surface, with no fixture or fittings.” (MTCR Annex Category II: Item 15(B) Technical Note)

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on July 31, 2006, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before August 30, 2006. Any such items not actually exported or reexported before midnight, on August 30, 2006, require a license in accordance with this rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 2, 2005, 70 FR 45273 (August 5, 2005), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget

Control Number. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, “Multi-Purpose Application,” which carries a burden hour estimate of 58 minutes for a manual or electronic submission. BIS anticipates a slight decrease in license applications submitted as a result of this rule.

3. This rule does not contain policies with federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Timothy Mooney, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 740, 772 and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; Sec. 901-911, Pub. L. 106-387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 2. Section 740.2 is amended by redesignating the text of paragraph (a)(5) as paragraph (a)(5)(i) and adding new paragraph (a)(5)(ii) to read, as follows:

§ 740.2 Restrictions on all License Exceptions.

- (a) * * *
- (5) * * *

(ii) MT controlled commodities described in ECCN 2A001 may be exported or reexported under § 740.9(a)(2)(ii) (License Exception TMP) or § 740.10 (License Exception RPL) as one-for-one replacement for equipment previously legally exported or reexported.

* * * * *

PART 772—[AMENDED]

■ 3. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 4. Section 772.1 is amended by adding, in alphabetical order, the definitions of “repeatability” and “production facilities”, as set forth below:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

“Production Facilities”. (MTCR Context only) (Cat 7 and 9)—Means equipment and specially designed software therefor integrated into installations for development or for one or more phases of production.

* * * * *

“Repeatability”. (MTCR Context only) (Cat 7)—According to IEEE Standard 528-2001 as follows: “The closeness of agreement among repeated measurements of the same variable under the same operating conditions when changes in conditions or non-operating periods occur between measurements”.

* * * * *

PART 774—[AMENDED]

■ 5. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 et seq.; 22 U.S.C. 287c, 22 U.S.C. 3201 et seq., 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42

U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901-911, Pub. L. 106-387; Sec. 221, Pub. L. 107-56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms” & “Toxins”, Export Control Classification Number (ECCN) 1C101 is amended by revising the Heading, to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

1C101 Materials for Reduced Observables Such as Radar Reflectivity, Ultraviolet/Infrared Signatures and Acoustic Signatures (i.e., Stealth Technology), Other Than Those Controlled by 1C001, for Applications Usable in Missiles and Their Subsystems

* * * * *

■ 7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms” & “Toxins”, Export Control Classification Number (ECCN) 1C107 is amended by revising the Heading and the “items” paragraph in the List of Items Controlled section, to read as follows:

1C107 Graphite and Ceramic Materials, Other Than Those Controlled by 1C007, Which Can be Machined to Any of the Following Products as Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Fine grain graphites with a bulk density of 1.72 g/cm³ or greater, measured at 15 °C, and having a grain size of 100 micrometers or less, usable for rocket nozzles and reentry vehicle nose tips as follows:

- a.1. Cylinders having a diameter of 120 mm or greater and a length of 50 mm or greater;
- a.2. Tubes having an inner diameter of 65 mm or greater and a wall thickness of 25 mm or greater and a length of 50 mm or greater;
- a.3. Blocks having a size of 120 mm x 120 mm x 50 mm or greater.
- b. Pyrolytic or fibrous reinforced graphites, usable for rocket nozzles and reentry vehicle nose tips;
- c. Ceramic composite materials (dielectric constant is less than 6 at any

frequency from 100 MHz to 100 GHz), for use in missile radomes; and

d. Bulk machinable silicon-carbide reinforced unfired ceramic, usable for nose tips.

■ 8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A101 is amended by revising the Heading and the “items” paragraph of the List of Items Controlled section, to read as follows:

7A101 Linear Accelerometers, Other Than Those Controlled by 7A001 (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Designed for use in inertial navigation systems or in guidance systems of all types, usable in “missiles” having all of the following characteristics, and specially designed components therefore:

- 1. ‘Scale factor’ ‘repeatability’ less (better) than 1250 ppm; and
- 2. ‘Bias’ ‘repeatability’ less (better) than 1250 micro g.

Note: The measurement of ‘bias’ and ‘scale factor’ refers to one sigma standard deviation with respect to a fixed calibration over a period of one year.

■ 9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A102 is amended by revising the Heading, to read as follows:

7A102 All Types of Gyros, Other Than Those Controlled by 7A002, Usable in Missiles, With a Rated “Drift Rate” “Stability” of Less Than 0.5° (1 Sigma or rms) per Hour in a 1 g Environment and Specially Designed Components Therefor

* * * * *

■ 10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A103 is amended by revising the “items” paragraph of the List of Items Controlled section, to read as follows:

7A103 Instrumentation, Navigation Equipment and Systems, Other Than Those Controlled by 7A003, and Specially Designed Components Therefor

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Inertial or other equipment using accelerometers or gyros controlled by 7A001, 7A002, 7A101 or 7A102 and systems incorporating such equipment;

Note: 7A103.a does not control equipment containing accelerometers specially designed and developed as MWD (Measurement While Drilling) sensors for use in down-hole well services operations.

b. Integrated flight instrument systems, which include gyrostabilizers or automatic pilots, designed or modified for use in missiles.

c. Integrated Navigation Systems, designed or modified for use in "missiles" and capable of providing a navigational accuracy of 200m Circular Error Probable (CEP) or less.

Technical Note: An 'integrated navigation system' typically incorporates the following components:

1. An inertial measurement device (e.g., an attitude and heading reference system, inertial reference unit, or inertial navigation system);
2. One or more external sensors used to update the position and/or velocity, either periodically or continuously throughout the flight (e.g., satellite navigation receiver, radar altimeter, and/or Doppler radar); and
3. Integration hardware and software.

■ 11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, is amended by adding Export Control Classification Number (ECCN) 9A103 immediately following ECCN 9A101, to read as follows:

9A103 Liquid Propellant Tanks Specially Designed for the Propellants Controlled in ECCNs 1C011, 1C111 or Other Liquid Propellants Used in "Missiles." (These Items Are Subject to the Export Licensing Authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

■ 12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9A120 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

9A120 Complete Unmanned Aerial Vehicles, Not Specified in 9A012, Having All of the Following

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Having any of the following:

a.1. An autonomous flight control and navigation capability; or

a.2. Capability of controlled-flight out of the direct vision range involving a human operator; and

b. Having any of the following:

b.1. Incorporating an aerosol dispensing system/mechanism with a capacity greater than 20 liters; or

b.2. Designed or modified to incorporate an aerosol dispensing system/mechanism with a capacity of greater than 20 liters.

Note: 9A120 does not control model aircraft, specially designed for recreational or competition purposes.

Technical Notes:

1. An aerosol consists of particulate or liquids other than fuel components, by-products or additives, as part of the payload to be dispersed in the atmosphere. Examples of aerosols include pesticides for crop dusting and dry chemicals for cloud seeding.
2. An aerosol dispensing system/mechanism contains all above devices (mechanical, electrical, hydraulic, etc.), which are necessary for storage and dispersion of an aerosol into the atmosphere. This includes the possibility of aerosol injection into the combustion exhaust vapor and into the propeller slip stream.

■ 13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9B106 is amended by revising the "items" paragraph in the List of Items Controlled section, to read as follows:

9B106 Environmental Chambers and Anechoic Chambers, as Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Environmental chambers capable of simulating all of the following flight conditions:

a.1. Vibration environments equal to or greater than 10 g rms, measured 'bare table', between 20 Hz and 2,000 Hz imparting forces equal to or greater than 5 kN; and

a.2. Any of the following:

a.2.a. Altitude equal to or greater than 15,000 m; or

a.2.b. Temperature range of at least -50 °C to +125 °C;

Technical Notes:

1. Item 9B106.a.2.a describes systems that are capable of generating a vibration environment with a single wave (e.g., a sine wave) and systems capable of generating a broad band random vibration (i.e., power spectrum).

2. The term 'bare table' means a flat table, or surface, with no fixture or fittings.

b. Environmental chambers capable of simulating all of the following flight conditions:

b.1. Acoustic environments at an overall sound pressure level of 140 dB or greater (referenced to 2×10^{-5} N/m²) or with a total rated acoustic power output of 4kW or greater; and

b.2. Any of the following:

b.2.a. Altitude equal to or greater than 15,000 m; or

b.2.b. Temperature range of at least -50 °C to +125 °C.

Dated: July 27, 2006.

Matthew S. Borman,

Deputy Assistant Secretary, for Export Administration.

[FR Doc. E6-12072 Filed 7-28-06; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

The Commerce Control List

CFR Correction

In Title 15 of the Code of Federal Regulations, Parts 300 to 799, revised as of January 1, 2006, on page 772, Supplement I to Part 774 is corrected by reinstating Export Control Classification Number 7A101 to Category 7 to read as follows:

PART 774—THE COMMERCE CONTROL LIST

* * * * *

Category 7—Navigation and Avionics

* * * * *

7A101 ACCELEROMETERS, OTHER THAN THOSE CONTROLLED BY 7A001, WITH A THRESHOLD OF 0.05 G OR LESS, OR A LINEARITY ERROR WITHIN 0.25% OF FULL SCALE OUTPUT, OR BOTH, WHICH ARE DESIGNED FOR USE IN INERTIAL NAVIGATION SYSTEMS OR IN GUIDANCE SYSTEMS OF ALL TYPES AND SPECIALLY DESIGNED COMPONENTS THEREFOR.

License Requirements

Reason for Control: MT, AT

<i>Control(s)</i>	<i>Country Chart</i>
MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: \$ value

Related Controls: This entry does not control accelerometers which are specially designed and developed as MWD (Measurement While Drilling) sensors for use in downhole well service operations.

Related Definitions: N/A

Items: The list of items is included in the entry heading.

[FR Doc. 06-55524 Filed 7-28-06; 8:45 am]

BILLING CODE 1505-01-D

FEDERAL TRADE COMMISSION**16 CFR Part 310**

RIN 3084-0098

Telemarketing Sales Rule Fees

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (the "Commission" or "FTC") is issuing this Final Rule to amend section 310.8 ("the Final Amended Fee Rule") of the FTC's Telemarketing Sales Rule ("TSR") by revising the fees charged to entities accessing the National Do Not Call Registry ("the Registry").

DATES: *Effective Date:* Revised section 310.8 will become effective September 1, 2006.

ADDRESSES: Requests for copies of this Final Fee Rule should be sent to: Public Reference Branch, Federal Trade Commission, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The complete public record of this proceeding is also available at that address. Copies of this Final Fee Rule are also available on the Internet at: <http://www.ftc.gov/bcp/rulemaking/tsr/tsrrulemaking/index.htm>.

FOR FURTHER INFORMATION CONTACT: John A. Krebs, (202) 326-3747, Division of Planning & Information, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The amended rule increases the annual fee for access to the Registry for each area code of data to \$62 per area code, or \$31 per area code of data during the second six months of an entity's annual subscription period. The maximum amount that would be charged to any single entity for accessing 280 area codes of data or more is increased to \$17,050. In addition, the amended rule retains the provisions regarding free access by "exempt" organizations, as well as free access to the first five area codes of data by all entities.

Statement of Basis And Purpose**I. Background**

On December 18, 2002, the Commission issued final amendments to the Telemarketing Sales Rule, which, *inter alia*, established the National Do Not Call Registry, permitting consumers to register, via either a toll-free telephone number or the Internet, their preference not to receive certain telemarketing calls ("Amended TSR").¹ Under the Amended TSR, most telemarketers are required to refrain from calling consumers who have placed their numbers on the Registry.² Telemarketers must periodically access the Registry to remove from their telemarketing lists the telephone numbers of those consumers who have registered.³

Shortly after issuance of the Amended TSR, Congress passed The Do-Not-Call Implementation Act ("the Implementation Act").⁴ The Implementation Act gave the Commission the specific authority to "promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the 'do-not-call' registry of the [TSR]. * * * No amounts shall be collected as fees pursuant to this section for such fiscal years except to the extent provided in advance in appropriations Acts. Such amounts shall be available * * * to offset the costs of activities and services related to the implementation and enforcement of the [TSR], and other activities resulting from such implementation and enforcement."⁵

On July 29, 2003, pursuant to the Implementation Act, Telemarketing Fraud and Abuse Prevention Act ("the Telemarketing Act"),⁶ and the

Consolidated Appropriations Resolution, 2003,⁷ the Commission issued a Final Rule further amending the TSR to impose fees on entities accessing the National Do Not Call Registry ("the Original Fee Rule").⁸ Those fees were based on the FTC's best estimate of the number of entities that would be required to pay for access to the Registry, and the need to raise \$18.1 million in Fiscal Year 2003 to cover the costs associated with the implementation and enforcement of the "do-not-call" provisions of the Amended TSR. The Commission determined that the fee structure would be based on the number of different area codes of data that an entity wished to access annually. The Original Fee Rule established an annual fee of \$25 for each area code of data requested from the Registry, with the first five area codes of data provided at no cost.⁹ The maximum annual fee was capped at \$7,375 for entities accessing 300 area codes of data or more.¹⁰

On July 30, 2004, pursuant to the Implementation Act, the Telemarketing Act, and the Consolidated Appropriations Act, 2004,¹¹ the Commission issued a revised Final Rule further amending the TSR and increasing fees on entities accessing the National Do Not Call Registry ("the 2004 Fee Rule").¹² Those fees were based on the FTC's experience through June 1, 2004, its best estimate of the number of entities that would be required to pay for access to the Registry, and the need to raise \$18 million in Fiscal Year 2004 to cover the costs associated with the implementation and enforcement of the "do-not-call" provisions of the Amended TSR. The Commission determined that the fee structure would continue to be based on the number of different area codes of data that an entity wished to access annually. The

⁷ Pub. L. 108-7, 117 Stat. 11 (2003).

⁸ 68 FR 45134 (July 31, 2003).

⁹ Once an entity requested access to area codes of data in the Registry, it could access those area codes as often as it deemed appropriate for one year (defined as its "annual period"). If, during the course of its annual period, an entity needed to access data from more area codes than those initially selected, it would be required to pay for access to those additional area codes. For purposes of these additional payments, the annual period was divided into two semi-annual periods of six-months each. Obtaining additional data from the Registry during the first semi-annual, six-month period required a payment of \$25 for each new area code. During the second semi-annual, six-month period, the charge for obtaining data from each new area code requested during that six-month period was \$15. These payments would provide the entity access to those additional area codes of data for the remainder of its annual period.

¹⁰ 68 FR at 45141.

¹¹ Pub. L. 108-199, 118 Stat. 3 (2004).

¹² 69 FR 45580 (July 30, 2004).

¹ 68 FR 4580 (Jan. 29, 2003).

² 16 CFR 310.4(b)(1)(iii)(B).

³ 16 CFR 310.4(b)(3)(iv). The Amended TSR requires telemarketers to access the Registry at least once every 31 days, effective January 1, 2005. See 69 FR 16368 (Mar. 29, 2004).

⁴ Pub. L. 108-10, 117 Stat. 557 (2003).

⁵ *Id.*

⁶ 15 U.S.C. 6101-08.

2004 Fee Rule established an annual fee of \$40 for each area code of data requested from the Registry, with the first five area codes of data provided at no cost.¹³ The maximum annual fee was capped at \$11,000 for entities accessing 280 area codes of data or more.¹⁴

On July 27, 2005, pursuant to the Implementation Act, the Telemarketing Act, and the Consolidated Appropriations Act, 2005,¹⁵ the Commission issued a revised Final Rule further amending the TSR and increasing fees on entities accessing the National Do Not Call Registry (“the 2005 Fee Rule”).¹⁶ These fees were based on the FTC’s experience through June 1, 2005, its best estimate of the number of entities that would be required to pay for access to the Registry, and the need to raise \$21.9 million in Fiscal Year 2005 to cover the costs associated with the implementation and enforcement of the “do-not-call” provisions of the Amended TSR. The Commission again determined that the fee structure would be based on the number of different area codes of data that an entity wished to access annually. The 2005 Fee Rule established an annual fee of \$56 for each area code of data requested from the Registry, with the first five area codes of data provided at no cost.¹⁷ The maximum annual fee was capped at \$15,400 for entities accessing 280 area codes of data or more.¹⁸

In the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 (“the 2006 Appropriations Act”),¹⁹ Congress directed the FTC to collect offsetting fees in the amount of \$23 million in Fiscal Year 2006 to implement and enforce the Amended TSR.²⁰ Pursuant to the 2006 Appropriations Act and the Implementation Act, as well as the Telemarketing Act, the FTC issued a Notice of Proposed Rulemaking to amend the fees charged to entities accessing the Registry (“the 2006 Fee Rule NPR”).²¹

In the 2006 Fee Rule NPR, the Commission proposed revising the fees

for access to the Registry in order to raise \$23 million to offset costs the FTC expects to incur in this Fiscal Year for purposes related to implementing and enforcing the “do-not-call” provisions of the Amended TSR. Based on the number of entities that had accessed the Registry through the end of February 2006, the Commission proposed revising the fees to \$62 annually and \$31 during the second six months of an entity’s annual subscription period for each area code of data requested from the Registry, with the first five area codes of data provided at no cost. As a consequence of the increase in the per-area-code charge, the maximum annual fee would increase to \$17,050 for entities accessing 280 area codes of data or more.²²

In the 2006 Fee Rule NPR, the Commission sought comment on the following issues relating to the proposed amendment:

(1) Whether entities accessing the Registry should continue to obtain the first five area codes of data for free;²³

(2) Whether “exempt” organizations should continue to be provided with free access to the Registry;²⁴

(3) The number and type of small businesses that may be subject to the revised fees;²⁵ and

(4) Whether there are any significant alternatives that would further minimize the impact of the rule on small entities, consistent with the objectives of the Telemarketing Act, the 2006 Appropriations Act, the Implementation Act, and the Regulatory Flexibility Act.²⁶

In response to the 2006 Fee Rule NPR, the Commission received twelve comments.²⁷ The amended rule,

²² *Id.* at 25514.

²³ *Id.* at 25514–5.

²⁴ *Id.* at 25515. The 2006 Fee Rule NPR, the 2005 Fee Rule, the 2004 Fee Rule, and the Original Fee Rule stated that “there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing the National Do Not Call Registry without being required to under this Rule, 47 CFR 64.1200, or any other federal law.” 16 CFR 310.8(c). Such “exempt” organizations include entities that engage in outbound telephone calls to consumers to induce charitable contributions, for political fund raising, or to conduct surveys. They also include entities engaged solely in calls to persons with whom they have an established business relationship or from whom they have obtained express written agreement to call, pursuant to 16 CFR 310.4(b)(1)(iii)(B)(i) or (ii), and who do not access the National Registry for any other purpose. See 71 FR at 25514; 70 FR at 43275; 69 FR at 45585–6; and 68 FR at 45144.

²⁵ 71 FR at 25515.

²⁶ *Id.*

²⁷ A list of the commenters in this proceeding, and the acronyms used to identify each, is attached hereto as an appendix. Comments submitted in response to the 2006 Fee Rule NPR will be cited in this Notice as “[Acronym of Commenter] at [page number].”

comments, and the basis for the Commission’s decision on the various recommendations are analyzed in detail below.

II. The Amended Rule

Based on the 2006 Appropriations Act, the Implementation Act, and the Telemarketing Act, as well as its review of the record in this proceeding, and on its law enforcement experience in this area, the Commission has decided to modify the fees required under the TSR Fee Rule. Under the amended rule provisions adopted herein, the annual fee for accessing the Registry will increase from \$56 per area code to \$62 per area code, and from a maximum of \$15,400 to \$17,050 for access to 280 area codes of data or more. The fee for accessing area codes during the second six months of an entity’s annual subscription period also will increase, from \$28 to \$31. Further, the Commission has decided to continue to provide all organizations with free access to the first five area codes of data, and has decided to continue to provide “exempt” organizations with free access to the Registry, as well.

III. Discussion of Comments

The Commission received twelve comments in response to the 2006 Fee Rule NPR. Of the twelve comments received, one comment was from a consumer who wanted to be added to the Registry.²⁸ Two comments were from consumers who supported the increase in fees.²⁹ The remaining nine comments were submitted by a mix of business and industry commenters, all of whom were opposed to the increase in fees, but who were divided on whether the Commission should eliminate the number of free area codes provided. In addressing the specific issues posed by the Commission, the commenters submitted only limited data or information that differed from that submitted in connection with earlier fee rulemakings. Instead, the comments primarily relied on information provided by the FTC as part of its 2006 Fee Rule NPR, and/or in previous rulemaking proceedings. Similarly, the primary arguments submitted in response to the 2006 Fee Rule NPR’s proposal to raise fees have also been considered previously by the Commission.

While most of the comments submitted represented views previously considered, some of the comments raised new points. For example, one commenter stated that the prohibition

²⁸ See JJ at 1.

²⁹ See BAS at 1, and S at 1.

¹³ *Id.* at 45584. The 2004 Fee Rule had the same fee structure as the Original Fee Rule. However, fees were increased from \$25 to \$40 per area code for the annual period and from \$15 to \$20 per area code for the second six-month period.

¹⁴ *Id.*

¹⁵ Pub. L. 108–447, 118 Stat. 2809 (2004).

¹⁶ 70 FR 43273 (July 27, 2005).

¹⁷ *Id.* at 43275. The 2005 Fee Rule had the same fee structure as the 2004 Fee Rule, except that the fees were increased from \$40 to \$56 per area code for the annual period and from \$20 to \$28 per area code for the second six-month period.

¹⁸ *Id.*

¹⁹ Pub. L. 109–108, 119 Stat. 2290 (2005).

²⁰ *Id.* at 2330.

²¹ 71 FR 25512 (May 1, 2006).

against entities cooperating and sharing the expense of subscribing to the Registry creates a burden for small businesses.³⁰ Still other commenters raised issues beyond the scope of this Notice, such as the impact of the “do-not-call” provisions of the Amended TSR on local economies, and criticism of the technical operation of the Registry.³¹

The major themes that emerged from the record are summarized below.

A. Five Free Area Codes of Data

In the 2006 Fee Rule NPR, the Commission proposed, at least for the next annual period, to continue allowing all entities accessing the Registry to obtain the first five area codes of data for free.³² The Commission proposed to continue allowing such free access in the Original Fee Rule, the 2004 Fee Rule, and the 2005 Fee Rule, “to limit the burden placed on small businesses that only require access to a small portion of the national registry.”³³ The Commission noted, as it has in the past, that such a fee structure was consistent with the mandate of the Regulatory Flexibility Act,³⁴ which requires that to the extent, if any, a rule is expected to have a significant economic impact on a substantial number of small entities, agencies should consider regulatory alternatives to minimize such impact. As stated in the prior fee rules, “the Commission continues to believe that providing access to five area codes of data for free is an appropriate compromise between the goals of equitably and adequately funding the

national registry, on one hand, and providing appropriate relief for small businesses, on the other.”³⁵ In addition, requiring over 57,800 entities to pay a small fee for access to five or fewer area codes of data from the Registry would place a significant burden on the Registry, requiring the expenditure of even more resources to handle properly that additional traffic.³⁶

The Commission received four comments that addressed the issue of five free area codes of data. Three of the commenters agreed that defining a small business as one that accesses five area codes or less of data excludes certain small businesses that either operate in a large metropolitan area or whose business is not limited to a small geographic market area.³⁷ As one commenter put it:

[S]mall businesses * * * often have the need to call a limited number of consumers who reside in a variety of states and/or area codes beyond their primary five area code calling region * * * It is common for these small businesses to find themselves forced to pay for access to a number of additional area codes in order to research a single phone number in each area code. At the same time, a large company who relies heavily on telemarketing, and makes thousands of calls to consumers but limits these calls to within the five-code area, does not have to pay a fee.³⁸

Another commenter pointed out that a large, publicly traded home product retailer in Colorado may access “the entire state of Colorado in preparation for a telemarketing campaign at no charge, while a truly small business operating in New York City may incur charges to access the fourteen area codes that comprise the State of New York, and this does not include the vicinal area codes of neighboring New Jersey and Connecticut.”³⁹

The commenters, however, differed on how to solve the problem. Two of the commenters supported continuing to allow all entities access to five area codes of data at no cost.⁴⁰ DMA noted that the fact that small businesses are able to access up to five area codes of data at no cost encourages their compliance.⁴¹ NADA stated that removing the five area code exemption would disproportionately impact small businesses.⁴² The third commenter supported providing small businesses

with free access to the entire Registry.⁴³ The commenter cited information from the Small Business Administration’s Office of Advocacy, which claimed that “very small firms with fewer than 20 employees spend 60 percent more per employee than larger firms to comply with federal regulations.”⁴⁴

The fourth commenter proposed that the Commission impose a modest \$200 flat fee on all entities that subscribe to five or fewer area codes of data in lieu of increasing the fees on all entities that access the Registry.⁴⁵ The commenter argued that allowing entities to obtain the first five area codes of data from the Registry for free is inequitable, as it unfairly benefits those who place the greatest burden on the Registry.⁴⁶ The commenter noted that while the number of entities that have accessed the Registry over the past two years has increased, the number of entities required to pay for access has decreased.⁴⁷ According to the commenter, “[t]his structure permits entities subscribing to five area codes to save \$80 versus the \$280 fee they would incur if they paid \$56 per area code, thereby *minimizing* the effect of the regulation per the Regulatory Flexibility Act’s mandate.”⁴⁸ Assuming that the same number of entities would access five or fewer area codes of data at no cost in Fiscal Year 2006, the commenter contends that by charging these entities a \$200 flat fee, this alternative fee proposal will generate \$11,660,000 in revenue from these entities alone.⁴⁹

After considering all of the comments submitted in this proceeding, the Commission has determined to retain the provision allowing entities to access up to five area codes of data at no cost. Although the Commission continues to recognize that only a small percentage of the total number of entities accessing the Registry pay for that access, these figures also illustrate the large number of businesses—many of them likely

³⁰ See AN at 1. The Commission addressed the issue of entities sharing the cost of accessing the Registry in the Original Fee Rule. 68 FR at 45136–7. The Commission agreed with the FCC that allowing entities to share the information obtained from the Registry would threaten the financial support for maintaining the database. *Id.* at 45136. Moreover, as noted below, the Commission believes that providing all entities with access to five free area codes of data limits the burden placed on small businesses.

³¹ See SW at 1, DMA at 6. According to one commenter, telemarketers reported to the city of Branson, Missouri that because of the no-call lists fewer room nights and show tickets were purchased in 2005 than in 2002. SW at 1. On the technical front, another commenter stated that the Commission should remove telephone numbers from the Registry as soon as they are dropped or abandoned. DMA at 6. The commenter argued that when a telephone number is dropped or abandoned, it should be removed from the Registry promptly so that the new subscriber may receive telemarketing calls. *Id.* According to the commenter, this is the time when new subscribers are most interested in receiving calls regarding, for example, home alarm systems, home insurance, lawn care, and newspaper delivery. *Id.*

³² 71 FR at 25514.

³³ See 68 FR at 45140; 69 FR at 45582; and 70 FR at 43275.

³⁴ 5 U.S.C. 601.

³⁵ See 68 FR at 45141; 69 FR at 45584; and 70 FR at 43275–6.

³⁶ From May 2005 to June 2006, over 57,800 entities accessed five or fewer area codes of data.

³⁷ NAR at 1–2, ATA at 6–7, and DMA at 5.

³⁸ NAR at 1–2.

³⁹ ATA at 7.

⁴⁰ See DMA at 5, NADA at 1.

⁴¹ DMA at 5.

⁴² NADA at 1.

⁴³ NAR at 2. NAR also opposes any reduction of the number of area codes provided at no cost.

⁴⁴ NAR at 2. See also SW at 1 (arguing that the fee increase penalizes small businesses). As stated in the 2006 Fee Rule NPR, this alternative would require entities seeking an exemption from the fees to submit information, such as their annual revenues, to demonstrate that they meet the statutory threshold to be classified a small business and exempt from the fees. 71 FR at 25516.

⁴⁵ ATA at 5. The commenter also recommended that all entities pay \$200 for the first five area codes of data that they access.

⁴⁶ *Id.* at 3.

⁴⁷ *Id.*

⁴⁸ *Id.* at 5 (emphasis in original).

⁴⁹ *Id.* at 6. The commenter further points out that by charging entities that access more than five area codes \$200 for the first five area codes of data they access, the Commission can raise an additional \$1,300,000.

small businesses—that likely would be adversely affected by a change in the number of area codes of data provided at no cost. In fact, over 57,800 entities have accessed five or fewer area codes of data from the Registry. It is true that a large seller that operates solely within five area codes may access the Registry at no cost in preparation for a large telemarketing campaign.⁵⁰ However, the Commission continues to believe, as observed in prior fee rules, that most entities accessing five or fewer area codes of data—realtors, car dealers, community-based newspapers, and other small businesses—are precisely the types of businesses that the Regulatory Flexibility Act requires the FTC to consider when adopting regulations.⁵¹ Moreover, the Commission again finds significant the information submitted by commenters discussing the disproportionate impact compliance with the “do-not-call” regulations may have on small businesses. In order to lessen that impact, the Commission believes that retaining the five free area code provision at least for the next annual period is appropriate.

The Commission does not believe that the alternatives suggested would be as effective in minimizing the impact of the “do-not-call” regulations on small businesses, and that these proposed alternatives may create undue burdens that the current system does not impose. For example, the suggestion to eliminate the number of area codes of data provided at no cost would result in tens of thousands of entities—that are likely small businesses—having to pay to access the Registry. While, to some, such a fee might seem modest, it nonetheless would represent an increase in costs to more than 57,800 entities, most of whom already may be disproportionately impacted by other costs of complying with the “do-not-call” regulations. In contrast, the suggestion to charge a flat fee of \$200 on all entities that subscribe to five or fewer area codes of data actually would result in tens of thousands of entities that access less than four area codes of data paying proportionally more per area code for access than other entities.⁵² Alternatively, the suggestion to base the fees on the actual size of the

entity requesting access would, as noted in prior rulemakings, require all entities to submit sensitive data concerning annual income, number of employees, or other similar factors. It also would require the FTC to develop an entirely new system to gather that information, maintain it in a proper manner, and investigate those claims to ensure proper compliance. As the Commission has previously stated, such a system “would present greater administrative, technical, and legal costs and complexities than the Commission’s current exemptive proposal, which does not require any proof or verification of that status.”⁵³ As a result, the Commission continues to believe that the most appropriate and effective method to minimize the impact of the Rule on small businesses is to provide access to a certain number of area codes of data at no cost.

The comments also do not provide any new information to support a change in the number of area codes provided at no cost. Thus, the Commission does not believe that any change in the current level of five free area codes is necessary or appropriate. The Commission continues to recognize that reducing the number of free area codes would result in slightly lower fees charged to the entities that must pay for access. At the same time, however, as noted previously, such a change also would likely result in increased costs to thousands of small businesses. On the other hand, the Commission is not persuaded that it should increase the number of area codes provided at no cost, although it continues to recognize that some small businesses located in large metropolitan areas or those whose businesses are not limited to small geographic areas may need to make calls to more than five area codes. Obviously, increasing the number of area codes provided at no cost would decrease the pool of paying entities, and further increase the fees these entities must pay. As a result, the Commission continues to believe that allowing all entities to gain access to the first five area codes of data from the Registry at no cost is appropriate.

B. Exempt Entity Access

In the 2006 Fee Rule NPR, the Commission also proposed to continue allowing “exempt” organizations to obtain free access to the Registry.⁵⁴ The Commission stated its belief that any exempt entity, voluntarily accessing the Registry to avoid calling consumers who

do not wish to receive telemarketing calls, should not be charged for such access.⁵⁵ Charging such entities access fees, when they are under no legal obligation to comply with the “do-not-call” requirements of the Amended TSR, may make them less likely to obtain access to the Registry in the future, resulting in an increase in unwanted calls to consumers.⁵⁶

No comments directly addressed this issue.⁵⁷ Accordingly, the Commission continues to believe that if it charged exempt entities for access to the Registry, many, if not most, of those entities would no longer seek access. As a result, as noted in prior fee rules, registered consumers would receive an increase in the number of unwanted telephone calls. Exempt entities are, by definition, under no legal obligation to access the Registry. Many are outside the jurisdiction of the FTC. They are voluntarily accessing the Registry in order to avoid calling consumers whose telephone numbers are registered. They should be encouraged to continue doing so, rather than be charged a fee for their efforts. The Commission will, therefore, continue to allow such exempt entities to access the Registry at no cost, after they have completed the required certification.

C. Imposition of the Fees and Use of the Funds

While the business and industry member commenters disagreed on whether access to five area codes of data should continue to be provided at no cost, they were unanimous in their opposition to the increase in fees for access to the National Do Not Call Registry.⁵⁸

Generally, these commenters argued that it would be unfair to continue raising fees given the fee increases over the last few years.⁵⁹ One commenter noted that:

The Commission initially indicated its belief that it would cost a few thousand dollars per telemarketer to obtain access to the national registry. By the time the Commission made the registry available, the cost for access had already increased to

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ As part of its alternative fee proposal referenced above, ATA stated that it “acknowledges the Commission’s reluctance to impose access charges on exempt entities. Without commenting on the substance of this policy, ATA’s proposal similarly avoids charging these entities for access to the [Registry]. However, future circumstances may dictate that these entities be charged at some point in time.” ATA at 5 n. 17.

⁵⁸ As noted above, two consumers supported the increase in fees. See BAS at 1, and S at 1.

⁵⁹ See TT at 1, NN at 1, AN at 1, ATA at 4–5, DMA at 2, and NAR at 1.

⁵⁰ See ATA at 7.

⁵¹ The comments submitted in response to the 2006 Fee Rule NPR do not offer any information or data to contradict this assertion. In fact, two of the commenters that represent these very entities support the provision allowing entities to access up to five area codes of data at no cost. See NAR at 1, and NADA at 1.

⁵² The commenters offered no other alternative fee structures.

⁵³ See 70 FR 43277, 69 FR at 45583. See also 68 FR at 16243 n.53.

⁵⁴ 71 FR at 25515.

\$7,250. Less than a year later, the Commission increased fees 68% to \$11,000. The following year, the Commission increased fees by 40% to \$15,400. Now yet again, the Commission proposes an 11% increase to \$17,050.⁶⁰

The commenter noted that “[o]ther than reflecting the increase in the annual congressional authorization from \$21.9 million to \$23 million, the Commission provides no justification for any increase in these fees.”⁶¹

In the 2006 Fee Rule NPR, the Commission analyzed information available at that time, and issued a proposal that reflected both the amount that needed to be raised,⁶² along with the number of area codes that were projected to be purchased. As a result, the fees that were proposed in the 2006 Fee Rule NPR represented an increase over the fees adopted in the 2005 Fee Rule. The increase in the amount of funding required to cover the cost to implement and enforce the Registry, while a component of the fee increase, is not the only component. As in prior fee rule proceedings, another factor that influenced the increase proposed in the 2006 Fee Rule NPR was the number of area codes of data that were purchased the prior year by entities accessing the Registry. The fees that the Commission proposed in the 2006 Fee Rule NPR reflect both the amount of funds necessary to implement and enforce the Registry, as well as the number of area codes that the Commission assumes will be purchased by entities accessing the Registry, based on the Commission’s current experience.

In addition, two commenters further argued that there is no justification for the fee increase given the costs and economies of scale associated with operating the Registry.⁶³ Another commenter was concerned “that fees are being used for telemarketing enforcement based on fraud or other violations of the TSR, where there may also be incidental violation of the registry.”⁶⁴ The commenter further contended that “[s]uch enforcement actions should not be funded by registry fees when they otherwise would have been funded from other enforcement budgets prior to the existence of the

registry.”⁶⁵ The commenter also noted the Commission’s statements regarding industry’s high rate of compliance, and argued that it is unfair to continue increasing fees and imposing enforcement costs on the very organizations that are most compliant with the rules.⁶⁶

Consistent with the Implementation Act, and as stated in previous fee rules, the Commission has limited the amount of fees to be collected to those needed to implement and enforce the “do-not-call” provisions of the Amended TSR. The amount of fees collected pursuant to this revised rule is intended to offset costs in the following three areas: first, funds are required to operate the Registry. This includes items such as handling consumer registration and complaints, telemarketer access to the Registry, state access to the Registry, and the management and operation of law enforcement access to appropriate information.⁶⁷ Second, funds are required for law enforcement efforts, including identifying targets, coordinating domestic and international initiatives, challenging alleged violators, and consumer and business education efforts, which are critical to securing compliance with the Amended TSR. These law enforcement efforts are a significant component of the total costs, given the large number of ongoing investigations currently being conducted by the agency, and the substantial effort necessary to complete such investigations. Third, funds are required to cover ongoing agency infrastructure and administration costs associated with the operation and enforcement of the registry, including information technology structural supports and distributed mission overhead support costs for staff and non-personnel expenses such as office space, utilities, and supplies.

In addition, one commenter expressed opposition to any increase in fees that might be attributable to the inclusion of wireless telephone numbers on the Registry, stating that:

⁶⁵ *Id.*

⁶⁶ *Id.* at 4. DMA further stated their belief that “it is inappropriate for entities that comply with the law to bear the enforcement costs of the FTC. If the do-not-call registry is as successful as the FTC indicates, the FTC itself or Congress should provide any additional necessary funding increases over the current fee structure.” DMA at 4.

⁶⁷ From June 2005 to May 2006, over 43 million phone numbers were added to the Registry, with a total since inception of approximately 124 million registrations. Since inception, the registry has also handled many requests from organizations wishing to access the registry (e.g. telemarketers, states, and law enforcers), including hundreds of thousands of subscription requests, and millions of area code access requests (including downloads and interactive search requests).

Telemarketing calls to wireless numbers without consent are prohibited under the FCC’s rules implementing the Telephone Consumer Protection Act of 1991 (“TCPA”), 47 U.S.C. 227 *et seq.* Thus, as a legal matter, consumers receive no fewer telemarketing calls by placing their wireless numbers on the registry. Because such calls already are prohibited in the first instance, there is no basis for allowing such numbers to be placed on the registry.⁶⁸

However, as noted in the 2005 Fee Rule, this commenter overstated the nature of the prohibition enacted by the Federal Communication Commission (“FCC”). The FCC’s prohibitions on telemarketing calls placed to wireless telephone numbers proscribe the use of an “automatic telephone dialing system or an artificial or prerecorded message” to place such calls.⁶⁹ While the Commission recognizes that many telemarketers use automated dialers to contact consumers, not all telemarketers use such technology. In addition, the Amended TSR’s prohibitions concerning fraudulent or abusive telemarketing acts or practices apply to both land line and wireless telephones, and the Registry has never differentiated between the two. At this point, the Commission sees no reason to make such a distinction.

Accordingly, the Commission concludes that an increase in fees is necessary.

IV. Calculation of the Revised Fees

As previously stated, the Commission proposed in the 2006 Fee Rule NPR to increase the fees charged to access the National Do Not Call Registry to \$62 annually for each area code of data requested, with the maximum annual fee capped at \$17,050 for entities accessing 280 area codes of data or more. The Commission based this proposal on the total number of entities that accessed the Registry from March 1, 2005 through February 28, 2006.⁷⁰ The Commission noted, however, that it would adjust the final revised fee to reflect the actual number of entities that had accessed the Registry at the time of issuance of the Final Amended Fee Rule.⁷¹

⁶⁸ See DMA at 4–5.

⁶⁹ See FCC Telemarketing and Telephone Solicitation Rules, 47 CFR 64.1200 (2006).

⁷⁰ At that time, slightly less than 66,200 entities had accessed all or part of the information in the Registry. Approximately 1,300 of these entities were “exempt” and therefore had accessed the Registry at no charge. An additional 58,300 entities had accessed five or fewer area codes of data, also at no charge. As a result, approximately 6,500 entities had paid for access to the Registry, with slightly less than 1,000 entities having paid for access to the entire Registry. 71 FR 25514.

⁷¹ *Id.*

⁶⁰ See DMA at 2. See also AN at 1. Another commenter argued that the fees are already high enough given that areas are growing and adding new area codes. TT at 1.

⁶¹ DMA at 2.

⁶² The Commission views the current Congressional authorization as an instruction regarding the fees to be collected.

⁶³ See DMA at 2–3, and AN at 1. One commenter points out that the Commission’s 2003 contract with AT&T to establish and administer the database was \$3.5 million. DMA at 3.

⁶⁴ DMA at 3.

As of June 1, 2006, there have been no significant or material changes in the number of entities that have accessed the Registry since the Commission issued the 2006 Fee Rule NPR. Therefore, based on the figures contained in the 2006 Fee Rule NPR, and the need to raise \$23 million in fees to offset costs it expects to incur in this Fiscal Year for implementing and enforcing the “do-not-call” provisions of the Amended TSR, the Commission is revising the fees to be charged for access to the Registry as follows: the fee charged for each area code of data will be \$62 per year, with the first five area codes provided to each entity at no cost. The fee charged to entities requesting access to additional area codes of data during the second six months of their annual period will be \$31. “Exempt” organizations, as defined by the “do-not-call” regulations, will continue to be allowed access to the Registry at no cost. The maximum amount that will be charged any single entity will be \$17,050, which will be charged to any entity accessing 280 area codes of data or more.

The Commission establishes September 1, 2006, as the effective date for this rule change. Thus, the revised fees will be charged to all entities that renew their subscription account number after that date.

V. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act,⁷² the Office of Management and Budget (“OMB”) approved the information collection requirements in the Amended TSR and assigned OMB Control Number 3084–0097. The rule amendment, as discussed above, provides for an increase in the fees that are charged for accessing the National Do Not Call Registry. Therefore, the proposed rule amendment does not create any new recordkeeping, reporting, or third-party disclosure requirements that would be subject to review and approval by OMB pursuant to the Paperwork Reduction Act.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act⁷³ requires the FTC to provide an Initial Regulatory Flexibility Analysis (“IRFA”) with its proposed rule, and a Final Regulatory Flexibility Analysis (“FRFA”) with its final rule, unless the FTC certifies that the rule will not have a significant economic impact on a substantial number of small entities. As explained in the 2006 Fee Rule NPR and this Statement, the Commission hereby

certifies that it does not expect that its Final Amended Fee Rule will have the threshold impact on small entities. As discussed above, this amended rule specifically charges no fee for access to one to five area codes of data included in the Registry. As a result, the Commission anticipates that many small businesses will be able to access the Registry without having to pay any annual fee. Thus, it is unlikely that there will be a significant burden on small businesses resulting from the revised fees. Nonetheless, the Commission published an IRFA with the 2006 Fee Rule NPR, and is also publishing a FRFA with this Final Amended Fee Rule below, in the interest of further explaining its determination, even though the Commission believes that it is not required to publish such analysis.

A. Reasons for Consideration of Agency Action

The Final Amended Fee Rule has been considered and adopted pursuant to the requirements of the Implementation Act and the 2006 Appropriations Act, which authorize the Commission to collect fees sufficient to implement and enforce the “do-not-call” provisions of the Amended TSR.

B. Statement of Objectives and Legal Basis

As explained above, the objective of the Final Amended Fee Rule is to collect sufficient fees from entities that must access the National Do Not Call Registry. The legal authority for this Rule is the 2006 Appropriations Act, the Implementation Act, and the Telemarketing Act.

C. Description of Small Entities to Which the Rule Will Apply

The Small Business Administration has determined that “telemarketing bureaus” with \$6.5 million or less in annual receipts qualify as small businesses.⁷⁴ Similar standards, *i.e.*, \$6.5 million or less in annual receipts, apply for many retail businesses which may be “sellers” and subject to the proposed revised fee provisions set forth in this Final Amended Fee Rule. In addition, there may be other types of businesses, other than retail establishments, that would be “sellers” subject to this rule.

During the period June 1, 2005 to May 31, 2006, over 57,800 entities have accessed five or fewer area codes of data from the Registry at no charge. While not all of these entities may qualify as small businesses, and some small

businesses may be required to purchase access to more than five area codes of data, the Commission believes that this is the best estimate of the number of small entities that would be subject to this Final Amended Fee Rule. In any event, as explained elsewhere in this Statement, the Commission believes that, to the extent the Final Amended Fee Rule has an economic impact on small businesses, the Commission has adopted an approach that minimizes that impact to ensure that it is not substantial, while fulfilling the legal mandate of the Implementation Act and the 2006 Appropriations Act to ensure that the telemarketing industry supports the cost of the National Do Not Call Registry.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The information collection activities at issue in this Final Amended Fee Rule consist principally of the requirement that firms, regardless of size, that access the Registry submit minimal identifying and payment information, which is necessary for the agency to collect the required fees. The cost impact of that requirement and the labor or professional expertise required for compliance with that requirement were discussed in section V of the 2004 Fee Rule Notice of Proposed Rule Making, 69 FR 23701, 23704 (April 30, 2004).

As for compliance requirements, small and large entities subject to the revised fee rule will pay the same rates to obtain access to the National Do Not Call Registry in order to reconcile their calling lists with the phone numbers maintained in the Registry. As noted earlier, however, compliance costs for small entities are not anticipated to have a significant impact on small entities, to the extent the Commission believes that compliance costs for those entities will be largely minimized by their ability to obtain data for up to five area codes at no charge.

E. Duplication With Other Federal Rules

None.

F. Discussion of Significant Alternatives

The Commission discussed the proposed alternatives in Section III, above.

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

VII. Final Rule

■ Accordingly, for the reasons set forth above, the Federal Trade Commission amends part 310 of title 16 of the Code of Federal Regulations as follows:

⁷² 44 U.S.C. 3501–3520.

⁷³ 5 U.S.C. 604(a).

⁷⁴ See 13 CFR 121.201.

PART 310—TELEMARKETING SALES RULE

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108.

■ 2. Revise §§ 310.8(c) and (d) to read as follows:

§ 310.8 Fee for access to the National Do Not Call Registry.

* * * * *

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$62 per area code of data accessed, up to a maximum of \$17,050; *provided*, however, that there shall be no charge for the first five area codes of data accessed by any person, and *provided further*, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing the National Do Not Call Registry without being required under this Rule, 47 CFR 64.1200, or any other Federal law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) After a person, either directly or through another person, pays the fees set forth in § 310.8(c), the person will be provided a unique account number which will allow that person to access the registry data for the selected area codes at any time for twelve months following the first day of the month in which the person paid the fee (“the annual period”). To obtain access to additional area codes of data during the first six months of the annual period, the person must first pay \$62 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, the person must first pay \$31 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

* * * * *

By direction of the Commission.

Donald S. Clark,
Secretary.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix—List of Acronyms for Commenters to the TSR 2006 Fee Rule Proposal

Commenter	Acronym
1. AIMS	AIMS
2. American Teleservices Association.	ATA
3. Aplus.Net	AN
4. Barb Sachau	BAS
5. Direct Marketing Association, Inc.	DMA
6. Judy Johnson	JJ
7. National Association of Realtors.	NAR
8. National Automobile Dealers Association.	NADA
9. Nelnet	NN
10. Solberg	S
11. Summerwinds LLC	SW
12. Turnstyles Ticketing	TT

[FR Doc. E6–12252 Filed 7–28–06; 8:45 am]

BILLING CODE 6750–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 422

RIN 0960–AG25

Social Security Number (SSN) Cards; Limiting Replacement Cards

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: The interim final rules published at 70 FR 74649, on December 16, 2005, are adopted as final with only minor changes. These regulations reflect and implement amendments to the Social Security Act (the Act) made by part of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law (Pub. L.) 108–458. Section 7213(a)(1)(A) of Pub. L. 108–458 requires that we limit individuals to three replacement SSN cards per year and ten replacement SSN cards during a lifetime. The provision permits us to allow for reasonable exceptions from these limits on a case-by-case basis in compelling circumstances. This provision also helps us to further strengthen the security and integrity of the SSN issuance process.

DATES: These regulations are effective December 16, 2005.

FOR FURTHER INFORMATION CONTACT: Karen Cool, Social Insurance Specialist, Office of Income and Security Programs, 157 RRCC, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, ((410) 966–7094, or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-

free numbers, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

Background

Our previous regulations at 20 CFR 422.103(e), *Replacement of social security number card*, stated that:

- In the case of lost or damaged SSN card, a duplicate card bearing the same name and number may be issued, and
- In the case of a need to change the name on the card, a corrected card bearing the same number and the new name may be issued.

Furthermore, our previous regulations at 20 CFR 422.110(a) stated that an individual who wished to change his or her name or other personal identifying information previously submitted in connection with an application for an SSN card must prove his or her identity and may be required to provide other evidence. If a completed request and all applicable evidence are received for a change in name, a new SSN card with the new name and bearing the same number previously assigned will be issued to the person making the request.

Our previous regulations did not put any numerical limits on the number of replacement SSN cards an individual may obtain. Prior to the new statutory replacement SSN card limit, the only limitation on the issuance of replacement cards that could affect the number of replacements an individual could obtain had been a protocol in our electronic records that prevented the issuance of a replacement SSN card within seven days of a previous issuance.

Section 7213(a)(1)(A) of Pub. L. 108–458 (the Intelligence Reform and Terrorism Prevention Act of 2004), enacted on December 17, 2004, requires that we restrict the issuance of multiple replacement SSN cards to any individual to three replacement SSN cards per year and ten replacement cards for the life of the individual. The statute mandates implementation of the limits not later than one year after December 17, 2004. In applying these limits, we will not consider replacement social security number cards issued prior to December 16, 2005. The provision also states that we may allow for reasonable exceptions from the limits on a case-by-case basis in compelling circumstances. In order to

comply with this provision of Pub. L. 108-458, we revised §§ 422.103 and 422.110 of our regulations.

Explanation of Changes

Section 422.103 Social Security Numbers.

In these final rules, we are making a nonsubstantive change to § 422.103(c)(1) by replacing the word “duplicate” with the word “replacement” in that section. Although the interim final rules published on December 16, 2005 did not provide for this change to § 422.103(c)(1), the effect of this change is solely to make the terminology uniform throughout the section.

We revised § 422.103(e) of our regulations by restricting the number of replacement cards an individual may obtain both during a year and over a lifetime. These limits are set at three replacement SSN cards in a year and ten per lifetime. However, as permitted by section 7213(a)(1)(A) of Pub. L. 108-458, we may allow for reasonable exceptions to these limits on a case-by-case basis in compelling circumstances. We are allowing exceptions for name changes and for changes in alien status that result in a necessary change to a restrictive legend on the SSN card, because we believe these situations satisfy the compelling circumstances test. We want to ensure the accuracy of our records and continue to encourage number holders to report name changes and changes in alien status. Consequently, every change in name or alien status, where the restrictive legend must change, presents compelling circumstances for not applying the replacement card limits. Further, because we investigate the validity of documents submitted when individuals change their name or alien status (see 20 CFR 422.107 (c) and (e)), we believe these are reasonable exceptions to the limitations in light of our compelling need for accurate records. Therefore, we will not count toward the annual and lifetime limits SSN replacement cards issued due to a change in name or restrictive legend change. We will grant an exception to the limits on a case-by-case basis if the individual provides evidence of hardship, such as a referral letter from a governmental social services agency indicating that the SSN card must be shown in order to obtain benefits or services. Finally, in an effort to streamline our definition of a replacement SSN card, we eliminated language regarding the sub-categories of duplicate and corrected SSN cards from the language heretofore incorporated in this regulation.

In these final rules, we are adding the term “legal” to the parenthetical statement that describes name changes (i.e., verified legal changes to first name and/or surname) to clarify what we consider an acceptable name change. Although this term was not included in the interim final rule, this is not a substantive change, but merely provides a more precise description of the kind of name change we intended as a basis for a replacement card. We believe this further clarification is necessary because we only accept name changes that can be verified by documentation obtained through a legal process.

Section 422.110 Individual's Request for Change in Record.

We revised § 422.110 to add cross-references to new paragraph (e)(2) in § 422.103, which describes the new limits on replacement SSN cards and the exceptions to those limits. We made a minor revision to paragraph (b) to reflect that the Immigration and Naturalization Service has been abolished and its functions and units incorporated into the Department of Homeland Security. We also made other clarifying language changes.

In these final rules, we are adding a parenthetical statement in paragraphs (a) and (b) to clarify what is considered a name change. As previously explained, these are not substantive changes, but merely provide a further description of what is considered an acceptable change in name. While the preamble to the interim final rules made it clear that name changes meant specific verified changes to a first name and/or surname, this language was inadvertently omitted from the interim final regulatory language.

We anticipate that the three-card per year limit will impact fewer than 10,000 individuals in any given year. For example, of the nearly 12.4 million replacement SSN cards we issued in 2004, the number of individuals who requested more than three replacement cards was 3,818. However, we do not have any data available for those individuals who requested replacement cards exceeding the ten-card per lifetime limit. We applied these changes prospectively beginning on December 16, 2005, and we will not consider replacement SSN cards that were issued prior to that date when applying either limit.

Comments on Interim Final Rules

On December 16, 2005, we published the interim final rules in the **Federal Register** at 70 FR 74649 and provided the public a 60-day comment period that ended on February 14, 2006. We

received comments from four individuals and one organization in response to the interim final rules. We carefully considered all the comments. We adopted the interim final rules as final with only minor clarifying changes. We believe the following summaries accurately present the views of the commenters, and we provide our reasons for not adopting the comments in our responses below.

Comment: Three individuals commented on the limits for replacement SSN cards. One agreed that limits are appropriate; another indicated that the new limits are too generous; and the last indicated that, after three cards, there should be a \$100 (“or whatever it costs”) charge to get a replacement card.

Response: We did not adopt these comments because the limits on replacement SSN cards in our rules were established by legislation that amended the Act. We believe these limits establish a fair balance between protecting the security and integrity of the SSN issuance process while not adversely affecting members of the public who may need to present an SSN card to obtain necessary benefits or services. Regarding fees for replacement cards, we had considered charging a fee in the past but determined that it was not practicable to do so.

Comment: One individual commented that SSN cards should be typed in and issued from the local Social Security office, saying that this would increase the security and integrity of the SSN card.

Response: This comment is outside the scope of the rule change which does not alter the centralized process we currently use for issuing SSN cards. Before we automated and centralized the SSN card issuance process, SSN cards were processed in the local Social Security offices. We believe a centralized process affords the greatest security and guarantees the integrity of SSN cards.

Comment: A nonpartisan organization commented that it is in support of the limits on replacement SSN cards and our proposed exceptions to the limits as indicated in the interim final rule. The organization's representative further stated that the example of a person providing a referral letter from a governmental social services agency is exactly the sort of significant hardship that SSA could anticipate a person or family to face.

Response: This comment supports our rule change and our definition of reasonable exceptions on a case-by-case basis in compelling circumstances. We want to ensure that individuals who

need services are not precluded from receiving them based on an inability to obtain a replacement SSN card.

For the reasons discussed above, we have not changed the interim final rules based on the public comments. Therefore, except for the clarifying language changes made to § 422.103 and § 422.110, the interim final rules are adopted as final without change.

Dated: May 16, 2006.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ Accordingly, the interim final rules amending 20 CFR part 422 published at 70 FR 74649 on December 16, 2005, are adopted as final with only minor clarifying language changes.

PART 422—ORGANIZATION AND PROCEDURES

Subpart B—[Amended]

■ 1. The authority citation for subpart B of part 422 is revised to read as follows:

Authority: Secs. 205, 232, 702(a)(5), 1131, 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b–1, and 1320b–13), and sec. 7213(a)(1)(A) of Pub. L. 108–458.

■ 2. Section 422.103 is amended by revising paragraph (e) to read as follows and by amending paragraph (c)(1) by removing the word “duplicate” and adding in its place the word “replacement” in the last sentence of the paragraph.

§ 422.103 Social security numbers.

* * * * *

(e) *Replacement of social security number card.* (1) *When we may issue you a replacement card.* We may issue you a replacement social security number card, subject to the limitations in paragraph (e)(2) of this section. In all cases, you must complete a Form SS–5 to receive a replacement social security number card. You may obtain a Form SS–5 from any Social Security office or from one of the sources noted in paragraph (b) of this section. For evidence requirements, see § 422.107.

(2) *Limits on the number of replacement cards.* There are limits on the number of replacement social security number cards we will issue to you. You may receive no more than three replacement social security number cards in a year and ten replacement social security number cards per lifetime. We may allow for reasonable exceptions to these limits on a case-by-case basis in compelling circumstances. We also will consider name changes (i.e., verified legal changes to the first name and/or surname) and changes in alien status

which result in a necessary change to a restrictive legend on the SSN card (see paragraph (e)(3) of this section) to be compelling circumstances, and will not include either of these changes when determining the yearly or lifetime limits. We may grant an exception if you provide evidence establishing that you would experience significant hardship if the card were not issued. An example of significant hardship includes, but is not limited to, providing SSA with a referral letter from a governmental social services agency indicating that the social security number card must be shown in order to obtain benefits or services.

(3) *Restrictive legend change defined.* Based on a person's immigration status, a restrictive legend may appear on the face of an SSN card to indicate that work is either not authorized or that work may be performed only with Department of Homeland Security (DHS) authorization. This restrictive legend appears on the card above the individual's name and SSN. Individuals without work authorization in the U.S. receive SSN cards showing the restrictive legend, “Not Valid for Employment;” and SSN cards for those individuals who have temporary work authorization in the U.S. show the restrictive legend, “Valid For Work Only With DHS Authorization.” U.S. citizens and individuals who are permanent residents receive SSN cards without a restrictive legend. For the purpose of determining a change in restrictive legend, the individual must have a change in immigration status or citizenship which results in a change to or the removal of a restrictive legend when compared to the prior SSN card data. An SSN card request based upon a change in immigration status or citizenship which does not affect the restrictive legend will count toward the yearly and lifetime limits, as in the case of Permanent Resident Aliens who attain U.S. citizenship.

■ 3. Section 422.110 is revised to read as follows:

§ 422.110 Individual's request for change in record.

(a) *Form SS–5.* If you wish to change the name or other personal identifying information you previously submitted in connection with an application for a social security number card, you must complete and sign a Form SS–5 except as provided in paragraph (b) of this section. You must prove your identity, and you may be required to provide other evidence. (See § 422.107 for evidence requirements.) You may obtain a Form SS–5 from any local Social Security office or from one of the

sources noted in § 422.103(b). You may submit a completed request for change in records to any Social Security office, or, if you are outside the U.S., to the Department of Veterans Affairs Regional Office, Manila, Philippines, or to any U.S. Foreign Service post or U.S. military post. If your request is for a change of name on the card (i.e., verified legal changes to the first name and/or surname), we may issue you a replacement card bearing the same number and the new name. We will grant an exception from the limitations specified in § 422.103(e)(2) for replacement social security number cards representing a change in name or, if you are an alien, a change to a restrictive legend shown on the card. (See § 422.103(e)(3) for the definition of a change to a restrictive legend.)

(b) *Assisting in enumeration.* We may enter into an agreement with officials of the Department of State and the Department of Homeland Security to assist us by collecting, as part of the immigration process, information to change the name or other personal identifying information you previously submitted in connection with an application or request for a social security number card. If your request is to change a name on the card (i.e., verified legal changes to the first name and/or surname) or to correct the restrictive legend on the card to reflect a change in alien status, we may issue you a replacement card bearing the same number and the new name or legend. We will grant an exception from the limitations specified in § 422.103(e)(2) for replacement social security number cards representing a change of name or, if you are an alien, a change to a restrictive legend shown on the card. (See § 422.103(e)(3) for the definition of a change to a restrictive legend.)

[FR Doc. E6–12254 Filed 7–28–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 9277]

RIN 1545–BE30

Employer Comparable Contributions to Health Savings Accounts Under Section 4980G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance regarding employer comparable contributions to Health Savings Accounts (HSAs) under section 4980G. In general, these final regulations affect employers that contribute to employees' HSAs.

DATES: *Effective Date:* These regulations are effective on July 31, 2006.

Applicability Date: These regulations apply to employer contributions to HSAs made on or after January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Mireille T. Khoury (202) 622-6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final Pension Excise Tax Regulations (26 CFR part 54) under section 4980G of the Internal Revenue Code (Code). Under section 4980G of the Code, an excise tax is imposed on an employer that fails to make comparable contributions to the HSAs of its employees.

Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Act), Public Law 108-173, (117 Stat. 2066, 2003) added section 223 to the Code to permit eligible individuals to establish HSAs for taxable years beginning after December 31, 2003. Section 4980G was also added to the Code by the Act. Section 4980G(a) imposes an excise tax on the failure of an employer to make comparable contributions to the HSAs of its employees for a calendar year. Section 4980G(b) provides that rules and requirements similar to section 4980E (the comparability rules for Archer Medical Savings Accounts (Archer MSAs)) apply for purposes of section 4980G. Section 4980E(b) imposes an excise tax equal to 35% of the aggregate amount contributed by the employer to the Archer MSAs of employees during the calendar year if an employer fails to make comparable contributions to the Archer MSAs of its employees in a calendar year. Therefore, if an employer fails to make comparable contributions to the HSAs of its employees during a calendar year, an excise tax equal to 35% of the aggregate amount contributed by the employer to the HSAs of its employees during that calendar year is imposed on the employer. See Sections 4980G(a) and (b) and 4980E(b). See also Notice 2004-2 (2004-2 IRB 269), Q & A-32. See § 601.601(d)(2).

On August 26, 2005, proposed regulations (REG-138647-04) were published in the **Federal Register** (70 FR 50233). The proposed regulations

clarified and expanded upon the guidance regarding the comparability rules published in Notice 2004-2 and in Notice 2004-50 (2004-33 IRB 196), Q & A-46 through Q & A-54. See § 601.601(d)(2) of this chapter. Written public comments on the proposed regulations were received and a public hearing was requested. The hearing was held on February 23, 2006. After consideration of all the comments, these final regulations adopt the provisions of the proposed regulations with certain modifications, the most significant of which are highlighted in this preamble.

Explanation of Provisions and Summary of Comments

Several commentators requested that the effective date should be at least one year from the date the regulations are finalized to give employers sufficient time to implement changes required to comply with the final regulations. The final regulations will apply to employer contributions to HSAs made on or after January 1, 2007.

An employer is not required to contribute to the HSAs of its employees. In general, however, if an employer makes contributions to any employee's HSA, the employer must make comparable contributions to the HSAs of all comparable participating employees. Comparable participating employees are eligible individuals (as defined in section 223(c)(1)) who are in the same category of employees and who have the same category of high deductible health plan (HDHP) coverage. Under the proposed regulations, the categories of coverage were self-only HDHP coverage and family HDHP coverage. Several commentators recommended that the final regulations should recognize additional categories of coverage other than self-only and family HDHP. The final regulations adopt this recommendation and allow family HDHP coverage to be subdivided into the following additional categories of HDHP coverage: self plus one, self plus two and self plus three or more. In addition, the final regulations provide that an employer's contribution with respect to the self plus two category may not be less than the employer's contribution with respect to the self plus one category and the employer's contribution with respect to the self plus three or more category may not be less than the employer's contribution with respect to the self plus two category.

In addition, several commentators requested separate treatment for groups of collectively bargained employees, such that employers' HSA contributions

to collectively bargained employees would not be subject to the comparability rules. In response to these comments, the final regulations provide that employees who are included in a unit of employees covered by a bona fide collective bargaining agreement between employee representatives and one or more employers are not comparable participating employees, if health benefits were the subject of good faith bargaining between such employee representatives and such employer or employers. Collectively bargained employees are, therefore, disregarded for purposes of section 4980G.

Numerous commentators requested guidance on the exception to the comparability rules for employer contributions made through a section 125 cafeteria plan. In response to these comments, the final regulations provide additional guidance on how employer HSA contributions are made through a cafeteria plan. Specifically, the final regulations provide that employer contributions to employees' HSAs are made through the cafeteria plan if under the written cafeteria plan, the employees have the right to elect to receive cash or other taxable benefits in lieu of all or a portion of an HSA contribution (i.e., all or a portion of the HSA contributions are available as pre-tax salary reduction amounts), regardless of whether an employee actually elects to contribute any amount to the HSA by salary reduction. The final regulations also provide several examples that illustrate the application of the cafeteria plan exception to the comparability rules.

One commentator requested guidance on what actions an employer must take to locate any missing comparable participating former employees for purposes of contributions to eligible former employees. The final regulations provide guidance on this issue and explain that an employer making comparable contributions to former employees must take reasonable actions to locate any missing comparable participating former employees. In general, such reasonable actions include the use of certified mail, the Internal Revenue Service Letter Forwarding Program, see Rev. Proc. 94-22 (1994-1 CB 608), or the Social Security Administration's Letter Forwarding Service. See § 601.601(d)(2).

Several commentators requested that testing for comparability purposes be permitted on a plan year, rather than calendar year, basis. Section 4980G mandates the use of a calendar year for testing purposes. Accordingly, the final regulations do not adopt the suggestion for plan year testing. Also, the final

regulations have removed and reserved the provision dealing with instances where an employee has not established an HSA by the end of the calendar year.

Finally, one commentator requested clarification on what would constitute reasonable interest for purposes of section 4980G. In response to this comment, the final regulations provide that the determination of whether a rate of interest used by an employer is reasonable will be based on all of the facts and circumstances. However, if an employer calculates interest using the Federal short-term rate as determined by the Secretary in accordance with Code section 1274(d), the employer is deemed to use a reasonable interest rate.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. These regulations do not impose a collection of information on small entities, thus the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Barbara E. Pie and Mireille T. Khoury, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities).

List of Subjects in 26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 54 is amended as follows:

PART 54—PENSION EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 54 is amended by adding entries in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *
Section 54.4980G-1 also issued under 26 U.S.C. 4980G. Section 54.4980G-2 also issued under 26 U.S.C. 4980G. Section 54.4980G-3 also issued under 26 U.S.C. 4980G. Section 54.4980G-4 also issued under 26 U.S.C. 4980G. Section 54.4980G-5 also issued under 26 U.S.C. 4980G. * * *

■ **Par. 2.** Sections 54.4980G-0, 54.4980G-1, 54.4980G-2, 54.4980G-3, 54.4980G-4, and 54.4980G-5 are added to read as follows:

§ 54.4980G-0 Table of contents.

This section contains the questions for §§ 54.4980G-1, 54.4980G-2, 54.4980G-3, 54.4980G-4, and 54.4980G-5.

§ 54.4980G-1 Failure of employer to make comparable health savings account contributions.

Q-1: What are the comparability rules that apply to employer contributions to Health Savings Accounts (HSAs)?

Q-2: What are the categories of HDHP coverage for purposes of applying the comparability rules?

Q-3: What is the testing period for making comparable contributions to employees' HSAs?

Q-4: How is the excise tax computed if employer contributions do not satisfy the comparability rules for a calendar year?

§ 54.4980G-2 Employer contribution defined.

Q-1: Do the comparability rules apply to amounts rolled over from an employee's HSA or Archer Medical Savings Account (Archer MSA)?

Q-2: If an employee requests that his or her employer deduct after-tax amounts from the employee's compensation and forward these amounts as employee contributions to the employee's HSA, do the comparability rules apply to these amounts?

§ 54.4980G-3 Employee for comparability testing.

Q-1: Do the comparability rules apply to contributions that an employer makes to the HSAs of independent contractors or self-employed individuals?

Q-2: May a sole proprietor who is an eligible individual contribute to his or her own HSA without contributing to the HSAs of his or her employees who are eligible individuals?

Q-3: Do the comparability rules apply to contributions by a partnership to a partner's HSA?

Q-4: How are members of controlled groups treated when applying the comparability rules?

Q-5: What are the categories of employees for comparability testing?

Q-6: Are employees who are included in a unit of employees covered by a collective bargaining agreement comparable participating employees?

Q-7: Is an employer permitted to make comparable contributions only to the HSAs of comparable participating employees who have coverage under the employer's HDHP?

Q-8: If an employee and his or her spouse are eligible individuals who work for the same employer and one employee-spouse has family coverage for both employees under the employer's HDHP, must the employer make comparable contributions to the HSAs of both employees?

Q-9: Does an employer that makes HSA contributions only for one class of non-collectively bargained employees who are

eligible individuals, but not for another class of non-collectively bargained employees who are eligible individuals (for example, management v. non-management) satisfy the requirement that the employer make comparable contributions?

Q-10: If an employer contributes to the HSAs of former employees who are eligible individuals, do the comparability rules apply to these contributions?

Q-11: Is an employer permitted to make comparable contributions only to the HSAs of comparable participating former employees who have coverage under the employer's HDHP?

Q-12: If an employer contributes only to the HSAs of former employees who are eligible individuals with coverage under the employer's HDHP, must the employer make comparable contributions to the HSAs of former employees who are eligible individuals with coverage under the employer's HDHP because of an election under a COBRA continuation provision (as defined in section 9832(d)(1))?

Q-13: How do the comparability rules apply if some employees have HSAs and other employees have Archer MSAs?

§ 54.4980G-4 Calculating comparable contributions.

Q-1: What are comparable contributions?

Q-2: How does an employer comply with the comparability rules when some non-collectively bargained employees who are eligible individuals do not work for the employer during the entire calendar year?

Q-3: How do the comparability rules apply to employer contributions to employees' HSAs if some non-collectively bargained employees work full-time during the entire calendar year, and other non-collectively bargained employees work full-time for less than the entire calendar year?

Q-4: May an employer make contributions for the entire year to the HSAs of its employees who are eligible individuals at the beginning of the calendar year (i.e., on a pre-funded basis) instead of contributing on a pay-as-you-go or on a look-back basis?

Q-5: Must an employer use the same contribution method as described in Q & A-3 and Q & A-4 of this section for all employees who were comparable participating employees for any month during the calendar year?

Q-6: How does an employer comply with the comparability rules if an employee has not established an HSA at the time the employer contributes to its employees' HSAs?

Q-7: If an employer bases its contributions on a percentage of the HDHP deductible, how is the correct percentage or dollar amount computed?

Q-8: Does an employer that contributes to the HSA of each comparable participating employee in an amount equal to the employee's HSA contribution or a percentage of the employee's HSA contribution (matching contributions) satisfy the rule that all comparable participating employees receive comparable contributions?

Q-9: If an employer conditions contributions by the employer to an employee's HSA on an employee's participation in health assessments, disease

management programs or wellness programs and makes the same contributions available to all employees who participate in the programs, do the contributions satisfy the comparability rules?

Q-10: If an employer makes additional contributions to the HSAs of all comparable participating employees who have attained a specified age or who have worked for the employer for a specified number of years, do the contributions satisfy the comparability rules?

Q-11: If an employer makes additional contributions to the HSAs of all comparable participating employees are eligible to make the additional contributions (HSA catch-up contributions) under section 223(b)(3), do the contributions satisfy the comparability rules?

Q-12: If an employer's contributions to an employee's HSA result in non-comparable contributions, may the employer recoup the excess amount from the employee's HSA?

Q-13: What constitutes a reasonable interest rate for purposes of making comparable contributions?

§ 54.4980G-5 HSA comparability rules and cafeteria plans and waiver of excise tax.

Q-1: If an employer makes contributions through a section 125 cafeteria plan to the HSA of each employee who is an eligible individual, are the contributions subject to the comparability rules?

Q-2: If an employer makes contributions through a cafeteria plan to the HSA of each employee who is an eligible individual in an amount equal to the amount of the employee's HSA contribution or a percentage of the amount of the employee's HSA contribution (i.e., matching contributions), are the contributions subject to the section 4980G comparability rules?

Q-3: If under the employer's cafeteria plan, employees who are eligible individuals and who participate in health assessments, disease management programs or wellness programs receive an employer contribution to an HSA, unless the employees elect cash, are the contributions subject to the comparability rules?

Q-4: May all or part of the excise tax imposed under section 4980G be waived?

§ 54.4980G-1 Failure of employer to make comparable health savings account contributions.

Q-1: What are the comparability rules that apply to employer contributions to Health Savings Accounts (HSAs)?

A-1: If an employer makes contributions to any employee's HSA, the employer must make comparable contributions to the HSAs of all comparable participating employees. See Q & A-1 in § 54.4980G-4 for the definition of comparable contributions. Comparable participating employees are eligible individuals (as defined in section 223(c)(1)) who are in the same category of employees and who have the same category of high deductible health plan (HDHP) coverage. See sections 4980G(b) and 4980E(d)(3). See section 223(c)(2) and (g) for the definition of an HDHP. See also Q & A-5 in § 54.4980G-

3 for the categories of employees and Q & A-2 of this section for the categories of HDHP coverage. But see Q & A-6 in § 54.4980G-3 for treatment of collectively bargained employees.

Q-2: What are the categories of HDHP coverage for purposes of applying the comparability rules?

A-2: (a) *In general.* Generally, the categories of coverage are self-only HDHP coverage and family HDHP coverage. Family HDHP coverage means any coverage other than self-only HDHP coverage. The comparability rules apply separately to self-only HDHP coverage and family HDHP coverage. In addition, if an HDHP has family coverage options meeting the descriptions listed in paragraph (b) of this Q & A-2, each such coverage option may be treated as a separate category of coverage and the comparability rules may be applied separately to each category. However, if the HDHP has more than one category that provides coverage for the same number of individuals, all such categories are treated as a single category for purposes of the comparability rules. Thus, the categories of "employee plus spouse" and "employee plus dependent," each providing coverage for two individuals, are treated as the single category "self plus one" for comparability purposes. See, however, the final sentence of paragraph (a) of Q & A-1 of § 54.4980G-4 for a special rule that applies if different amounts are contributed for different categories of family coverage.

(b) *HDHP Family coverage categories.* The coverage categories are—

- (1) Self plus one;
- (2) Self plus two; and
- (3) Self plus three or more.

(c) *Examples.* The rules of this Q & A-2 are illustrated by the following examples:

Example 1. Employer A maintains an HDHP and contributes to the HSAs of eligible employees who elect coverage under the HDHP. The HDHP has self-only coverage and family coverage. Thus, the categories of coverage are self-only and family coverage. Employer A contributes \$750 to the HSA of each eligible employee with self-only HDHP coverage and \$1,000 to the HSA of each eligible employee with family HDHP coverage. Employer A's contributions satisfy the comparability rules.

Example 2. (i) Employer B maintains an HDHP and contributes to the HSAs of eligible employees who elect coverage under the HDHP. The HDHP has the following coverage options:

- (A) Self-only;
- (B) Self plus spouse;
- (C) Self plus dependent;
- (D) Self plus spouse plus one dependent;
- (E) Self plus two dependents; and
- (F) Self plus spouse and two or more dependents.

(ii) The self plus spouse category and the self plus dependent category constitute the same category of HDHP coverage (self plus one) and Employer B must make the same comparable contributions to the HSAs of all eligible individuals who are in either the self plus spouse category of HDHP coverage or the self plus dependent category of HDHP coverage. Likewise, the self plus spouse plus one dependent category and the self plus two dependents category constitute the same category of HDHP coverage (self plus two) and Employer B must make the same comparable contributions to the HSAs of all eligible individuals who are in either the self plus spouse plus one dependent category of HDHP coverage or the self plus two dependents category of HDHP coverage.

Example 3. (i) Employer C maintains an HDHP and contributes to the HSAs of eligible employees who elect coverage under the HDHP. The HDHP has the following coverage options:

- (A) Self-only;
- (B) Self plus one;
- (C) Self plus two; and
- (D) Self plus three or more.

(ii) Employer C contributes \$500 to the HSA of each eligible employee with self-only HDHP coverage, \$750 to the HSA of each eligible employee with self plus one HDHP coverage, \$900 to the HSA of each eligible employee with self plus two HDHP coverage and \$1,000 to the HSA of each eligible employee with self plus three or more HDHP coverage. Employer C's contributions satisfy the comparability rules.

Q-3: What is the testing period for making comparable contributions to employees' HSAs?

A-3: To satisfy the comparability rules, an employer must make comparable contributions for the calendar year to the HSAs of employees who are comparable participating employees. See section 4980G(a). See Q & A-3 and Q & A-4 in § 54.4980G-4 for a discussion of HSA contribution methods.

Q-4: How is the excise tax computed if employer contributions do not satisfy the comparability rules for a calendar year?

A-4: (a) *Computation of tax.* If employer contributions do not satisfy the comparability rules for a calendar year, the employer is subject to an excise tax equal to 35% of the aggregate amount contributed by the employer to HSAs for that period.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q & A-4:

Example. During the 2007 calendar year, Employer D has 8 employees who are eligible individuals with self-only coverage under an HDHP provided by Employer D. The deductible for the HDHP is \$2,000. For the 2007 calendar year, Employer D contributes \$2,000 each to the HSAs of two employees and \$1,000 each to the HSAs of the other six employees, for total HSA contributions of

\$10,000. Employer D's contributions do not satisfy the comparability rules. Therefore, Employer D is subject to an excise tax of \$3,500 (35% of \$10,000) for its failure to make comparable contributions to its employees' HSAs.

§ 54.4980G-2 Employer contribution defined.

Q-1: Do the comparability rules apply to amounts rolled over from an employee's HSA or Archer Medical Savings Account (Archer MSA)?

A-1: No. The comparability rules do not apply to amounts rolled over from an employee's HSA or Archer MSA.

Q-2: If an employee requests that his or her employer deduct after-tax amounts from the employee's compensation and forward these amounts as employee contributions to the employee's HSA, do the comparability rules apply to these amounts?

A-2: No. Section 106(d) provides that amounts contributed by an employer to an eligible employee's HSA shall be treated as employer-provided coverage for medical expenses and are excludible from the employee's gross income up to the limit in section 223(b). After-tax employee contributions to an HSA are not subject to the comparability rules because they are not employer contributions under section 106(d).

§ 54.4980G-3 Employee for comparability testing.

Q-1: Do the comparability rules apply to contributions that an employer makes to the HSAs of independent contractors or self-employed individuals?

A-1: No. The comparability rules apply only to contributions that an employer makes to the HSAs of employees.

Q-2: May a sole proprietor who is an eligible individual contribute to his or her own HSA without contributing to the HSAs of his or her employees who are eligible individuals?

A-2: (a) *Sole proprietor not an employee.* Yes. The comparability rules apply only to contributions made by an employer to the HSAs of employees. Because a sole proprietor is not an employee, the comparability rules do not apply to contributions the sole proprietor makes to his or her own HSA. However, if a sole proprietor contributes to any employee's HSA, the sole proprietor must make comparable contributions to the HSAs of all comparable participating employees. In determining whether the comparability rules are satisfied, contributions that a sole proprietor makes to his or her own HSA are not taken into account.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q & A-2:

Example. In a calendar year, B, a sole proprietor is an eligible individual and contributes \$1,000 to B's own HSA. B also contributes \$500 for the same calendar year to the HSA of each employee who is an eligible individual. The comparability rules are not violated by B's \$1,000 contribution to B's own HSA.

Q-3: Do the comparability rules apply to contributions by a partnership to a partner's HSA?

A-3: (a) *Partner not an employee.* No. Contributions by a partnership to a bona fide partner's HSA are not subject to the comparability rules because the contributions are not contributions by an employer to the HSA of an employee. The contributions are treated as either guaranteed payments under section 707(c) or distributions under section 731. However, if a partnership contributes to the HSAs of any employee who is not a partner, the partnership must make comparable contributions to the HSAs of all comparable participating employees.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q & A-3:

Example. (i) Partnership X is a limited partnership with three equal individual partners, A (a general partner), B (a limited partner), and C (a limited partner). C is to be paid \$300 annually for services rendered to Partnership X in her capacity as a partner without regard to partnership income (a section 707(c) guaranteed payment). D and E are the only employees of Partnership X and are not partners in Partnership X. A, B, C, D, and E are eligible individuals and each has an HSA. During Partnership X's Year 1 taxable year, which is also a calendar year, Partnership X makes the following contributions—

(A) A \$300 contribution to each of A's and B's HSAs which are treated as section 731 distributions to A and B;

(B) A \$300 contribution to C's HSA in lieu of paying C the guaranteed payment directly; and

(C) A \$200 contribution to each of D's and E's HSAs, who are comparable participating employees.

(ii) Partnership X's contributions to A's and B's HSAs are section 731 distributions, which are treated as cash distributions. Partnership X's contribution to C's HSA is treated as a guaranteed payment under section 707(c). The contribution is not excludible from C's gross income under section 106(d) because the contribution is treated as a distributive share of partnership income for purposes of all Code sections other than sections 61(a) and 162(a), and a guaranteed payment to a partner is not treated as compensation to an employee. Thus, Partnership X's contributions to the HSAs of A, B, and C are not subject to the comparability rules. Partnership X's

contributions to D's and E's HSAs are subject to the comparability rules because D and E are employees of Partnership X and are not partners in Partnership X. Partnership X's contributions satisfy the comparability rules.

Q-4: How are members of controlled groups treated when applying the comparability rules?

A-4: All persons or entities treated as a single employer under section 414 (b), (c), (m), or (o) are treated as one employer. See sections 4980G(b) and 4980E(e).

Q-5: What are the categories of employees for comparability testing?

A-5: (a) *Categories.* The categories of employees for comparability testing are as follows (but see Q & A-6 of this section for the treatment of collectively bargained employees)—

- (1) Current full-time employees;
- (2) Current part-time employees; and
- (3) Former employees (except for

former employees with coverage under the employer's HDHP because of an election under a COBRA continuation provision (as defined in section 9832(d)(1)).

(b) *Part-time and full-time employees.* For purposes of section 4980G, part-time employees are customarily employed for fewer than 30 hours per week and full-time employees are customarily employed for 30 or more hours per week. See sections 4980G(b) and 4980E(d)(4)(A) and (B).

(c) *In general.* Except as provided in Q & A-6 of this section, the categories of employees in paragraph (a) of this Q & A-5 are the exclusive categories of employees for comparability testing. An employer must make comparable contributions to the HSAs of all comparable participating employees (eligible individuals who are in the same category of employees with the same category of HDHP coverage) during the calendar year without regard to any classification other than these categories. For example, full-time eligible employees with self-only HDHP coverage and part-time eligible employees with self-only HDHP coverage are separate categories of employees and different amounts can be contributed to the HSAs for each of these categories.

Q-6: Are employees who are included in a unit of employees covered by a collective bargaining agreement comparable participating employees?

A-6: (a) *In general.* No. Collectively bargained employees who are covered by a bona fide collective bargaining agreement between employee representatives and one or more employers are not comparable participating employees, if health benefits were the subject of good faith

bargaining between such employee representatives and such employer or employers. Former employees covered by a collective bargaining agreement also are not comparable participating employees.

(b) *Examples.* The following examples illustrate the rules in paragraph (a) of this Q & A-6. The examples read as follows:

Example 1. Employer A offers its employees an HDHP with a \$1,500 deductible for self-only coverage. Employer A has collectively bargained and non-collectively bargained employees. The collectively bargained employees are covered by a collective bargaining agreement under which health benefits were bargained in good faith. In the 2007 calendar year, Employer A contributes \$500 to the HSAs of all eligible non-collectively bargained employees with self-only coverage under Employer A's HDHP. Employer A does not contribute to the HSAs of the collectively bargained employees. Employer A's contributions to the HSAs of non-collectively bargained employees satisfy the comparability rules. The comparability rules do not apply to collectively bargained employees.

Example 2. Employer B offers its employees an HDHP with a \$1,500 deductible for self-only coverage. Employer B has collectively bargained and non-collectively bargained employees. The collectively bargained employees are covered by a collective bargaining agreement under which health benefits were bargained in good faith. In the 2007 calendar year and in accordance with the terms of the collective bargaining agreement, Employer B contributes to the HSAs of all eligible collectively bargained employees. Employer B does not contribute to the HSAs of the non-collectively bargained employees. Employer B's contributions to the HSAs of collectively bargained employees are not subject to the comparability rules because the comparability rules do not apply to collectively bargained employees. Accordingly, Employer B's failure to contribute to the HSAs of the non-collectively bargained employees does not violate the comparability rules.

Example 3. Employer C has two units of collectively bargained employees—unit Q and unit R—each covered by a collective bargaining agreement under which health benefits were bargained in good faith. In the 2007 calendar year and in accordance with the terms of the collective bargaining agreement, Employer C contributes to the HSAs of all eligible collectively bargained employees in unit Q. In accordance with the terms of the collective bargaining agreement, Employer C makes no HSA contributions for collectively bargained employees in unit R. Employer C's contributions to the HSAs of collectively bargained employees are not subject to the comparability rules because the comparability rules do not apply to collectively bargained employees.

Example 4. Employer D has a unit of collectively bargained employees that are covered by a collective bargaining agreement under which health benefits were bargained

in good faith. In accordance with the terms of the collective bargaining agreement, Employer D contributes an amount equal to a specified number of cents per hour for each hour worked to the HSAs of all eligible collectively bargained employees. Employer D's contributions to the HSAs of collectively bargained employees are not subject to the comparability rules because the comparability rules do not apply to collectively bargained employees.

Q-7: Is an employer permitted to make comparable contributions only to the HSAs of comparable participating employees who have coverage under the employer's HDHP?

A-7: (a) *Employer-provided HDHP coverage.* If during a calendar year, an employer contributes to the HSA of any employee who is an eligible individual covered under an HDHP provided by the employer, the employer is required to make comparable contributions to the HSAs of all comparable participating employees with coverage under any HDHP provided by the employer. An employer that contributes only to the HSAs of employees who are eligible individuals with coverage under the employer's HDHP is not required to make comparable contributions to HSAs of employees who are eligible individuals but are not covered under the employer's HDHP.

(b) *Non-employer provided HDHP coverage.* An employer that contributes to the HSA of any employee who is an eligible individual with coverage under any HDHP that is not an HDHP provided by the employer, must make comparable contributions to the HSAs of all comparable participating employees whether or not covered under the employer's HDHP. An employer that makes a reasonable good faith effort to identify all comparable participating employees with non-employer provided HDHP coverage and makes comparable contributions to the HSAs of such employees satisfies the requirements in paragraph (b) of this Q & A-7.

(c) *Examples.* The following examples illustrate the rules in this Q & A-7. None of the employees in the following examples are covered by a collective bargaining agreement. The examples read as follows:

Example 1. In a calendar year, Employer E offers an HDHP to its full-time employees. Most full-time employees are covered under Employer E's HDHP and Employer E makes comparable contributions only to these employees' HSAs. Employee W, a full-time employee of Employer E and an eligible individual, is covered under an HDHP provided by the employer of W's spouse and not under Employer E's HDHP. Employer E is not required to make comparable contributions to W's HSA.

Example 2. In a calendar year, Employer F does not offer an HDHP. Several full-time employees of Employer F, who are eligible individuals, have HSAs. Employer F contributes to these employees' HSAs. Employer F must make comparable contributions to the HSAs of all full-time employees who are eligible individuals.

Example 3. In a calendar year, Employer G offers an HDHP to its full-time employees. Most full-time employees are covered under Employer G's HDHP and Employer G makes comparable contributions to these employees' HSAs and also to the HSAs of full-time employees who are eligible individuals and who are not covered under Employer G's HDHP. Employee S, a full-time employee of Employer G and a comparable participating employee, is covered under an HDHP provided by the employer of S's spouse and not under Employer G's HDHP. Employer G must make comparable contributions to S's HSA.

Q-8: If an employee and his or her spouse are eligible individuals who work for the same employer and one employee-spouse has family coverage for both employees under the employer's HDHP, must the employer make comparable contributions to the HSAs of both employees?

A-8: (a) *In general.* If the employer makes contributions only to the HSAs of employees who are eligible individuals covered under its HDHP where only one employee-spouse has family coverage for both employees under the employer's HDHP, the employer is not required to contribute to the HSAs of both employee-spouses. The employer is required to contribute to the HSA of the employee-spouse with coverage under the employer's HDHP, but is not required to contribute to the HSA of the employee-spouse covered under the employer's HDHP by virtue of his or her spouse's coverage. However, if the employer contributes to the HSA of any employee who is an eligible individual with coverage under an HDHP that is not an HDHP provided by the employer, the employer must make comparable contributions to the HSAs of both employee-spouses if they are both eligible individuals. If an employer is required to contribute to the HSAs of both employee-spouses, the employer is not required to contribute amounts in excess of the annual contribution limits in section 223(b).

(b) *Examples.* The following examples illustrate the rules in paragraph (a) of this Q & A-8. None of the employees in the following examples are covered by a collective bargaining agreement. The examples read as follows:

Example 1. In a calendar year, Employer H offers an HDHP to its full-time employees. Most full-time employees are covered under Employer H's HDHP and Employer H makes

comparable contributions only to these employees' HSAs. T and U are a married couple. Employee T, who is a full-time employee of Employer H and an eligible individual, has family coverage under Employer H's HDHP for T and T's spouse. Employee U, who is also a full-time employee of Employer H and an eligible individual, does not have coverage under Employer H's HDHP except as the spouse of Employee T. Employer H is required to make comparable contributions to T's HSA, but is not required to make comparable contributions to U's HSA.

Example 2. In a calendar year, Employer J offers an HDHP to its full-time employees. Most full-time employees are covered under Employer J's HDHP and Employer J makes comparable contributions to these employees' HSAs and to the HSAs of full-time employees who are eligible individuals but are not covered under Employer J's HDHP. R and S are a married couple. Employee S, who is a full-time employee of Employer J and an eligible individual, has family coverage under Employer J's HDHP for S and S's spouse. Employee R, who is also a full-time employee of Employer J and an eligible individual, does not have coverage under Employer J's HDHP except as the spouse of Employee S. Employer J must make comparable contributions to S's HSA and to R's HSA.

Q-9: Does an employer that makes HSA contributions only for one class of non-collectively bargained employees who are eligible individuals, but not for another class of non-collectively bargained employees who are eligible individuals (for example, management v. non-management) satisfy the requirement that the employer make comparable contributions?

A-9: (a) *Different classes of employees.*

No. If the two classes of employees are comparable participating employees, the comparability rules are not satisfied. The only categories of employees for comparability purposes are current full-time employees, current part-time employees, and former employees. Collectively bargained employees are not comparable participating employees. But see Q & A-1 in 54.4980G-5 on contributions made through a cafeteria plan.

(b) *Examples.* The following examples illustrate the rules in paragraph (a) of this Q & A-9. None of the employees in the following examples are covered by a collective bargaining agreement. The examples read as follows:

Example 1. In a calendar year, Employer K maintains an HDHP covering all management and non-management employees. Employer K contributes to the HSAs of non-management employees who are eligible individuals covered under its HDHP. Employer K does not contribute to the HSAs of its management employees who are

eligible individuals covered under its HDHP. The comparability rules are not satisfied.

Example 2. All of Employer L's employees are located in city X and city Y. In a calendar year, Employer L maintains an HDHP for all employees working in city X only. Employer L does not maintain an HDHP for its employees working in city Y. Employer L contributes \$500 to the HSAs of city X employees who are eligible individuals with coverage under its HDHP. Employer L does not contribute to the HSAs of any of its city Y employees. The comparability rules are satisfied because none of the employees in city Y are covered under an HDHP of Employer L. (However, if any employees in city Y were covered by an HDHP of Employer L, Employer L could not fail to contribute to their HSAs merely because they work in a different city.)

Example 3. Employer M has two divisions—division N and division O. In a calendar year, Employer M maintains an HDHP for employees working in division N and division O. Employer M contributes to the HSAs of division N employees who are eligible individuals with coverage under its HDHP. Employer M does not contribute to the HSAs of division O employees who are eligible individuals covered under its HDHP. The comparability rules are not satisfied.

Q-10: If an employer contributes to the HSAs of former employees who are eligible individuals, do the comparability rules apply to these contributions?

A-10: (a) *Former employees.* Yes. The comparability rules apply to contributions an employer makes to former employees' HSAs. Therefore, if an employer contributes to any former employee's HSA, it must make comparable contributions to the HSAs of all comparable participating former employees (former employees who are eligible individuals with the same category of HDHP coverage). However, an employer is not required to make comparable contributions to the HSAs of former employees with coverage under the employer's HDHP because of an election under a COBRA continuation provision (as defined in section 9832(d)(1)). See Q & A-5 and Q & A-12 of this section. The comparability rules apply separately to former employees because they are a separate category of covered employee. See Q & A-5 of this section. Also, former employees who were covered by a collective bargaining agreement immediately before termination of employment are not comparable participating employees. See Q & A-6 of this section.

(b) *Locating former employees.* An employer making comparable contributions to former employees must take reasonable actions to locate any missing comparable participating former employees. In general, such actions include the use of certified mail, the

Internal Revenue Service Letter Forwarding Program or the Social Security Administration's Letter Forwarding Service.

(c) *Examples.* The following examples illustrate the rules in paragraph (a) of this Q & A-10. None of the employees in the following examples are covered by a collective bargaining agreement. The examples read as follows:

Example 1. In a calendar year, Employer N contributes \$1,000 for the calendar year to the HSA of each current employee who is an eligible individual with coverage under any HDHP. Employer N does not contribute to the HSA of any former employee who is an eligible individual. Employer N's contributions satisfy the comparability rules.

Example 2. In a calendar year, Employer O contributes to the HSAs of current employees and former employees who are eligible individuals covered under any HDHP. Employer O contributes \$750 to the HSA of each current employee with self-only HDHP coverage and \$1,000 to the HSA of each current employee with family HDHP coverage. Employer O also contributes \$300 to the HSA of each former employee with self-only HDHP coverage and \$400 to the HSA of each former employee with family HDHP coverage. Employer O's contributions satisfy the comparability rules.

Q-11: Is an employer permitted to make comparable contributions only to the HSAs of comparable participating former employees who have coverage under the employer's HDHP?

A-11: If during a calendar year, an employer contributes to the HSA of any former employee who is an eligible individual covered under an HDHP provided by the employer, the employer is required to make comparable contributions to the HSAs of all former employees who are comparable participating former employees with coverage under any HDHP provided by the employer. An employer that contributes only to the HSAs of former employees who are eligible individuals with coverage under the employer's HDHP is not required to make comparable contributions to the HSAs of former employees who are eligible individuals and who are not covered under the employer's HDHP. However, an employer that contributes to the HSA of any former employee who is an eligible individual with coverage under an HDHP that is not an HDHP of the employer, must make comparable contributions to the HSAs of all former employees who are eligible individuals whether or not covered under an HDHP of the employer.

Q-12: If an employer contributes only to the HSAs of former employees who are eligible individuals with coverage under the employer's HDHP, must the employer make comparable

contributions to the HSAs of former employees who are eligible individuals with coverage under the employer's HDHP because of an election under a COBRA continuation provision (as defined in section 9832(d)(1))?

A-12: No. An employer that contributes only to the HSAs of former employees who are eligible individuals with coverage under the employer's HDHP is not required to make comparable contributions to the HSAs of former employees who are eligible individuals with coverage under the employer's HDHP because of an election under a COBRA continuation provision (as defined in section 9832(d)(1)).

Q-13: How do the comparability rules apply if some employees have HSAs and other employees have Archer MSAs?

A-13: (a) *HSAs and Archer MSAs.* The comparability rules apply separately to employees who have HSAs and employees who have Archer MSAs. However, if an employee has both an HSA and an Archer MSA, the employer may contribute to either the HSA or the Archer MSA, but not to both.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q & A-13:

Example. In a calendar year, Employer P contributes \$600 to the Archer MSA of each employee who is an eligible individual and who has an Archer MSA. Employer P contributes \$500 for the calendar year to the HSA of each employee who is an eligible individual and who has an HSA. If an employee has both an Archer MSA and an HSA, Employer P contributes to the employee's Archer MSA and not to the employee's HSA. Employee X has an Archer MSA and an HSA. Employer P contributes \$600 for the calendar year to X's Archer MSA but does not contribute to X's HSA. Employer P's contributions satisfy the comparability rules.

§ 54.4980G-4 Calculating comparable contributions.

Q-1: What are comparable contributions?

A-1: (a) *Definition.* Contributions are comparable if, for each month in a calendar year, the contributions are either the same amount or the same percentage of the deductible under the HDHP for employees who are eligible individuals with the same category of coverage on the first day of that month. Employees with self-only HDHP coverage are tested separately from employees with family HDHP coverage. Similarly, employees with different categories of family HDHP coverage may be tested separately. See Q & A-2 in § 54.4980G-1. An employer is not required to contribute the same amount or the same percentage of the deductible

for employees who are eligible individuals with one category of HDHP coverage that it contributes for employees who are eligible individuals with a different category of HDHP coverage. For example, an employer that satisfies the comparability rules by contributing the same amount to the HSAs of all employees who are eligible individuals with family HDHP coverage is not required to contribute any amount to the HSAs of employees who are eligible individuals with self-only HDHP coverage, or to contribute the same percentage of the self-only HDHP deductible as the amount contributed with respect to family HDHP coverage. However, the contribution with respect to the self plus two category may not be less than the contribution with respect to the self plus one category and the contribution with respect to the self plus three or more category may not be less than the contribution with respect to the self plus two category.

(b) *Examples.* The following examples illustrate the rules in paragraph (a) of this Q & A-1. None of the employees in the following examples are covered by a collective bargaining agreement. The examples read as follows:

Example 1. In the 2007 calendar year, Employer A offers its full-time employees three health plans, including an HDHP with self-only coverage and a \$2,000 deductible. Employer A contributes \$1,000 for the calendar year to the HSA of each employee who is an eligible individual electing the self-only HDHP coverage. Employer A makes no HSA contributions for employees with family HDHP coverage or for employees who do not elect the employer's self-only HDHP. Employer A's HSA contributions satisfy the comparability rules.

Example 2. In the 2007 calendar year, Employer B offers its employees an HDHP with a \$3,000 deductible for self-only coverage and a \$4,000 deductible for family coverage. Employer B contributes \$1,000 for the calendar year to the HSA of each employee who is an eligible individual electing the self-only HDHP coverage. Employer B contributes \$2,000 for the calendar year to the HSA of each employee who is an eligible individual electing the family HDHP coverage. Employer B's HSA contributions satisfy the comparability rules.

Example 3. In the 2007 calendar year, Employer C offers its employees an HDHP with a \$1,500 deductible for self-only coverage and a \$3,000 deductible for family coverage. Employer C contributes \$1,000 for the calendar year to the HSA of each employee who is an eligible individual electing the self-only HDHP coverage. Employer C contributes \$1,000 for the calendar year to the HSA of each employee who is an eligible individual electing the family HDHP coverage. Employer C's HSA contributions satisfy the comparability rules.

Example 4. In the 2007 calendar year, Employer D offers its employees an HDHP

with a \$1,500 deductible for self-only coverage and a \$3,000 deductible for family coverage. Employer D contributes \$1,500 for the calendar year to the HSA of each employee who is an eligible individual electing the self-only HDHP coverage. Employer D contributes \$1,000 for the calendar year to the HSA of each employee who is an eligible individual electing the family HDHP coverage. Employer D's HSA contributions satisfy the comparability rules.

Example 5. (i) In the 2007 calendar year, Employer E maintains two HDHPs. Plan A has a \$2,000 deductible for self-only coverage and a \$4,000 deductible for family coverage. Plan B has a \$2,500 deductible for self-only coverage and a \$4,500 deductible for family coverage. For the calendar year, Employer E makes contributions to the HSA of each full-time employee who is an eligible individual covered under Plan A of \$600 for self-only coverage and \$1,000 for family coverage. Employer E satisfies the comparability rules, if it makes either of the following contributions for the 2007 calendar year to the HSA of each full-time employee who is an eligible individual covered under Plan B—

(A) \$600 for each full-time employee with self-only coverage and \$1,000 for each full-time employee with family coverage; or

(B) \$750 for each employee with self-only coverage and \$1,125 for each employee with family coverage (the same percentage of the deductible Employer E contributes for full-time employees covered under Plan A, 30% of the deductible for self-only coverage and 25% of the deductible for family coverage).

(ii) Employer E also makes contributions to the HSA of each part-time employee who is an eligible individual covered under Plan A of \$300 for self-only coverage and \$500 for family coverage. Employer E satisfies the comparability rules, if it makes either of the following contributions for the 2007 calendar year to the HSA of each part-time employee who is an eligible individual covered under Plan B—

(A) \$300 for each part-time employee with self-only coverage and \$500 for each part-time employee with family coverage; or

(B) \$375 for each part-time employee with self-only coverage and \$563 for each part-time employee with family coverage (the same percentage of the deductible Employer E contributes for part-time employees covered under Plan A, 15% of the deductible for self-only coverage and 12.5% of the deductible for family coverage).

Example 6. (i) In the 2007 calendar year, Employer F maintains an HDHP. The HDHP has the following coverage options—

(A) A \$2,500 deductible for self-only coverage;

(B) A \$3,500 deductible for self plus one dependent (self plus one);

(C) A \$3,500 deductible for self plus spouse (self plus one);

(D) A \$3,500 deductible for self plus spouse and one dependent (self plus two); and

(E) A \$3,500 deductible for self plus spouse and two or more dependents (self plus three or more).

(ii) Employer F makes the following contributions for the calendar year to the

HSA of each full-time employee who is an eligible individual covered under the HDHP—

- (A) \$750 for self-only coverage;
- (B) \$1,000 for self plus one dependent;
- (C) \$1,000 for self plus spouse;
- (D) \$1,500 for self plus spouse and one dependent; and
- (E) \$2,000 for self plus spouse and two or more dependents.

(iii) Employer F's HSA contributions satisfy the comparability rules.

Example 7. (i) In a calendar year, Employer G offers its employees an HDHP and a health flexible spending arrangement (health FSA). The health FSA reimburses employees for medical expenses as defined in section 213(d). Some of Employer G's employees have coverage under the HDHP and the health FSA, some have coverage under the HDHP and their spouse's FSA, and some have coverage under the HDHP and are enrolled in Medicare. For the calendar year, Employer G contributes \$500 to the HSA of each employee who is an eligible individual. No contributions are made to the HSAs of employees who have coverage under Employer G's health FSA or under a spouse's health FSA or who are enrolled in Medicare.

(ii) The employees who have coverage under a health FSA (whether Employer H's or their spouse's FSA) or who are covered under Medicare are not eligible individuals. Specifically, the employees who have coverage under the health FSA or under a spouse's health FSA are not comparable participating employees because they are not eligible individuals under section 223(c)(1). Similarly, the employees who are enrolled in Medicare are not comparable participating employees because they are not eligible individuals under section 223(b)(7) and (c)(1). Therefore, employees who have coverage under the health FSA or under a spouse's health FSA and employees who are enrolled in Medicare are excluded from comparability testing. See sections 4980G(b) and 4980E. Employer G's contributions satisfy the comparability rules.

Q-2: How does an employer comply with the comparability rules when some non-collectively bargained employees who are eligible individuals do not work for the employer during the entire calendar year?

A-2: (a) *In general.* In determining whether the comparability rules are satisfied, an employer must take into account all full-time and part-time employees who were employees and eligible individuals for any month during the calendar year. (Full-time and part-time employees are tested separately. See Q & A-5 in § 54.4980G-3.) There are two methods to comply with the comparability rules when some employees who are eligible individuals do not work for the employer during the entire calendar year; contributions may be made on a pay-as-you-go basis or on a look-back basis. See Q & A-9 through Q & A-11 in § 54.4980G-3 for the rules regarding comparable contributions to the HSAs of former employees.

(b) *Contributions on a pay-as-you-go basis.* An employer may comply with the comparability rules by contributing amounts at one or more dates during the calendar year to the HSAs of employees who are eligible individuals as of the first day of the month, if contributions are the same amount or the same percentage of the HDHP deductible for employees who are eligible individuals as of the first day of the month with the same category of coverage and are made at the same time. Contributions made at the employer's usual payroll interval for different groups of employees are considered to be made at the same time. For example, if salaried employees are paid monthly and hourly employees are paid bi-weekly, an employer may contribute to the HSAs of hourly employees on a bi-weekly basis and to the HSAs of salaried employees on a monthly basis. An employer may change the amount that it contributes to the HSAs of employees at any point. However, the changed contribution amounts must satisfy the comparability rules.

(c) *Examples.* The following examples illustrate the rules in paragraph (b) of this Q & A-2: The examples read as follows:

Example 1. (i) Beginning on January 1st, Employer H contributes \$50 per month on the first day of each month to the HSA of each employee who is an eligible individual on that date. Employer H does not contribute to the HSAs of former employees. In mid-March of the same year, Employee X, an eligible individual, terminates employment after Employer H has contributed \$150 to X's HSA. After X terminates employment, Employer H does not contribute additional amounts to X's HSA. In mid-April of the same year, Employer H hires Employee Y, an eligible individual, and contributes \$50 to Y's HSA in May and \$50 in June. Effective in July of the same year, Employer H stops contributing to the HSAs of all employees and makes no contributions to the HSA of any employee for the months of July through December. In August, Employer H hires Employee Z, an eligible individual. Employer H does not contribute to Z's HSA. After Z is hired, Employer H does not hire additional employees. As of the end of the calendar year, Employer H has made the following HSA contributions to its employees' HSAs—

- (A) Employer H contributed \$150 to X's HSA;
- (B) Employer H contributed \$100 to Y's HSA;
- (C) Employer H did not contribute to Z's HSA; and
- (D) Employer H contributed \$300 to the HSA of each employee who was an eligible individual and employed by Employer J from January through June.

(ii) Employer H's contributions satisfy the comparability rules.

Example 2. In a calendar year, Employer J offers its employees an HDHP and

contributes on a monthly pay-as-you-go basis to the HSAs of employees who are eligible individuals with coverage under Employer J's HDHP. In the calendar year, Employer J contributes \$50 per month to the HSA of each of employee with self-only HDHP coverage and \$100 per month to the HSA of each employee with family HDHP coverage. From January 1st through March 31st of the calendar year, Employee X is an eligible individual with self-only HDHP coverage. From April 1st through December 31st of the calendar year, X is an eligible individual with family HDHP coverage. For the months of January, February and March of the calendar year, Employer J contributes \$50 per month to X's HSA. For the remaining months of the calendar year, Employer J contributes \$100 per month to X's HSA. Employer J's contributions to X's HSA satisfy the comparability rules.

(d) *Contributions on a look-back basis.* An employer may also satisfy the comparability rules by determining comparable contributions for the calendar year at the end of the calendar year, taking into account all employees who were eligible individuals for any month during the calendar year and contributing the same percentage of the HDHP deductible or the same dollar amount to the HSAs of all employees with the same category of coverage for that month.

(e) *Examples.* The following examples illustrate the rules in paragraph (d) of this Q & A-2. The examples read as follows:

Example 1. In a calendar year, Employer K offers its employees an HDHP and contributes on a look-back basis to the HSAs of employees who are eligible individuals with coverage under Employer K's HDHP. Employer K contributes \$600 (\$50 per month) for the calendar year to the HSA of each of employee with self-only HDHP coverage and \$1,200 (\$100 per month) for the calendar year to the HSA of each employee with family HDHP coverage. From January 1st through June 30th of the calendar year, Employee Y is an eligible individual with family HDHP coverage. From July 1st through December 31, Y is an eligible individual with self-only HDHP coverage. Employer K contributes \$900 on a look-back basis for the calendar year to Y's HSA (\$100 per month for the months of January through June and \$50 per month for the months of July through December). Employer K's contributions to Y's HSA satisfy the comparability rules.

Example 2. On December 31st, Employer L contributes \$50 per month on a look-back basis to each employee's HSA for each month in the calendar year that the employee was an eligible individual. In mid-March of the same year, Employee T, an eligible individual, terminated employment. In mid-April of the same year, Employer L hired Employee U, who becomes an eligible individual as of May 1st and works for Employer L through December 31st. On December 31st, Employer L contributes \$150 to Employee T's HSA and \$400 to Employee

U's HSA. Employer L's contributions satisfy the comparability rules.

(f) *Periods and dates for making contributions.* With both the pay-as-you-go method and the look-back method, an employer may establish, on a reasonable and consistent basis, periods for which contributions will be made (for example, a quarterly period covering three consecutive months in a calendar year) and the dates on which such contributions will be made for that designated period (for example, the first day of the quarter or the last day of the quarter in the case of an employer who has established a quarterly period for making contributions). An employer that makes contributions on a pay-as-you-go basis for a period covering more than one month will not fail to satisfy the comparability rules because an employee who terminates employment prior to the end of the period for which contributions were made has received more contributions on a monthly basis than employees who have worked the entire period. In addition, an employer that makes contributions on a pay-as-you-go basis for a period covering more than one month must make HSA contributions for any comparable participating employees hired after the date of initial funding for that period.

(g) *Example.* The following example illustrates the rules in paragraph (f) of this Q & A-2:

Example. Employer M has established, on a reasonable and consistent basis, a quarterly period for making contributions to the HSAs of eligible employees on a pay-as-you-go basis. Beginning on January 1st, Employer M contributes \$150 for the first three months of the calendar year to the HSA of each employee who is an eligible individual on that date. On January 15th, Employee V, an eligible individual, terminated employment after Employer M has contributed \$150 to V's HSA. On January 15th, Employer M hired Employee W, who becomes an eligible individual as of February 1st. On April 1st, Employer M has contributed \$100 to W's HSA for the two months (February and March) in the quarter period that Employee W was an eligible employee. Employer M's contributions satisfy the comparability rules.

Q-3: How do the comparability rules apply to employer contributions to employees' HSAs if some non-collectively bargained employees work full-time during the entire calendar year, and other non-collectively bargained employees work full-time for less than the entire calendar year?

A-3: Employer contributions to the HSAs of employees who work full-time for less than twelve months satisfy the comparability rules if the contribution amount is comparable when determined on a month-to-month basis. For example, if the employer contributes

\$240 to the HSA of each full-time employee who works the entire calendar year, the employer must contribute \$60 to the HSA of each full-time employee who works on the first day of each three months of the calendar year. The rules set forth in this Q & A-2 apply to employer contributions made on a pay-as-you-go basis or on a look-back basis as described in Q & A-3 of this section. See sections 4980G(b) and 4980E(d)(2)(B).

Q-4: May an employer make contributions for the entire year to the HSAs of its employees who are eligible individuals at the beginning of the calendar year (on a pre-funded basis) instead of contributing on a pay-as-you-go or on a look-back basis?

A-4: (a) *Contributions on a pre-funded basis.* Yes. An employer may make contributions for the entire year to the HSAs of its employees who are eligible individuals at the beginning of the calendar year. An employer that pre-funds the HSAs of its employees will not fail to satisfy the comparability rules because an employee who terminates employment prior to the end of the calendar year has received more contributions on a monthly basis than employees who work the entire calendar year. See Q & A-12 of this section. Under section 223(d)(1)(E), an account beneficiary's interest in an HSA is nonforfeitable. An employer must make comparable contributions for all employees who are comparable participating employees for any month during the calendar year, including employees who are eligible individuals hired after the date of initial funding. An employer that makes HSA contributions on a pre-funded basis may also contribute on a pre-funded basis to the HSAs of employees who are eligible individuals hired after the date of initial funding. Alternatively, an employer that has pre-funded the HSAs of comparable participating employees may contribute to the HSAs of employees who are eligible individuals hired after the date of initial funding on a pay-as-you-go basis or on a look-back basis. An employer that makes HSA contributions on a pre-funded basis must use the same contribution method for all employees who are eligible individuals hired after the date of initial funding.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q & A-4:

Example. (i) On January 1, Employer N contributes \$1,200 for the calendar year on a pre-funded basis to the HSA of each employee who is an eligible individual. In mid-May, Employer N hires Employee B, who becomes an eligible individual as of June 1st. Therefore, Employer N is required

to make comparable contributions to B's HSA beginning in June. Employer N satisfies the comparability rules with respect to contributions to B's HSA if it makes HSA contributions in any one of the following ways—

(A) Pre-funding B's HSA by contributing \$700 to B's HSA;

(B) Contributing \$100 per month on a pay-as-you-go basis to B's HSA; or

(C) Contributing to B's HSA at the end of the calendar year taking into account each month that B was an eligible individual and employed by Employer M.

(ii) If Employer M hires additional employees who are eligible individuals after initial funding, it must use the same contribution method for these employees that it used to contribute to B's HSA.

Q-5: Must an employer use the same contribution method as described in Q & A-2 and Q & A-4 of this section for all employees who were comparable participating employees for any month during the calendar year?

A-5: Yes. If an employer makes comparable HSA contributions on a pay-as-you-go basis, it must do so for each employee who is a comparable participating employee as of the first day of the month. If an employer makes comparable contributions on a look-back basis, it must do so for each employee who was a comparable participating employee for any month during the calendar year. If an employer makes HSA contributions on a pre-funded basis, it must do so for all employees who are comparable participating employees at the beginning of the calendar year and must make comparable HSA contributions for all employees who are comparable participating employees for any month during the calendar year, including employees who are eligible individuals hired after the date of initial funding. See Q & A-4 of this section for rules regarding contributions for employees hired after initial funding.

Q-6: How does an employer comply with the comparability rules if an employee has not established an HSA at the time the employer contributes to its employees' HSAs?

A-6: (a) *Employee has not established an HSA at the time the employer funds its employees' HSAs.* If an employee has not established an HSA at the time the employer funds its employees' HSAs, the employer complies with the comparability rules by contributing comparable amounts plus reasonable interest to the employee's HSA when the employee establishes the HSA, taking into account each month that the employee was a comparable participating employee. See Q & A-13 of this section for rules regarding reasonable interest.

(b) *Employee has not established an HSA by the end of the calendar year.* [Reserved].

(c) *Example.* The following example illustrates the rules in paragraph (a) of this Q & A-6:

Example. Beginning on January 1st, Employer O contributes \$500 per calendar year on a pay-as-you-go basis to the HSA of each employee who is an eligible individual. Employee C is an eligible individual during the entire calendar year but does not establish an HSA until March. Notwithstanding C's delay in establishing an HSA, Employer O must make up the missed HSA contributions plus reasonable interest for January and February by April 15th of the following calendar year.

Q-7: If an employer bases its contributions on a percentage of the HDHP deductible, how is the correct percentage or dollar amount computed?

A-7: (a) *Computing HSA contributions.* The correct percentage is determined by rounding to the nearest 1/100th of a percentage point and the dollar amount is determined by rounding to the nearest whole dollar.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q & A-7:

Example. In this *Example*, assume that each HDHP provided by Employer P satisfies the definition of an HDHP for the 2007 calendar year. In the 2007 calendar year, Employer P maintains two HDHPs. Plan A has a deductible of \$3,000 for self-only coverage. Employer P contributes \$1,000 for the calendar year to the HSA of each employee covered under Plan A. Plan B has a deductible of \$3,500 for self-only coverage. Employer P satisfies the comparability rules if it makes either of the following contributions for the 2007 calendar year to the HSA of each employee who is an eligible individual with self-only coverage under Plan B—

- (i) \$1,000; or
- (ii) \$1,167 (33.33% of the deductible rounded to the nearest whole dollar amount).

Q-8: Does an employer that contributes to the HSA of each comparable participating employee in an amount equal to the employee's HSA contribution or a percentage of the employee's HSA contribution (matching contributions) satisfy the rule that all comparable participating employees receive comparable contributions?

A-8: No. If all comparable participating employees do not contribute the same amount to their HSAs and, consequently, do not receive comparable contributions to their HSAs, the comparability rules are not satisfied, notwithstanding that the employer offers to make available the same contribution amount to each comparable participating employee. But see Q & A-1 in § 54.4980G-5 on

contributions to HSAs made through a cafeteria plan.

Q-9: If an employer conditions contributions by the employer to an employee's HSA on an employee's participation in health assessments, disease management programs or wellness programs and makes the same contributions available to all employees who participate in the programs, do the contributions satisfy the comparability rules?

A-9: No. If all comparable participating employees do not elect to participate in all the programs and consequently, all comparable participating employees do not receive comparable contributions to their HSAs, the employer contributions fail to satisfy the comparability rules. But see Q & A-1 in § 54.4980G-5 on contributions made to HSAs through a cafeteria plan.

Q-10: If an employer makes additional contributions to the HSAs of all comparable participating employees who have attained a specified age or who have worked for the employer for a specified number of years, do the contributions satisfy the comparability rules?

A-10: No. If all comparable participating employees do not meet the age or length of service requirement, all comparable participating employees do not receive comparable contributions to their HSAs and the employer contributions fail to satisfy the comparability rules.

Q-11: If an employer makes additional contributions to the HSAs of all comparable participating employees who are eligible to make the additional contributions (HSA catch-up contributions) under section 223(b)(3), do the contributions satisfy the comparability rules?

A-11: No. If all comparable participating employees are not eligible to make the additional HSA contributions under section 223(b)(3), all comparable participating employees do not receive comparable contributions to their HSAs, and the employer contributions fail to satisfy the comparability rules.

Q-12: If an employer's contributions to an employee's HSA result in non-comparable contributions, may the employer recoup the excess amount from the employee's HSA?

A-12: No. An employer may not recoup from an employee's HSA any portion of the employer's contribution to the employee's HSA. Under section 223(d)(1)(E), an account beneficiary's interest in an HSA is nonforfeitable. However, an employer may make additional HSA contributions to satisfy

the comparability rules. An employer may contribute up until April 15th following the calendar year in which the non-comparable contributions were made. An employer that makes additional HSA contributions to correct non-comparable contributions must also contribute reasonable interest. However, an employer is not required to contribute amounts in excess of the annual contribution limits in section 223(b). See Q & A-13 of this section for rules regarding reasonable interest.

Q-13: What constitutes a reasonable interest rate for purposes of making comparable contributions?

A-13: The determination of whether a rate of interest used by an employer is reasonable will be based on all of the facts and circumstances. If an employer calculates interest using the Federal short-term rate as determined by the Secretary in accordance with section 1274(d), the employer is deemed to use a reasonable interest rate.

§ 54.4980G-5 HSA comparability rules and cafeteria plans and waiver of excise tax.

Q-1: If an employer makes contributions through a section 125 cafeteria plan to the HSA of each employee who is an eligible individual, are the contributions subject to the comparability rules?

A-1: (a) *In general.* No. The comparability rules do not apply to HSA contributions that an employer makes through a section 125 cafeteria plan. However, contributions to an HSA made through a cafeteria plan are subject to the section 125 nondiscrimination rules (eligibility rules, contributions and benefits tests and key employee concentration tests). See section 125(b), (c) and (g) and the regulations thereunder.

(b) *Contributions made through a section 125 cafeteria plan.* Employer contributions to employees' HSAs are made through a section 125 cafeteria plan and are subject to the section 125 cafeteria plan nondiscrimination rules and not the comparability rules if under the written cafeteria plan, the employees have the right to elect to receive cash or other taxable benefits in lieu of all or a portion of an HSA contribution (meaning that all or a portion of the HSA contributions are available as pre-tax salary reduction amounts), regardless of whether an employee actually elects to contribute any amount to the HSA by salary reduction.

Q-2: If an employer makes contributions through a cafeteria plan to the HSA of each employee who is an eligible individual in an amount equal to the amount of the employee's HSA

contribution or a percentage of the amount of the employee's HSA contribution (matching contributions), are the contributions subject to the section 4980G comparability rules?

A-2: No. The comparability rules do not apply to HSA contributions that an employer makes through a section 125 cafeteria plan. Thus, where matching contributions are made by an employer through a cafeteria plan, the contributions are not subject to the comparability rules of section 4980G. However, contributions, including matching contributions, to an HSA made under a cafeteria plan are subject to the section 125 nondiscrimination rules (eligibility rules, contributions and benefits tests and key employee concentration tests). See Q & A-1 of this section.

Q-3: If under the employer's cafeteria plan, employees who are eligible individuals and who participate in health assessments, disease management programs or wellness programs receive an employer contribution to an HSA and the employees have the right to elect to make pre-tax salary reduction contributions to their HSAs, are the contributions subject to the comparability rules?

A-3: (a) *In general.* No. The comparability rules do not apply to employer contributions to an HSA made through a cafeteria plan. See Q & A-1 of this section.

(b) *Examples.* The following examples illustrate the rules in this § 54.4980G-5. The examples read as follows:

Example 1. Employer A's written cafeteria plan permits employees to elect to make pre-tax salary reduction contributions to their HSAs. Employees making this election have the right to receive cash or other taxable benefits in lieu of their HSA pre-tax contribution. The section 125 cafeteria plan nondiscrimination rules and not the comparability rules apply because the HSA contributions are made through the cafeteria plan.

Example 2. Employer B's written cafeteria plan permits employees to elect to make pre-tax salary reduction contributions to their HSAs. Employees making this election have the right to receive cash or other taxable benefits in lieu of their HSA pre-tax contribution. Employer B automatically contributes a non-elective matching contribution or seed money to the HSA of each employee who makes a pre-tax HSA contribution. The section 125 cafeteria plan nondiscrimination rules and not the comparability rules apply to Employer B's HSA contributions because the HSA contributions are made through the cafeteria plan.

Example 3. Employer C's written cafeteria plan permits employees to elect to make pre-tax salary reduction contributions to their

HSAs. Employees making this election have the right to receive cash or other taxable benefits in lieu of their HSA pre-tax contribution. Employer C makes a non-elective contribution to the HSAs of all employees who complete a health risk assessment and participate in Employer C's wellness program. Employees do not have the right to receive cash or other taxable benefits in lieu of Employer C's non-elective contribution. The section 125 cafeteria plan nondiscrimination rules and not the comparability rules apply to Employer C's HSA contributions because the HSA contributions are made through the cafeteria plan.

Example 4. Employer D's written cafeteria plan permits employees to elect to make pre-tax salary reduction contributions to their HSAs. Employees making this election have the right to receive cash or other taxable benefits in lieu of their HSA pre-tax contribution. Employees participating in the plan who are eligible individuals receive automatic employer contributions to their HSAs. Employees make no election with respect to Employer D's contribution and do not have the right to receive cash or other taxable benefits in lieu of Employer D's contribution but are permitted to make their own pre-tax salary reduction contributions to fund their HSAs. The section 125 cafeteria plan nondiscrimination rules and not the comparability rules apply to Employer D's HSA contributions because the HSA contributions are made through the cafeteria plan.

Q-4: May all or part of the excise tax imposed under section 4980G be waived?

A-4: In the case of a failure which is due to reasonable cause and not to willful neglect, all or a portion of the excise tax imposed under section 4980G may be waived to the extent that the payment of the tax would be excessive relative to the failure involved. See sections 4980G(b) and 4980E(c).

Approved: July 14, 2006.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Acting Deputy Assistant Secretary (Tax Policy).

[FR Doc. E6-11991 Filed 7-28-06; 8:45 am]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL-8204-4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to codify a longstanding generator-specific delisting determination for brine purification muds (K071) generated by Olin Corporation (Olin) at its facility in Charleston, Tennessee. This rule will amend the Code of Federal Regulations to reflect the delisting, which was granted by EPA in December 1981 and by the Tennessee Department of Environment and Conservation in June 1983 after full notice and comment. The rule will not impose any new requirements on Olin or any other member of the regulated community.

DATES: This rule is effective on September 29, 2006 without further notice unless we receive adverse comment by August 30, 2006. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA-R04-RCRA-2006-0478, by one of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the on-line instructions.

- *E-mail:* lippert.kristin@epa.gov.
- *Mail or deliver:* Kristin Lippert, North Enforcement and Compliance Section, Mail Code 4WD-RCRA, RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail.

www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at

www.regulations.gov and in hard copy at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: For general and technical information about this Direct Final Rule, contact Kristin Lippert, North Enforcement and Compliance Section, Mail Code 4WD-RCRA, RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303 or call (404) 562-8605.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

- I. Legal Background
- II. Olin's Petition to Delist its Waste
- III. Evaluation of Olin's Petition
- IV. History of this Rulemaking
- V. Final Action and Effective Date
- VI. Regulatory Impact
- VII. Regulatory Flexibility Act
- VIII. Executive Order 12875
- IX. Executive Order 12898
- X. Executive Order 13211
- XI. Paperwork Reduction Act
- XII. Unfunded Mandates Reform Act
- XIII. Executive Order 13045
- XIV. Executive Order 13175
- XV. National Technology Transfer and Advancement Act
- XVI. Executive Order 13132 Federalism
- XVII. Submission to Congress and General Accounting Office

I. Legal Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of the Resource Conservation and Recovery Act (RCRA), EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times and is published in Title 40 Code of Federal Regulations (40 CFR) 261.31 and 261.32. These wastes are listed as hazardous because: (1) They exhibit one or more of the characteristics of hazardous waste identified in subpart C of part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity); or (2) they meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual

facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to demonstrate that a specific waste generated at a particular facility should not be regulated as a hazardous waste.

II. Olin's Petition to Delist its Waste

On July 13, 1981, Olin petitioned EPA to amend 40 CFR part 261 to exclude sodium chloride purification muds generated at Olin's facility in Charleston, Tennessee. The muds meet the listing description for EPA Hazardous Waste No. K071—brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.

Olin's petition included a description of its production and treatment processes. Olin's Charleston facility manufactures chlorine using a mercury cell chlor-alkali process. The chlor-alkali production process at Charleston involves the preparation of a strong brine from rock salt, which then circulates through mercury where part of the dissolved sodium chloride is separated by electrolysis into chlorine and sodium. The chlorine is collected and processed into liquid chlorine and the sodium amalgamates with the mercury of the cell and is separated and decomposed to form sodium hydroxide. The weak brine leaves the cells, is dechlorinated, resaturated, and purified. The purification (settling and filtration) of the resaturated brine produces brine muds which contain low levels of mercury carried over from the cells. The muds are dewatered using gravity. Liquid brine and dissolved mercury drain out and are returned to the brine system.

Olin's petition also included a description of total constituent and EP toxicity analyses of the muds for mercury, the constituent of concern for K071, and provided a plan for continuous testing of the muds prior to disposal.

III. Evaluation of Olin's Petition

Based on the information submitted by Olin, EPA granted a conditional temporary exclusion for Olin's sodium chloride purification muds on December 16, 1981 (46 FR 61272, December 16, 1981). The exclusion is conditioned on Olin's testing of samples from each batch of mud for mercury prior to disposal. Batches with a mercury concentration of 0.05 parts per million (ppm) or less are considered nonhazardous and are disposed of in Olin's on-site solid waste landfill. Batches that exceed 0.05 ppm of

mercury are considered hazardous and are disposed of accordingly. EPA requested public comments on the delisting of Olin's brine purification muds. No adverse comments were received by the Agency.

At EPA's direction on September 28, 1981, Olin also submitted a delisting petition to the Tennessee Division of Solid Waste Management because, at that time, Tennessee had Phase 1 Interim Authorization. On February 17, 1982, Tennessee published notice of its tentative decision to grant Olin's delisting petition and requested public comments. No public comments were received by Tennessee. On June 28, 1983, Tennessee granted final approval of Olin's petition. Under the terms of the final approval, Olin must analyze samples from every batch of mud before disposal and submit the results to Tennessee on a quarterly basis. If a batch exceeds a mercury concentration of 0.05 ppm, Olin must handle the batch as a hazardous waste.

In 1984, Congress passed the Hazardous and Solid Waste Amendments ("HSWA") to RCRA. HSWA included additional criteria for evaluating proposed exclusions of certain listed waste. In anticipation of HSWA, EPA and Tennessee asked Olin to supply additional information that would allow evaluation of Olin's delisting under HSWA's proposed criteria. Olin complied, supplying detailed information supporting the delisting determination previously made by the agencies. Subsequently, both agencies confirmed that final exclusions, such as Olin's delisting, which were granted before November 8, 1984 were not affected by HSWA.

IV. History of This Rulemaking

In 2004, Olin contacted EPA seeking confirmation that use of potassium chloride as a raw material in the mercury cell process would not affect application of Olin's delisting to brine purification muds generated in that process, provided the muds meet the criteria of the delisting. Olin determined that use of potassium chloride as a raw material in the production process will not alter the composition or characteristics of the resulting brine purification muds with respect to mercury, the constituent of concern, nor will use of potassium chloride introduce any other hazardous constituents into the muds. EPA agreed with Olin's determination and concluded that Olin did not need a modification to its current delisting in order to use the delisting to manage muds generated in the potassium chloride process.

In the course of EPA's review of Olin's determination regarding use of potassium chloride, the Agency noted that Olin's delisting is not listed in the Code of Federal Regulations. EPA is issuing this direct final rule to correct this oversight.

V. Final Action and Effective Date

By this rule, EPA is taking direct final action to incorporate Olin's longstanding delisting into the Code of Federal Regulations. EPA is publishing this as a direct final rule because the Agency views this as a non-controversial amendment to the Code of Federal Regulations and anticipates no adverse comments. Interested parties had two prior opportunities to comment on Olin's delisting petition, first at the federal level and later at the state level, and no adverse comments were submitted. EPA sees no reason to provide a third comment period.

This rule will be effective upon publication in the **Federal Register**. Section 3010(b) of RCRA allows rules to become effective immediately when the regulated community does not need time to come into compliance. That is the case here because this rule will codify Olin's longstanding delisting for brine purification muds by amending the Code of Federal Regulations to reflect the delisting. The rule does not impose any new requirements on Olin or any other member of the regulated community. This reason also provides a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act pursuant to 5 U.S.C. 553(d).

VI. Regulatory Impact

Because EPA is issuing today's rule under the Federal RCRA delisting program, only states subject to federal RCRA delisting provisions are affected. This exclusion may not be effective in states that have received EPA's authorization to make their own delisting decisions.

Under section 3009 of RCRA, EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's requirements. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If Olin

manages brine purification muds in any state with delisting authorization, Olin must obtain delisting authorization from the state before Olin can manage the brine purification muds as nonhazardous in that state.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. Today's rule is not significant because its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous. Because there is no additional impact from today's rule, the rule is not a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (f) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's rule will not have any impact on small entities since its effect is to reduce the overall costs of EPA's hazardous waste regulations on one facility. Accordingly, EPA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

VIII. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent

of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

IX. Executive Order 12898

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population" (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3-17). Today's final rule applies to a single waste at a single facility. We have no data indicating that today's final rule would result in disproportionately negative impacts on minority or low income communities.

X. Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Affect Energy Supply, Distribution, or Use" (May 18, 2001), addresses the need for regulatory actions to more fully consider the potential energy impacts of the proposed rule and resulting actions.

Under the Order, agencies are required to prepare a Statement of Energy Effects when a regulatory action may have significant adverse effects on energy supply, distribution, or use, including impacts on price and foreign supplies. Additionally, the requirements obligate agencies to consider reasonable alternatives to regulatory actions with adverse effects and the impacts the alternatives might have upon energy supply, distribution, or use. Today's final rule applies to a single waste at a single facility and is not likely to have any significant adverse impact on factors affecting energy supply. EPA believes that 66 FR 28355 Executive Order 13211 is not relevant to this action.

XI. Paperwork Reduction Act

This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Because there are no paperwork requirements as part of this final rule, EPA is not required to prepare an Information Collection Request (ICR) in support of today's action.

XII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

EPA finds that today's rule is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. Therefore, no statement is required under section 205 of the UMRA. In addition, this rule does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

XIII. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997), entitled "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that EPA determines: (1) Is economically significant as defined under Executive Order 12866; and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. Today's rule is not subject to Executive Order 13045 because the rule is not economically significant as defined under Executive Order 12866.

XIV. Executive Order 13175

Under Executive Order 13175 (65 FR 67249, November 6, 2000), EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal government or EPA takes certain steps prior to the formal promulgation of the regulation. Those steps include: (1) Consulting with tribal officials early in the process of developing the proposed regulation; (2) providing to the Director of OMB, in a separately identified section of the regulation's preamble, a description of the extent of EPA's prior consultation with tribal officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and (3) making available to the Director of OMB any

written communications submitted to EPA by tribal officials.

Today's rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

XV. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995, 15 U.S.C. 272 note, EPA is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that EPA provide Congress, through OMB, with an explanation of the reasons for not using such standards.

Today's rule does not establish any new technical standards and, therefore, EPA is not required to consider the use of voluntary consensus standards in developing this rule.

XVI. Executive Order 13132 Federalism

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

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with

State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

Today's rule does not have federalism implications. It does not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because the rule only affects one facility.

XVII. Submission to Congress and Government Accountability Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States.

Under section 804 of the Congressional Review Act, rules of particular applicability are exempted from the requirements of section 801. See 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. This rule is effective on September 29, 2006.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Section 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 18, 2006.

Beverly H. Banister,
Acting Director, Waste Management Division, Region 4.

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Table 2 of Appendix IX of Part 261, the following waste is added in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Olin Corporation	Charleston, TN ..	Sodium chloride purification muds and potassium chloride purification muds (both classified as EPA Hazardous Waste No. K071) that have been batch tested using EPA's Toxicity Characteristic Leaching Procedure and have been found to contain less than 0.05 ppm mercury. Purification muds that have been found to contain less than 0.05 ppm mercury will be disposed in Olin's on-site non-hazardous waste landfill or another Subtitle D landfill. Purification muds that exceed this level will be considered a hazardous waste.
*	*	*

[FR Doc. 06-6587 Filed 7-28-06; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA-HQ-SFUND-1987-0002; FRL-8204-2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of partial deletion of the Rocky Mountain Arsenal National Priorities List Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 announces the deletion of the Internal Parcel of the Rocky Mountain Arsenal National Priorities List (RMA/NPL) Site from the National Priorities List (NPL). All areas originally proposed for deletion (71 FR 24627), except for a three-acre area

which encompasses the Rail Yard Treatment System, are being deleted (see map). The Rail Yard Treatment System is excluded from the Internal Parcel due to a delay in developing the Interim Construction Completion Report. With the Rail Yard area excluded, the Internal Parcel consists of 7,396 acres (11.5 square miles) of the On-Post Operable Unit of RMA. The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), have determined that the Internal Parcel of the RMA/NPL Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

This partial deletion pertains to the surface media (soil, surface water,

sediment), structures, and groundwater of the Internal Parcel of the On-Post OU of the RMA/NPL Site. The Internal Parcel includes groundwater that is east of E Street with the exception of a small area in the northwest corner of Section 6. The Rail Yard Treatment System and the rest of the On-Post OU, including groundwater below RMA that is west of E Street and the small area in the northwest corner of Section 6, as well as the Off-Post OU will remain on the NPL. This partial deletion of the Internal Parcel will not change Appendix B of 40 CFR part 300, which was previously amended in January 2003 (68 FR 2699) to reflect that a partial deletion of 1.5 square miles from the RMA/NPL Site had occurred.

DATES: This partial deletion of the Internal Parcel is effective on July 31, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Chergo, Community Involvement Coordinator (8OC), U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466;

telephone number: 1-800-227-8917 or (303) 312-6601; fax number: 303-312-6961; e-mail address: chergo.jennifer@epa.gov.

SUPPLEMENTARY INFORMATION: The Rocky Mountain Arsenal National Priorities List (RMA/NPL) Site is located in southern Adams County, Colorado and is comprised of two operable units (OU), the On-Post and Off-Post. The On-Post OU of the RMA/NPL Site encompasses 17.2 square miles (11,007 acres) approximately eight miles northeast of downtown Denver, Colorado. The Off-Post OU addresses contamination north and northwest of the RMA proper boundaries. The Internal Parcel consists of approximately 11.5 square miles (7,396 acres) of the On-Post OU of RMA in Commerce City, Colorado.

This partial deletion pertains to the surface media (soil, surface water, sediment), structures, and groundwater of the Internal Parcel of the On-Post OU of the RMA/NPL Site. The Internal Parcel includes groundwater that is east of E Street with the exception of a small area in the northwest corner of Section 6. The rest of the On-Post OU, including groundwater below RMA that is west of E Street and the small area in the northwest corner of Section 6, and the Off-Post OU will remain on the NPL.

On April 26, 2006, EPA published a Notice of Intent for Partial Deletion (NOIDp) in the **Federal Register** (71 FR 24627) and local newspapers which proposed to delete the Internal Parcel from the RMA/NPL Site. EPA received comment letters from ninety-four organizations/entities and individuals. Authors of six letters were opposed to the proposed partial deletion of the Internal Parcel. One of these letters requested postponement of the deletion stating that the 60-day review time was insufficient to review and resolve questions regarding characterization of the eastern portion of the Internal Parcel and their perception of unnecessary risk posed by deletion of the western portion of the Internal Parcel. Several commenters also questioned the "piece-meal" approach to the Internal Parcel deletion.

In our Responsiveness Summary, EPA described the CERCLA investigation process and how various areas of the Internal Parcel, including the eastern portion which includes the groundwater aquifer below a demolition range, were

characterized. This process included file searches, "desktop" information (e.g., aerial photographs) searches, site reconnaissance, and collection of both soil and groundwater samples during the Remedial Investigation (RI). Soil samples were collected from burn pits and ordnance disposal areas, specific areas of concern to the commenters, during the RI. Explosive residue and Toxicity Characteristic Leaching Procedure (TCLP)-metals were addressed during pre-design studies for the Burial Trenches and Munitions (Testing) Soil Remediation Project. These studies showed that explosive residue and TCLP-metal concentrations were below risk-based regulatory levels. Considering these studies, the geology of the area, as well as the history of the disposal areas, there is no evidence of explosive or TCLP-metal soil contamination that could act as a source of groundwater contamination. The discovery of limited additional contamination at one area subsequent to the original excavation being completed demonstrates the multiple, sometimes overlapping, elements of the selected remedy that protect human health and the environment. These elements include excavation of known contaminated soil, further evaluation of ecological risks, and collection of confirmatory samples.

EPA ensures that human health is protected from on-going remedial activities on the remaining NPL areas through effective control of project emissions, restricting visitor access, and implementation of the *Site-Wide Air Quality Monitoring Program Plan*, including monitoring of air emissions. There are two major project areas that involve disturbance of contaminated soil remaining in the NPL area. Visitors to the Refuge are restricted to areas located approximately one mile from the Lime Basin slurry wall project and approximately two miles from the Basin F projects. Air emissions are measured at the current fence line and near the Visitor Center to verify that potential risks to visitors and the nearby communities are minimized. These requirements to protect human health will remain in place irrespective of the deletion of the Internal Parcel.

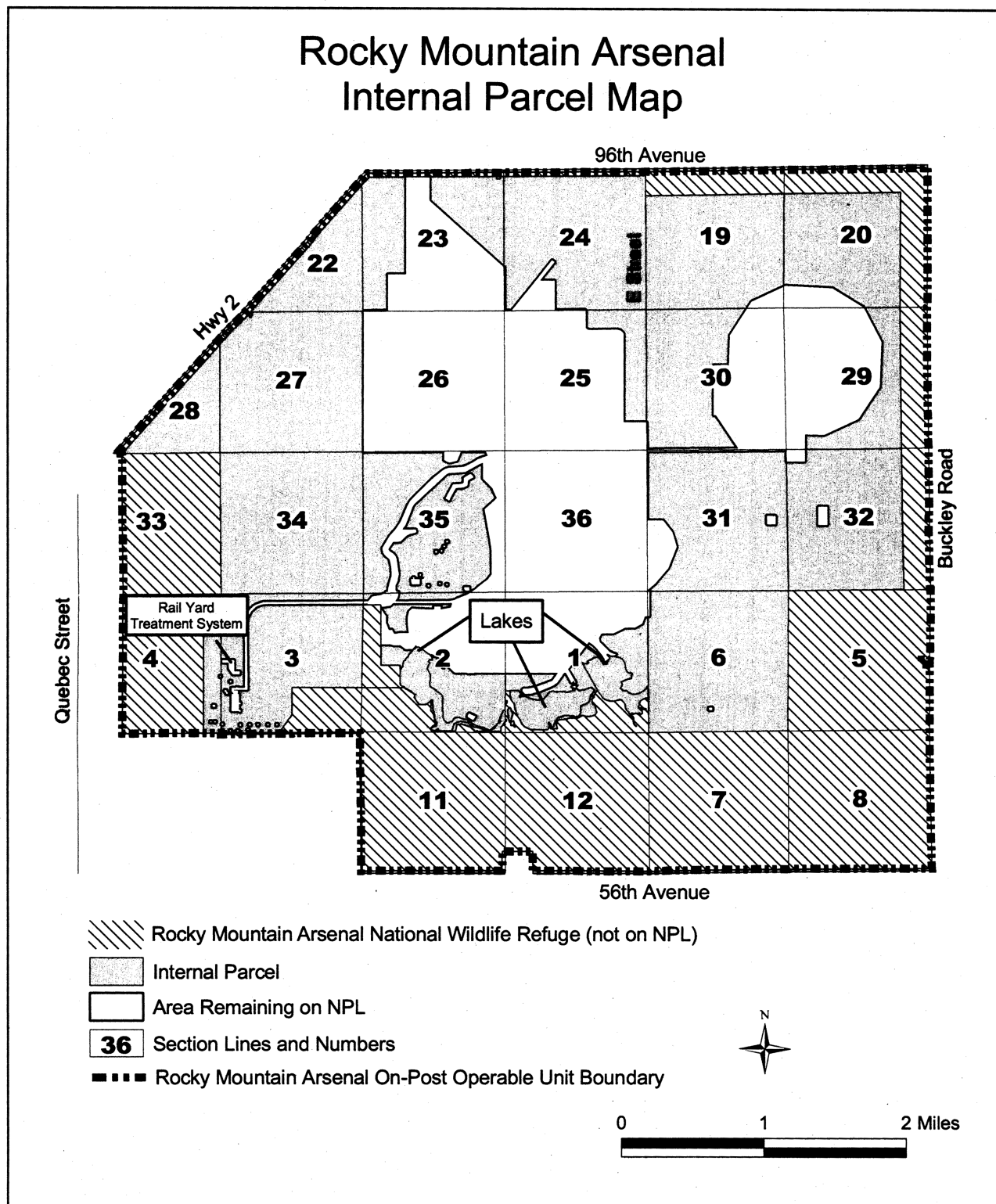
EPA's responsiveness summary further explained how only areas which met the criteria of "Responsible parties

or other persons have implemented all appropriate response actions required" (40 CFR 300.425(e)(1)(i)) were considered for deletion. EPA's Partial Deletions Rule, published November 1, 1995, was intended to allow portions of a site or an OU that have been cleaned up to be available for productive use, especially where total site cleanup may take many years. This description accurately reflects the ongoing cleanup at the RMA/NPL Site, which is over 50 percent complete, i.e., ten years of the fifteen-year schedule have passed and 16 of the 31 remedy projects have been completed. Partial deletion of the Internal Parcel communicates to the public the successful implementation of the remedy and progress toward final cleanup. In addition, it helps the Army achieve its goal of transferring property and furthers the purposes of the RMA National Wildlife Refuge Act (1992). The Internal Parcel deletion, though described as "piece-meal" by the commenters, is consistent with other partial deletions that leave islands of an NPL site surrounded or abutted by deleted lands, e.g., Cecil Field, (68 FR 27746).

The remaining eighty-eight letters supported proceeding with the Internal Parcel deletion based upon their confidence in the thoroughness of the cleanup activities conducted by the Department of the Army (Army) and Shell Oil Company (Shell). EPA agrees that completion of the remedy requirements as well as recent, site-wide studies adequately demonstrate that the Internal Parcel does not present a threat to the environment or human health and deletion of the Internal Parcel from the RMA/NPL Site is appropriate.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

BILLING CODE 6560-50-P



List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping

requirements, Superfund, Water pollution control, Water supply.

Dated: July 24, 2006.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 06-6572 Filed 7-28-06; 8:45 am]

BILLING CODE 6560-50-C

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 060216045-6045-01; I.D. 072506B]

Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Greenland turbot in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2006 Greenland turbot total allowable catch (TAC) in the Bering Sea subarea of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 27, 2006, through 2400 hrs, A.l.t., December 31, 2006.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands

Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2006 Greenland turbot TAC in the Bering Sea subarea of the BSAI is 1,607 metric tons (mt) as established by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2006 Greenland turbot TAC in the Bering Sea subarea of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 907 mt, and is setting aside the remaining 700 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Greenland turbot in the Bering Sea subarea of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained

from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Greenland turbot in the Bering Sea subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 24, 2006.

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

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 25, 2006.

Alan D. Risenhoover,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 06-6583 Filed 7-26-06; 2:32 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 71, No. 146

Monday, July 31, 2006

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-25105; Directorate Identifier 2006-CE-33-AD]

RIN 2120-AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 45 (YT-34), A45 (T-34A, B-45), and D45 (T-34B) Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 62-24-01, which applies to all Raytheon Aircraft Company (Raytheon) Beech Models 45 (YT-34), A45 (T-34A, B45), and D45 (T-34B) airplanes. AD 62-24-01 currently requires you to repetitively inspect, using the dye penetrant method, the front and rear horizontal stabilizer spars for cracks and replace any cracked stabilizer. Since we issued AD 62-24-01, we determined that using dye penetrant inspection method may not detect cracks before failure of the horizontal stabilizer spars. Therefore, we are proposing to require the surface eddy current inspection method to detect cracks in the horizontal stabilizer spars. Consequently, this proposed AD would retain the actions required in AD 62-24-01 and change the required inspection method from dye penetrant to surface eddy current. We are proposing this AD to prevent failure of the front and rear horizontal stabilizer spars caused by fatigue cracks. This failure could result in stabilizer separation and loss of control of the airplane.

DATES: We must receive comments on this proposed AD by September 29, 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.

- Governmentwide 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.

FOR FURTHER INFORMATION CONTACT: T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946-4155; facsimile: (316) 946-4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, "FAA-2006-25105; Directorate Identifier 2006-CE-33-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 we receive concerning this proposed AD.

Discussion

Fatigue cracks found in the horizontal stabilizer spars caused us to issue AD 62-24-01, Amendment 39-508. AD 62-24-01 currently requires the following

on all Raytheon Beech Models 45 (YT-34), A45 (T-34A, B45), and D45 (T-34B) airplanes:

- Repetitive inspections, using the dye penetrant method at 500-hour time-in-service (TIS) intervals, of the front and rear horizontal stabilizer spars between the butt rib and the inboard end for cracks; and

- Replacement of the horizontal stabilizer if cracks are found in either spar or the reinforcing doubler.

Investigation of a T-34 series airplane accident where the wing separated in flight revealed fatigue cracks in the stabilizer spar root sections. These spar root sections were inspected for fatigue cracks using the dye penetrant method (as required by AD 62-24-01) just 281 hours TIS before the fatal accident.

Since 281 hours TIS is much shorter than the 500-hour TIS inspection interval required by this AD, we have determined that using dye penetrant inspection method may not detect cracks before failure of the horizontal stabilizer spars. Therefore, we are proposing to require the surface eddy current inspection method to detect cracks in the horizontal stabilizer spars.

This condition, if not corrected, could result in failure of the horizontal stabilizer spars caused by fatigue cracks, which could result in stabilizer separation and loss of control of the airplane.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would supersede AD 62-24-01 with a new AD that would retain the actions required in AD 62-24-01 and only change the inspection procedure from the dye penetrant method to the surface eddy current method.

Costs of Compliance

We estimate that this proposed AD would affect 475 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 work-hours × \$80 per hour = \$640	Not applicable	\$640	\$640 × 475 = \$304,000.

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
4 work-hours × \$80 per hour = \$320	\$3,500	\$320 + \$3,500 = \$3,820.

Cost Difference Between This Proposed AD and AD 62-24-01

The only difference between this proposed AD and AD 62-24-01 is the proposed change of inspection method. There may be some minimal additional cost involved in doing the proposed eddy current inspection because of possible equipment rentals necessary. No additional actions are being proposed. We have determined that this proposed AD action does not increase the cost impact over that already required by AD 62-24-01.

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.

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at <http://dms.dot.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5227) is located at the street address stated in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

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 FAA amends § 39.13 by removing Airworthiness Directive (AD) 62-24-01, Amendment 39-508, and adding the following new AD:

Raytheon Aircraft Company: Docket No. FAA-2006-25105; Directorate Identifier 2006-CE-33-AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by September 29, 2006.

Affected ADs

(b) This AD supersedes AD 62-24-01, Amendment 39-508.

Applicability

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
Beech 45 (YT-34)	All.
Beech A45 (T34A, B-45)	All.
Beech D45 (T-34B)	All.

Unsafe Condition

(d) This AD results from our determination that the surface eddy current inspection method should be used in place of the dye penetrant inspection method currently required in AD 62-24-01. We are issuing this AD to prevent failure of the front and rear horizontal stabilizer spars caused by fatigue cracks. This failure could result in stabilizer separation and loss of control of the airplane.

Compliance

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Using the surface eddy current inspection procedures outlined in the appendix of this AD, inspect the front and rear horizontal stabilizer spars between the butt rib and the in-board end for cracks.	At the next repetitive inspection interval required by AD 62–24–01 or within the next 6 months after the effective date of this AD, whichever occurs first. Repetitively inspect thereafter at intervals not to exceed 500 hours time-in-service	The surface eddy current inspection procedures are contained in the appendix to this AD.
(2) If any crack is found in either spar or the reinforcing doubler during any inspection required in paragraph (e)(1) of this AD, replace the stabilizer.	Before further flight after the inspection in which the crack is found. After the replacement, continue with the repetitive inspection requirement in paragraph (e)(1) of this AD	Not applicable.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita Aircraft Certification Office (ACO), FAA, ATTN: T.N. Baktha, Aerospace Engineer, Wichita ACO, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4107, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(g) AMOCs approved for AD 62–24–01 are approved for this AD.

Related Information

(h) To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at <http://dms.dot.gov>. The docket number is Docket No. FAA–2006–25105; Directorate Identifier 2006–CE–33–AD.

Appendix to Docket No. FAA–2006–25105

Surface Eddy Current Inspection Procedure

Note: This surface eddy current inspection procedure is based on T–34 Spar Corporation TSC 3506, Rev C, dated May 10, 2005. The T–34 Spar Corporation is allowing the use of this procedure to be included in this Airworthiness Directive. Alternative methods of compliance procedures will be allowed, if approved by the Wichita Aircraft Certification Office and requested using the procedures found in 14 CFR 39.19.

Purpose

This procedure is to be used to detect cracks in the inner and outer spars of the

front and rear spar assemblies of Raytheon Aircraft Company Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplane stabilizers outside of the steel bushings in the attach holes.

Area To Be Inspected

To access the area of inspection, remove the stabilizer from the airplane. The areas to be inspected include the forward and aft surfaces of the inner and outer front and rear spars of the horizontal stabilizers in the areas surrounding each of the attach holes.

Preparing the Area for Inspection

Thoroughly clean area to be inspected with solvent (acetone or equivalent) as required until no signs of dirt, grime, or oil remain on the front and rear spars from the closeout former inboard on the forward and aft surfaces of the spars.

Surfaces to be inspected should be smooth and corrosion-free. Any loss of thickness due to corrosion below material thickness tolerance is cause for rejection of the structure. An ultrasonic tester may be used to determine if material thickness has been compromised.

Equipment Requirements

Nortec Stavely 2000D Eddy Current Tester or equivalent.

Probe: 50–500 KHz, shielded, absolute, 0.071" diameter (0.090 max. diameter), right angle, pencil style, surface probe, 5" long, 1/2" drop or equivalent. Use 0.025" notch (beyond head) for calibration

Personal Requirements

Technicians with Eddy Current, Level II or Level III per one of the following

specifications: ATA specification 105, SNT–TC–1A, or NAS–410 (MIL–std 410E).

Methods

Typical Set-up Parameters:
Frequency – 350 KHz, Gain Vertical – 75 dB, Horizontal – 69 dB, Drive-Mid, Filters-Lo Pass-30, Hi Pass-0, Lift off-Horizontal to the left, adjust as required. The most reliable indication (minimum of 1½ to 2 graticules) of the smallest observable flaw in the coupon (see attach Figures) occurs from the notch extending 0.025" past the edge of the nominal fastener head (total notch length of 0.100" from the edge of the nominal hole). Install appropriate aluminum guide pin into bushing such that the edge of the guide pin is flush with the edge of the bushing. Using the pin (see the attached Figures) as a guide, circle the area surrounding the steel bushing with the probe and adjacent area (approximately ¼") to inspect for cracks. Inspect forward and aft surfaces surrounding bushings of each spar.

Note: T–34 Spar Corporation, 2800 Airport Road, Hanger A, Ada, Oklahoma, 74820 is a source for these coupons and pin.

Accept/Reject Criteria

Any repeatable flaw indication is cause for rejection in accordance with the procedure. In the event that any crack is detected, describe the flaw in detail providing sketch as needed and send the information to the Wichita ACO.

Documentation Requirements

Record inspection findings in the aircraft logbook.

BILLING CODE 4910–13–P

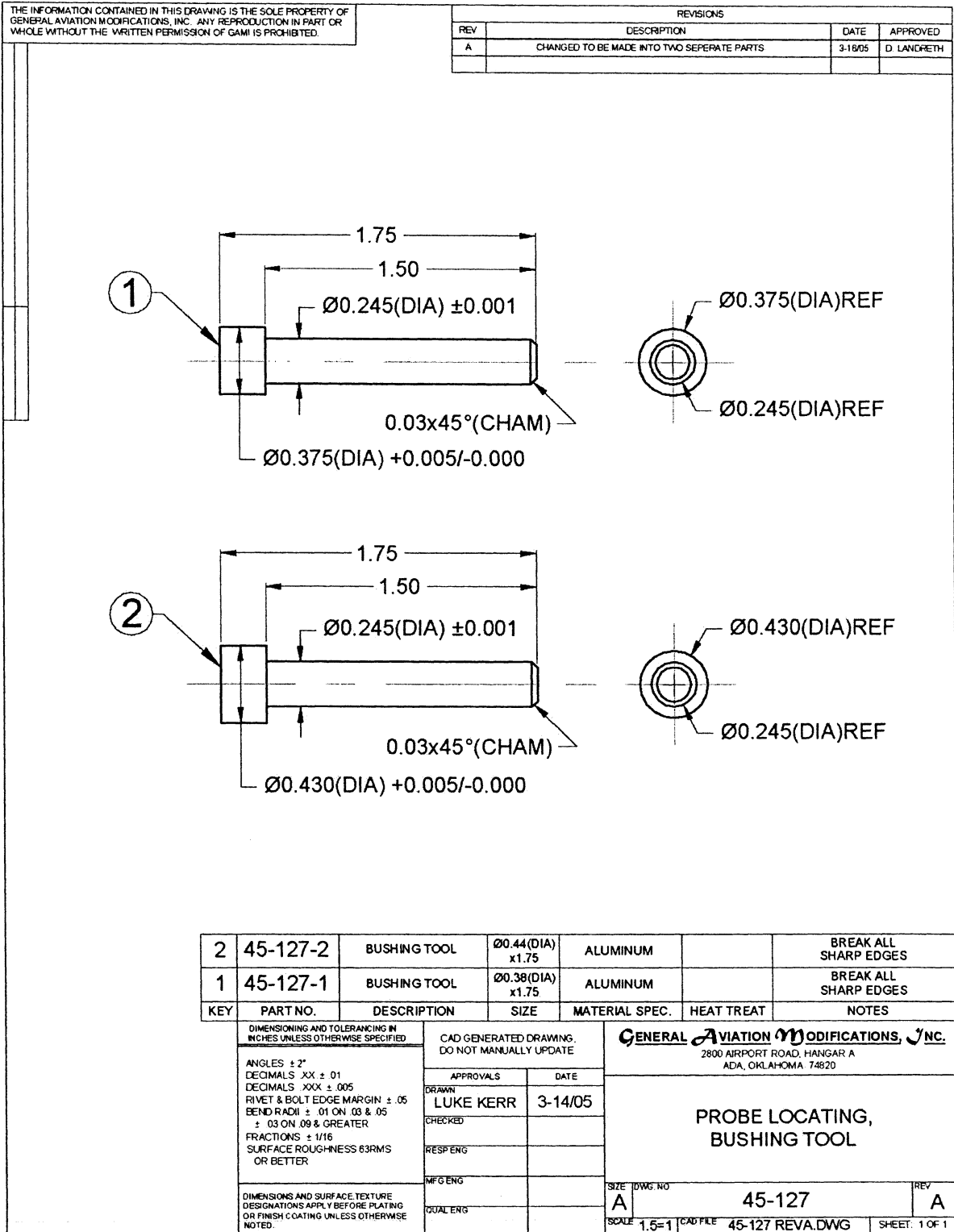


Figure 1

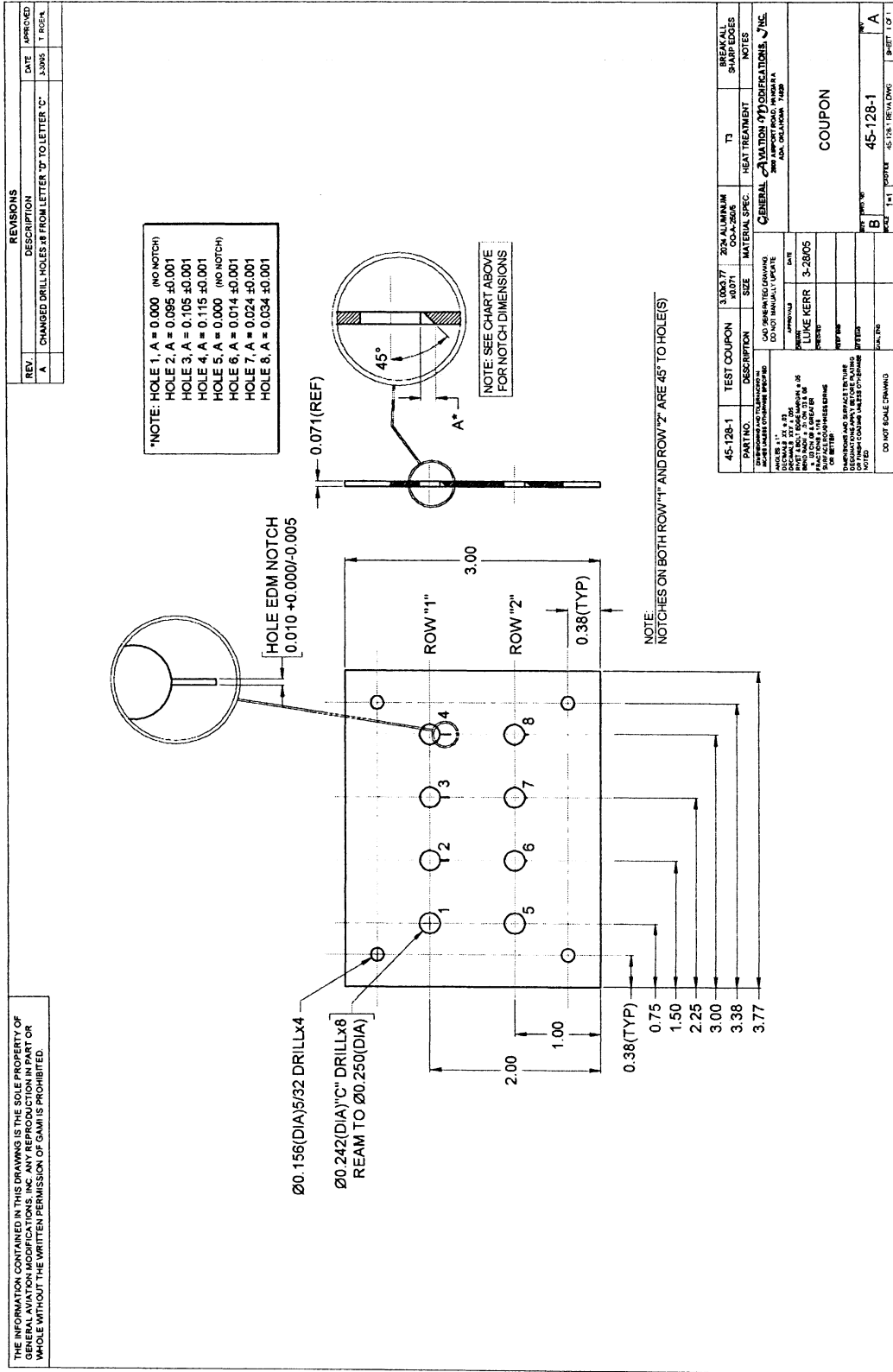


Figure 2

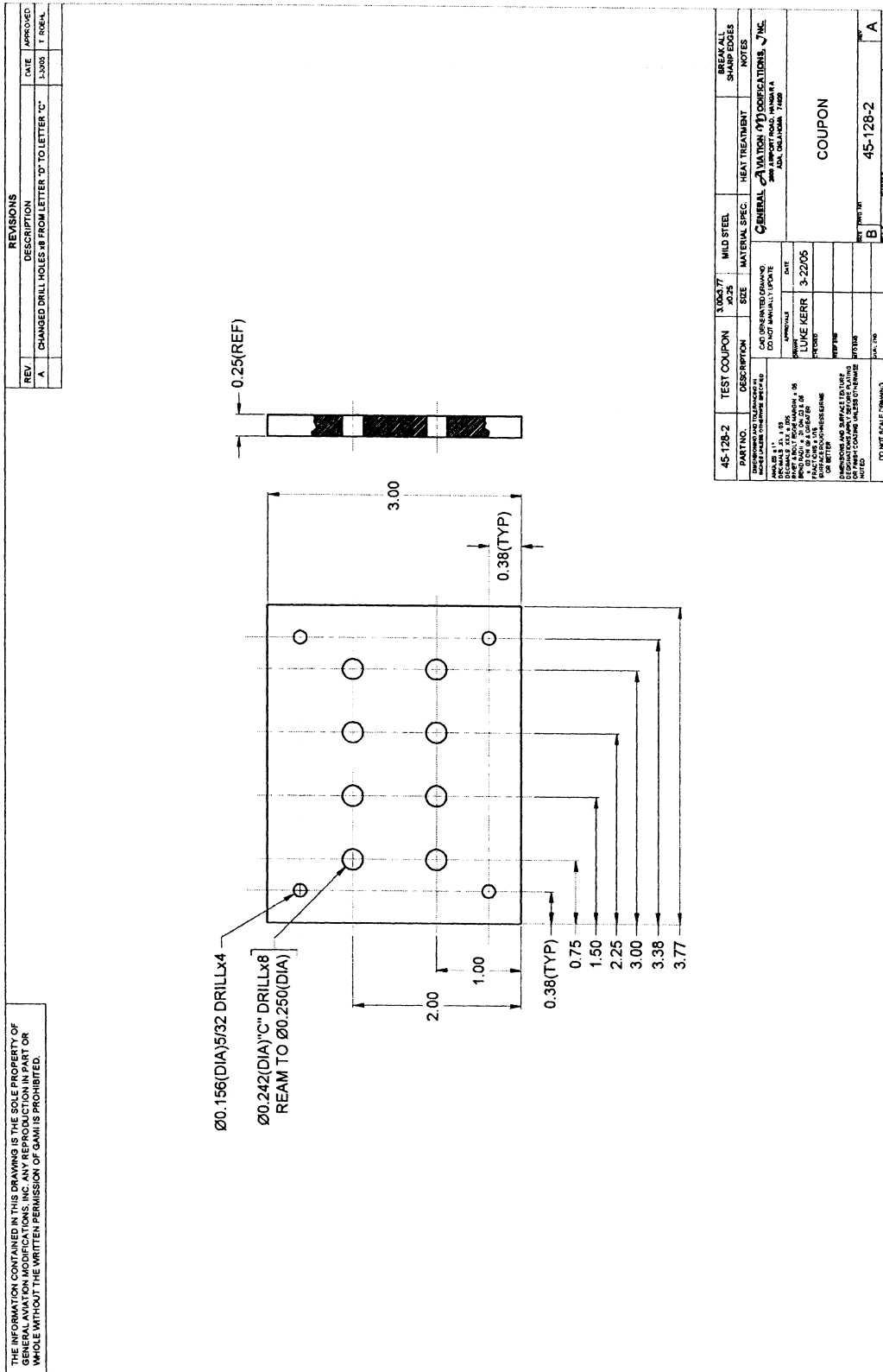


Figure 3

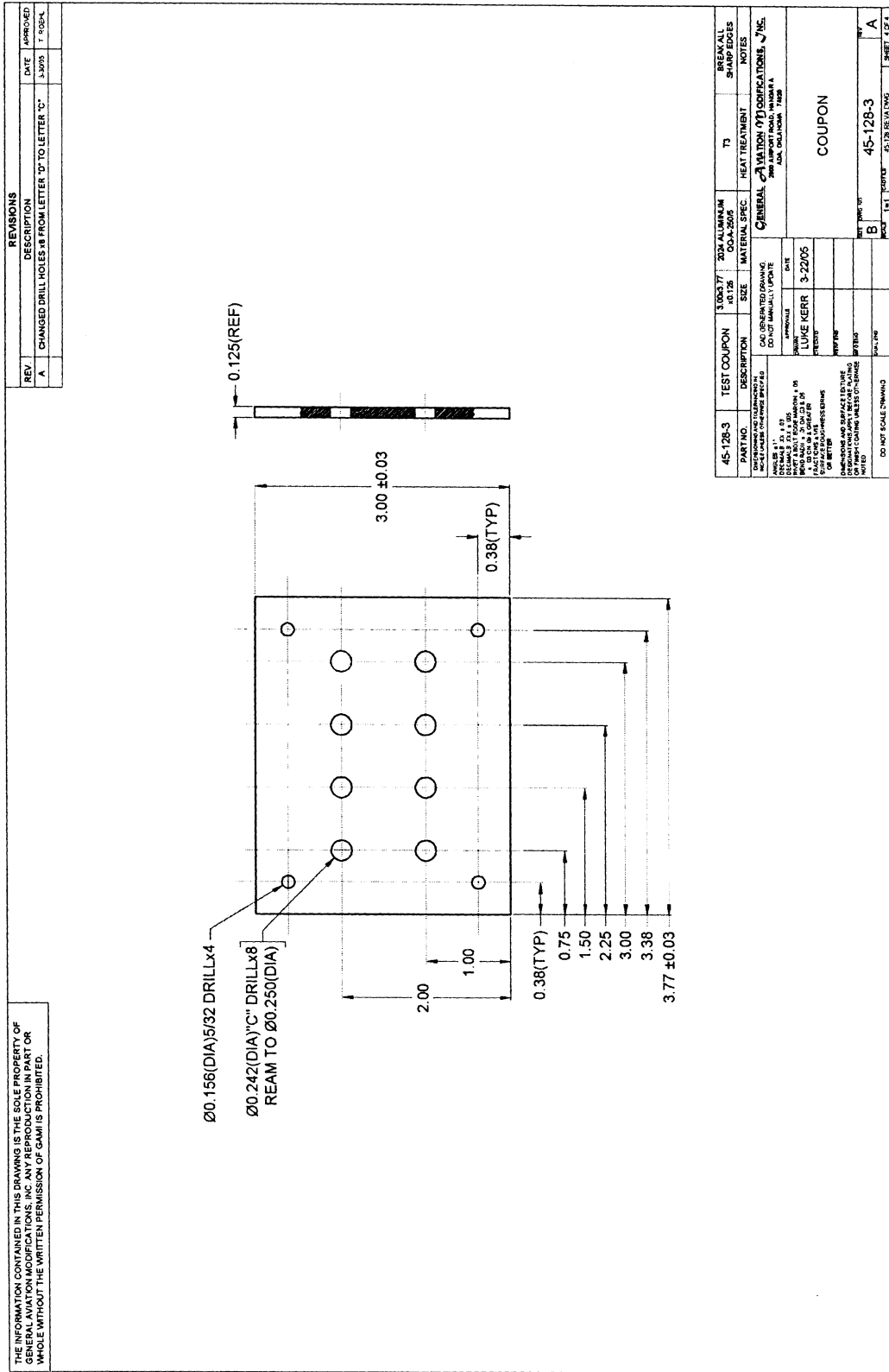


Figure 4

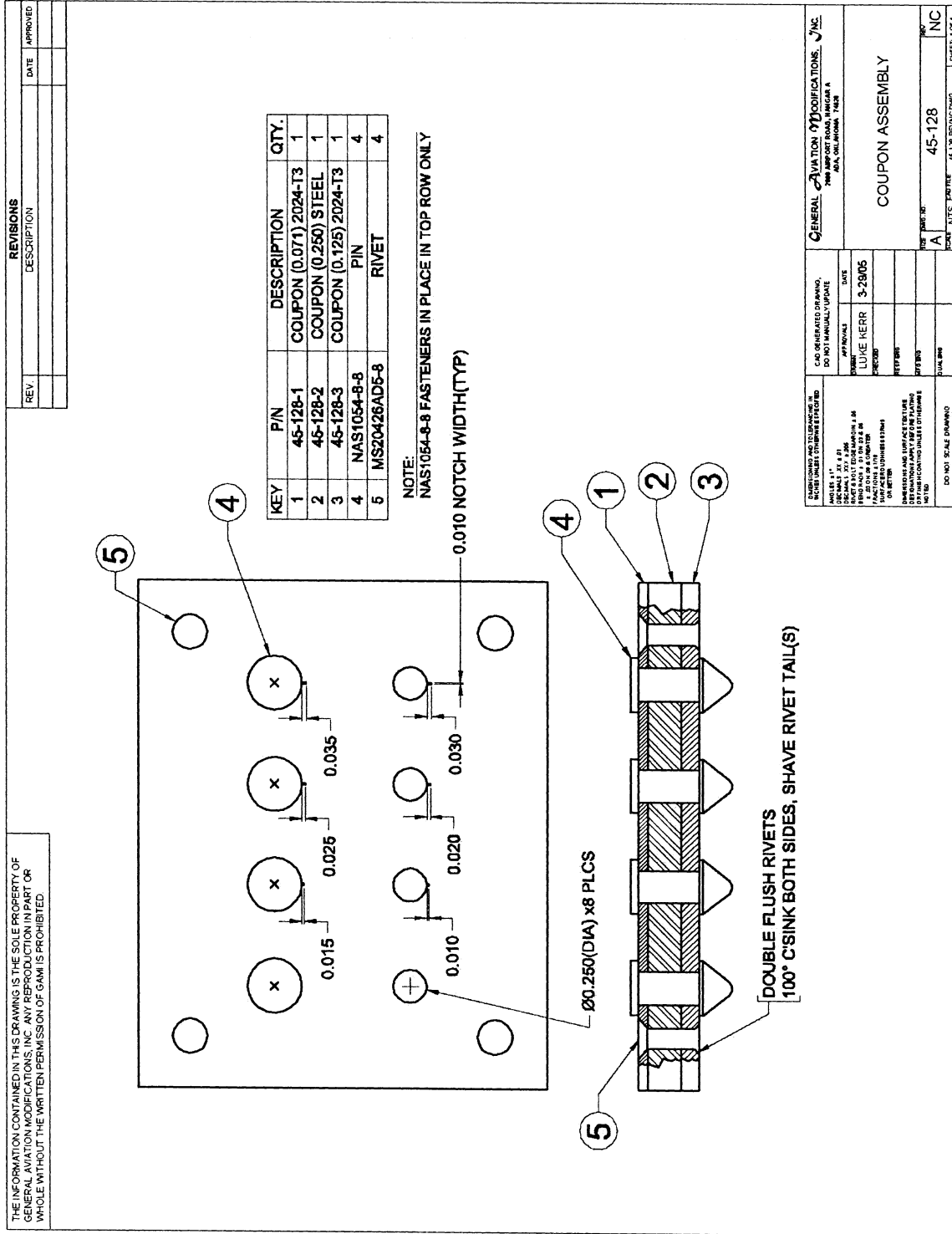


Figure 5

Issued in Kansas City, Missouri, on July 24, 2006.

James E. Jackson,
Acting Manager, Small Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 06-6581 Filed 7-28-06; 8:45 am]

BILLING CODE 4910-13-C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-25157; Directorate Identifier 2006-CE-34-AD]

RIN 2120-AA64

Airworthiness Directives; Raytheon Aircraft Company Models C90A, B200, B200C, B300, and B300C Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Raytheon Aircraft Company (Raytheon) (formerly Beech) Models C90A, B200, B200C, B300, and B300C airplanes. This proposed AD would require you to inspect the flight controls for improper assembly or damage, and if any improperly assembled or damaged flight controls are found, take corrective action. This proposed AD results from a report of inspections of several affected airplanes with improperly assembled or damaged flight controls. We are proposing this AD to detect and correct improperly assembled or damaged flight controls, which could result in an unsafe condition by reducing capabilities of the flight controls and lead to loss of control of the airplane.

DATES: We must receive comments on this proposed AD by September 29, 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.

For service information identified in this proposed AD, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201-0085; telephone: (800) 429-5372 or (316) 676-3140.

FOR FURTHER INFORMATION CONTACT: Chris B. Morgan, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946-4154; facsimile: (316) 946-4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, "FAA-2006-25157; Directorate Identifier 2006-CE-34-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 we receive concerning this proposed AD.

Discussion

We have received a report from an FAA Manufacturing Inspection District Office that describes numerous nonconformities during the manufacture of Raytheon Models C90A, B200,

B200C, B300, and B300C airplanes. These nonconformities affected the flight controls and included improper assembly and damage to the flight controls that could lead to loss of control of the airplane.

This condition, if not corrected, could result in an unsafe condition by reducing capabilities of the flight controls.

Relevant Service Information

We have reviewed Raytheon Aircraft Company Mandatory Service Bulletin Number SB 27-3761, Issued: February 2006.

The service information describes procedures for inspecting the flight control systems to ensure conformity with type design and correct the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would require you to inspect the flight controls for improper assembly or damage, and if any improperly assembled or damaged flight controls are found, take corrective action.

Differences Between This Proposed AD and the Service Information

We are requiring all phases of the flight control system be inspected at one time. The service information as presented allows some sections of the system to go 800 hours time-in-service before they are scheduled for inspection. We feel this time is excessive to allow potential safety items and nonconformities to exist. We have determined that the proposed compliance time will not inadvertently ground the affected airplanes.

Costs of Compliance

We estimate that this proposed AD would affect 135 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
80 work-hours × \$80 per hour = \$6,400	Not Applicable	\$6,400	\$864,000

We have no way of determining the number of airplanes that may need any corrective action that would be required

based on the results of the proposed inspection.

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.

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at <http://dms.dot.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5227) is located at the street address stated in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

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 FAA amends § 39.13 by adding the following new AD:

Raytheon Aircraft Company (Formerly Beech): Docket No. FAA-2006-25157; Directorate Identifier 2006-CE-34-AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by September 29, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
C90A	LJ-1697 through LJ-1726, LJ-1728, LJ-1729, and LJ-1731 through LJ-1739.
B200	BB-1827 through BB-1912.
B200C ..	BL-148 and BL-149.
B300	FL-379 through FL-423, FL-426, FL-428 through FL-450, and FL-452.
B300C ..	FM-11.

Unsafe Condition

(d) This AD results from a report of inspections of several affected airplanes with improperly assembled or damaged flight controls. We are issuing this AD to detect and correct improperly assembled or damaged flight controls, which could result in an unsafe condition by reducing capabilities of the flight control and lead to loss of control of the airplanes.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Inspect the flight controls for improper assembly and any damage.	At whichever of the following occurs first: (i) Within 100 hours time-in-service after the effective date of this AD; or (ii) At the next annual inspection that occurs at least 30 days after the effective date of this AD.	Follow Raytheon Aircraft Company Mandatory Service Bulletin Number SB 27-3761, Issued: February 2006.
(2) If you find any improperly assembled or damaged flight controls as a result of the inspection required by paragraph (e)(1) of this AD, take corrective action as specified in the service information.	Before further flight after the inspection required by paragraph (e)(1) of this AD.	Follow Raytheon Aircraft Company Mandatory Service Bulletin Number SB 27-3761, Issued: February 2006.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita Aircraft Certification Office (ACO), FAA, ATTN: Chris B. Morgan, Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946-4154; facsimile: (316) 946-4107, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) To get copies of the service information referenced in this AD, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201-0085; telephone: (800) 429-5372 or (316) 676-3140. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC, or on the Internet at <http://dms.dot.gov>. The docket number is Docket No. FAA-2006-25157; Directorate Identifier 2006-CE-34-AD.

Issued in Kansas City, Missouri, on July 24, 2006.

James E. Jackson,
Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06-6590 Filed 7-28-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[REG-111578-06]

RIN 1545-BF56

Computer Software Under Section 199 (c)(5)(B); Hearing**AGENCY:** Internal Revenue Service, Treasury.**ACTION:** Change of location for public hearing.

SUMMARY: This document provides a change of location for a public hearing on proposed regulations under section 199 of the Internal Revenue Code. The regulations provide a deduction for income attributable to domestic production activities to certain transactions involving computer software.

DATES: The public hearing is being held on Tuesday, August 29, 2006, at 10 a.m.**ADDRESSES:** The public hearing was originally being held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington DC. The hearing location has changed. The public hearing will be held in the IRS Auditorium (New Carrollton location), 5000 Ellin Road, Lanham, MD 20706.**FOR FURTHER INFORMATION CONTACT:** Guy R. Traynor, (202) 622-7180 or Richard Hurst at Richard.A.Hurst@irs.counsel.treas.gov.**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is a notice of proposed rulemaking (REG-111578-06) that was published in the **Federal Register** on Thursday, June 1, 2006 (71 FR 31128).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who submitted written comments by August 30, 2006, and outlines by August 8, 2006, may present oral comments at the hearing.

A period of 10 minutes is allotted to each person for presenting oral comments. The IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Guy R. Traynor,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6-12142 Filed 7-28-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 934**

[ND-049-FOR, Amendment No. XXXVI]

North Dakota Regulatory Program**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota intends to revise its program to incorporate the additional flexibility afforded by the revised Federal regulations, clarify ambiguities, and improve operational efficiency.

This document gives the times and locations that the North Dakota program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t. August 30, 2006. If requested, we will hold a public hearing on the amendment on August 25, 2006. We will accept requests to speak until 4 p.m., m.d.t. on August 15, 2006.**ADDRESSES:** You may submit comments, identified by SATS No. ND-049-49, by any of the following methods:

- E-mail: jfleischman@osmre.gov. Include "ND-049-FOR" in the subject line of the message.
- Mail/Hand Delivery/Courier: Jeffrey W. Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 150 East B Street, Rm 1018, Casper, Wyoming 82602, 307/261-6550.
- Fax: 307/261-6552.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and ND-049-FOR. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: Access to the docket, to review copies of the North Dakota

program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement's (OSM) Casper Field Office. In addition, you may review a copy of the amendment during regular business hours at the following locations:

Jeffrey W. Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 150 East B Street, Rm 1018, Casper, Wyoming 82602, 307/261-6550, E-mail: jfleischman@osmre.gov.

James R. Deutsch, Reclamation Division, Public Service Commission, 600 E. Boulevard Ave. Dept. 408, Bismarck, North Dakota 58508-0480, 701/328-2410, Internet: <http://www.ndpsc.state.nd.us>.

FOR FURTHER INFORMATION CONTACT:

Jeffrey W. Fleischman, Telephone: 307/261-6552. E-mail: jfleischman@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the North Dakota Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.15 and 934.30.

II. Description of the Proposed Amendment

By letter dated May 24, 2006, North Dakota sent us a proposed amendment to its program (Amendment number XXXVI, administrative record No. ND-KK-01) under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment to include changes made at its own initiative. The full text of the program is available for you to read at the locations listed above under

ADDRESSES.

Specifically, North Dakota proposes to:

- Add language to North Dakota's Coal Rules at North Dakota Administrative Code (NDAC) 69-05.2-06-03 (right-of-entry requirements) to allow a permittee to delete coal leases from the permit when mining on a tract covered by a lease that is no longer needed to show surface right of entry, or when a coal lease has otherwise been terminated (however, if the coal lease no longer provides the surface right of entry, other documents granting the permittee right of entry must be added to the permit).

- Delete language in North Dakota's Coal Rules at NDAC 69-05.2-10-01 that requires the newspaper notice for permit applications include a reference to the U.S. Geological Survey map that contains the area, and limits the listing of coal owners in the notice to those that will be affected by the mining activities.

- Revise the bond release application requirements in North Dakota's Coal Rules at NDAC 69-05.2-12-12 to require the filing of a copy of the newspaper advertisement instead of requiring the submittal of affidavits of publication.

- Revise sedimentation pond inspection requirements at NDAC 69-05.2-16-09 to make a better distinction between inspections that must be conducted while a pond is being constructed versus annual inspection reports that must be prepared by a registered professional engineer.

- Revise revegetation success standards at NDAC 69-05.2-22-07 to allow data collected from native grassland, tame pastureland and cropland in any two years after year six of the ten-year revegetation liability period to be used for final bond release purposes.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the North Dakota program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your written comments when developing the final rule if they are received after the close of the comment period (*see DATES*). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Casper Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. ND-049-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Casper Field Office at 307/261-6552. In the final rulemaking, we will not consider or include in the administrative record any electronic comments received after the time indicated under **DATES** or at e-addresses other than the Casper Field Office.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on August 15, 2006. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an

opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and

its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects 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. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute

major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act.

This rule:

- a. Does not have an annual effect on the economy of \$100 million.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a

determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 28, 2006.

Allen D. Klein,

Director, Western Region.

[FR Doc. E6-12203 Filed 7-28-06; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA-148-FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Pennsylvania regulatory program (hereinafter, the “Pennsylvania program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The proposed amendment (Administrative Record Number PA 887.00) was submitted to clarify the requirements for shaft and slope development and other issues relating to blasting at a mine site.

This document gives the times and locations that the Pennsylvania program and this submittal are available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., local time August 30, 2006. If requested, we will hold a public hearing on August 25, 2006. We will accept requests to speak until 4 p.m., local time on August 15, 2006.

ADDRESSES: You may submit comments, identified by “PA-148-FOR” by any of the following methods:

- *E-mail:* grieger@osmre.gov.
- *Mail/Hand Delivery:* George Rieger, Director, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 415 Market Street, Room 304, Harrisburg, PA 17101, Telephone: (717) 782-4036.

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency docket number "PA-148-FOR" for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" section in this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Docket: You may review copies of the Pennsylvania program, this submission, a listing of any scheduled public hearings, and all written comments received in response to this document at OSM's Pittsburgh Field Division Office at the address listed above during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the submission by contacting OSM's Pittsburgh Field Division's Harrisburg Office. In addition, you may receive a copy of the submission during regular business hours at the following location:

Joseph P. Pizarchik, Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, PO Box 8461, Harrisburg, Pennsylvania 17105-8461, Telephone: (717) 787-5103.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (717) 782-4036. E-mail: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including

the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Description of the Proposed Amendment

By letter dated June 8, 2006 (Administrative Record Number PA 887.00), the Pennsylvania Department of Environmental Protection (PADEP) sent OSM a program amendment to address blasting for the development of shafts for underground mines and to make administrative changes to regulations relating to blasting in 25 Pa. Code Chapters 77, 87, 88, 89 and 210. However, by letter dated July 5, 2006 (Administrative Record Number PA 887.02), PADEP withdrew the provisions pertaining to industrial mineral underground mining provisions at Chapter 77 since they are not coal related. Therefore, only those changes at 25 Pa. Code Chapters 87, 88, 89 and 210 will be addressed in this rule. The proposed changes clarify that the use of explosives in connection with the construction of a mine opening for an underground coal mine is a surface mining activity subject to the applicable requirements in Chapters 87 or 88 and that the person conducting the blasting activity must possess a blaster's license. In addition, PADEP is proposing changes to the scheduling requirements applicable to the use of explosives for constructing openings for coal and industrial mineral underground mines and changes to the requirements for protective measures to be taken when surface coal mine blasting is in proximity to a public highway or an entrance to a mine. Finally, a category for mine opening blasting is being added to the classifications of blaster's licenses.

The full text of the document is available for you to read at the location listed above under **ADDRESSES**. A summary of the proposed changes, as provided by Pennsylvania in the Preamble of their proposed rule (Administrative Record Number PA 887.00), are as follows:

25 Pa. Code 210.11. Definition.

PADEP is proposing to add a definition for the term "mine opening blasting" to 25 Pa. Code 210.11 as follows: "Mine opening blasting—Blasting conducted for the purpose of constructing a shaft, slope, drift, or tunnel mine opening for an underground mine, either operating or under development, from the surface

down to the point where the mine opening connects with the mineral strata to be or being extracted."

25 Pa. Code 87.1, 88.1, and 89.5. Definitions.

PADEP is proposing to add a definition for the term "mine opening blasting" to 25 Pa. Code 87.1, 88.1, and 89.5 as follows: "Mine opening blasting—Blasting conducted for the purpose of constructing a shaft, slope, drift, or tunnel mine opening for an underground mine, either operating or under development, from the surface down to the point where the mine opening connects with the coal seam to be or being extracted."

25 Pa. Code 87.124. Use of explosives: general requirements.

PADEP is proposing to change subsection (b) to correct the reference from "87.125" to "87.126 (relating to use of explosives: public notice of blasting schedules)."

As proposed, subsection (b) reads:

Blasts that use more than 5 pounds of explosive or blasting agents shall be conducted according to the schedule required by section 87.126 (relating to use of explosives: public notice of blasting schedules).

25 Pa. Code 87.126. Use of explosives: public notice of blasting schedule.

PADEP is proposing to delete the following phrase at subsection (b)(2)(ii), "each period may not exceed 4 hours".

As proposed, subsection (b)(2)(ii) reads:

Dates and time periods when explosives are to be detonated.

25 Pa. Code 87.127. Use of explosives: surface blasting requirements.

PADEP is proposing to change subsection (a) by adding the following:

* * * except that mine opening blasting conducted after the second blast, for that mine opening, may be conducted at any time of day or night as necessary to maintain stability of the mine opening to protect the health and safety of mineworkers. For mine opening blasting conducted after the second blast, for that mine opening, the Department may approve vibration limits at a dwelling, public building, school, church or commercial or institutional structure, that are less stringent than those specified in Subsections (e) or (n) if consented to, in writing, by the structure owner and lessee, if leased to another party.

As proposed, subsection (a) reads:

Blasting shall be conducted between sunrise and sunset, at times announced in the blasting schedule, except that mine opening blasting conducted after the second blast, for that mine opening, may be conducted at any time of day or night as necessary to maintain stability of the mine opening to protect the health and safety of mineworkers. For mine opening blasting

conducted after the second blast, for that mine opening, the Department may approve vibration limits at a dwelling, public building, school, church or commercial or institutional structure, that are less stringent than those specified in Subsections (e) or (n) if consented to, in writing, by the structure owner and lessee, if leased to another party.

PADEP is proposing to change subsection (b) by adding the phrase "or vibration limits," and by deleting the term "excessive noise" and replacing it with the phrase "the adverse affects of vibration or safety hazards."

As proposed, subsection (b) reads:

The Department may specify more restrictive time periods or vibration limits, based on public requests or other relevant information, according to the need to adequately protect the public from the adverse affects of vibration or safety hazards.

PADEP is proposing to change subsection (e) by deleting the following phrases, "unless the structure is owned by the person who conducts the surface mining activities and is not leased to another person. The lessee may sign a waiver", and replacing them with "unless the structure is located on the permit area when the structure owner and lessee, if leased to another party, have each signed a."

As proposed, subsection (e) reads:

An airblast shall be controlled so that it does not exceed the noise level specified in this subsection at a dwelling, public building, school, church or commercial or institutional structure, unless the structure is located on the permit area when the structure owner and lessee, if leased to another party, have each signed a waiver relieving the operator from meeting the airblast limitations of this subsection.

PADEP is proposing to change subsection (e)(1) to delete the following language, "Lower frequency limit of measuring system in Hz (k 3dB) Maximum level (dB) 0.1 Hz or lower flat response 134, peak 2 Hz or lower flat response" and "peak 6 Hz or lower flat response 129, peak c-weighted, slow response 105 peak dBC.", and insert the following phrase: "is 133 dBL."

As proposed, subsection (e)(1) reads:

The maximum allowable noise level is 133 dBL.

PADEP is proposing to change subsection (f)(1) to lower the distance from a blasting area where an operator must barricade and guard public highways and entrances to the operation from 1,000 feet to 800 feet. PADEP is also proposing to insert the following language:

The operator may use an alternative measure to this requirement if the operator demonstrates, to the Department's satisfaction, that the alternative measure is at

least as effective at protecting persons and property from the adverse affects of a blast. Alternative measures are measures such as:

- (i) Slowing or stopping traffic in coordination with appropriate state or local authorities, including local police.
- (ii) Using mats to suppress fly rock.
- (iii) Designing the blast to prevent damage or injury to persons and property located on the public highways or at the operation's entrances by using design elements such as:
 - (A) Orienting the blast so that the direction of relief is away from public highways or operation entrances.
 - (B) Adjusting blast design parameters including:
 - (I) The hole's diameter.
 - (II) The number of rows.
 - (III) The number of holes.
 - (IV) The amount and type of explosive.
 - (V) The burden and spacing.
 - (VI) The amount and type of stemming.
 - (VII) The powder factor.

As proposed, subsection (f)(1) reads:

Public highways and entrances to the operation shall be barricaded and guarded by the operator if the highways and entrances to the operations are located within 800 feet of a point where a blast is about to be fired. The operator may use an alternative measure to this requirement if the operator demonstrates, to the Department's satisfaction, that the alternative measure is at least as effective at protecting persons and property from the adverse affects of a blast. Alternative measures are measures such as:

- (i) Slowing or stopping traffic in coordination with appropriate state or local authorities, including local police.
- (ii) Using mats to suppress fly rock.
- (iii) Designing the blast to prevent damage or injury to persons and property located on the public highways or at the operation's entrances by using design elements such as:
 - (A) Orienting the blast so that the direction of relief is away from public highways or operation entrances.
 - (B) Adjusting blast design parameters including:
 - (I) The hole's diameter.
 - (II) The number of rows.
 - (III) The number of holes.
 - (IV) The amount and type of explosive.
 - (VI) The amount and type of stemming.
 - (VII) The powder factor.

PADEP is proposing to delete subsection (l) in its entirety. Subsection (l) currently reads:

The use of a formula to determine maximum weight of explosives per delay for blasting operations at a particular site may be approved by the Department if the peak particle velocity of 1 inch per second required in § 87.126 (relating to use of explosives: public notice of blasting schedule) would not be exceeded.

25 Pa. Code 87.129. Use of explosives: records of blasting operations.

PADEP is proposing to change subsection (4) by adding the phrase: "identification of and the"

As proposed subsection (4) reads:

The identification of and the direction and distance, in feet, to the nearest dwelling, public building, school, church, commercial or institutional building or other structure.

25 Pa. Code 88.135. Blasting: surface blasting requirements.

PADEP proposes to add the following language to subsection (a):

* * * except that mine opening blasting conducted after the second blast for that mine opening may be conducted at any time of day or night as necessary to maintain stability of the mine opening to protect the health and safety of mineworkers. For mine opening blasting conducted after the second blast, for that mine opening, the Department may approve vibration limits at a dwelling, public building, school, church or commercial or institutional structure, that are less stringent than those specified in Subsection (h) if consented to, in writing, by the structure owner and lessee, if leased to another party.

As proposed, subsection (a) reads:

Blasting shall be conducted between sunrise and sunset, except that mine opening blasting conducted after the second blast for that mine opening may be conducted at any time of day or night as necessary to maintain stability of the mine opening to protect the health and safety of mineworkers. For mine opening blasting conducted after the second blast, for that mine opening, the Department may approve vibration limits at a dwelling, public building, school, church or commercial or institutional structure, that are less stringent than those specified in Subsection (h) if consented to, in writing, by the structure owner and lessee, if leased to another party.

PADEP is proposing to change subsection (b) by adding the following phrases: "or vibration limits," and "from the adverse affects of vibration or safety hazards." As proposed, subsection (b) reads:

The Department may specify more restrictive time periods or vibration limits, based on other relevant information, according to the need to adequately protect the public from the adverse affects of vibration or safety hazards.

PADEP is proposing to change subsection (f)(1) by lowering the distance from a blasting area where an operator must barricade and guard public highways and entrances to the operation from 1,000 feet to 800 feet and by adding the following:

The operator may use an alternative measure to this requirement if the operator demonstrates, to the Department's satisfaction, that the alternative measure is at least as effective at protecting persons and property from the adverse affects of a blast. Alternative measures are measures such as:

- (i) Slowing or stopping traffic in coordination with appropriate state or local authorities, including local police.
- (ii) Using mats to suppress fly rock.

(iii) Designing the blast to prevent damage or injury to persons and property located on the public highways or at the operation's entrances by using design elements such as:

(A) Orienting the blast so that the direction of relief is away from public highways or operation entrances.

(B) Adjusting blast design parameters including:

(I) The hole's diameter.

(II) The number of rows.

(III) The number of holes.

(IV) The amount and type of explosive.

(V) The burden and spacing.

(VI) The amount and type of stemming.

(VII) The powder factor.

As proposed, subsection (f)(1) reads:

Public highways and entrances to the operation shall be barricaded and guarded by the operator if the highways and entrances to the operations are located within 800 feet of a point where a blast is about to be fired. The operator may use an alternative measure to this requirement if the operator demonstrates, to the Department's satisfaction, that the alternative measure is at least as effective at protecting persons and property from the adverse effects of a blast. Alternative measures are measures such as:

(i) Slowing or stopping traffic in coordination with appropriate state or local authorities, including local police.

(ii) Using mats to suppress fly rock.

(iii) Designing the blast to prevent damage or injury to persons and property located on the public highways or at the operation's entrances by using design elements such as:

(A) Orienting the blast so that the direction of relief is away from public highways or operation entrances.

(B) Adjusting blast design parameters including:

(I) The hole's diameter.

(II) The number of rows.

(III) The number of holes.

(IV) The amount and type of explosive.

(V) The burden and spacing.

(VI) The amount and type of stemming.

(VII) The powder factor.

PADEP is proposing to change subsection (h) to delete the phrase, "the maximum peak particle velocity may not exceed 2 inches per second" and add the phrase, "* * * the blasts shall be designed and conducted in a manner that achieves either a scaled distance of 90 or meets the maximum allowable peak particle velocity as indicated by Figure 1 * * *" PADEP is further proposing to change the last sentence of this subsection by removing the phrase, "130 DB linear at a frequency 6Hz or lower" and replacing it with "133 dBL." As proposed, subsection (h) reads:

In all blasting operations, the blasts shall be designed and conducted in a manner that achieves either a scaled distance of 90 or meets the maximum allowable peak particle velocity as indicated by Figure 1 at the location of any dwelling, public building, school, church or commercial or institutional building. Peak particle velocities shall be recorded in three mutually perpendicular

directions; longitudinal, transverse and vertical. The maximum peak particle velocity shall be the largest of any of three measurements. The Department may reduce the maximum peak particle velocity allowed, if it determines that a lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts, or other factors. The sound pressure level may not exceed 133 dBL.

PADEP is proposing to change subsection (i) by adding the phrase "and sound pressure." As proposed subsection (i) reads:

The maximum peak particle velocity and sound pressure limitations of this section do not apply at the following locations: * * *

PADEP is proposing to remove subsection (l) in its entirety. This subsection currently reads:

The use of a formula to determine maximum weight of explosives per delay for blasting operations at a particular site, may be approved by the Department if the peak particle velocity of 2 inches per second would not be exceeded.

25 Pa. Code 88.493. Minimum environmental protection performance standards.

PADEP is proposing to change subsection (7)(i) by replacing the phrase "initial rounds of slopes, shafts and tunnels" with "mine opening blasting."

As proposed, subsection (7)(i) reads:

A person who conducts surface blasting activities incident to underground mining activities, including, but not limited to, mine opening blasting shall conduct the activities in compliance with sections 88.45 and 88.134–88.137.

25 Pa. Code 89.62. Use of explosives.

PADEP is proposing to change this section to replace the words "initial rounds of slopes, shafts and tunnels" with "mine opening blasting."

As proposed, 25 Pa. Code 89.62 reads:

Each person who conducts surface blasting activities incident to underground mining activities, including, but not limited to, mine opening blasting, shall conduct the activities in compliance with Chapter 87 (relating to surface mining of coal).

25 Pa. Code 210.12. Scope.

PADEP is proposing to change this section to add the phrase: "Except for persons engaging in mine opening blasting."

As proposed, 25 Pa. Code 210.12 reads:

This chapter applies to persons engaging in the detonation of explosives within this Commonwealth. Except for persons engaging in mine opening blasting, this chapter does not apply to persons authorized to detonate explosives or to supervise blasting activities under: * * *

25 Pa. Code 210.17. Issuance and renewal of licenses.

PADEP is proposing to change subsection (a) to add the phrase "mine opening blasting" at two places.

As proposed, this section reads:

A blaster's license is issued for a specific classification of blasting activities. The classifications will be determined by the Department and may include general blasting (which includes all classifications except demolition, mine opening blasting and underground noncoal mining), trenching and construction, seismic and pole line work, well perforation, surface mining, underground noncoal mining, mine opening blasting, industrial, limited and demolition.

III. Public Comment Procedures

In accordance with 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see DATES). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Pittsburgh Field Division's Harrisburg Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: PA-148-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Pittsburgh Field Division's Harrisburg Office at (717) 782-4036.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., local time on August 15, 2006. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the submission, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian Tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal that is the subject of this rule is based on counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does not

have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 6, 2006.

H. Vann Weaver,

Acting Regional Director, Appalachian Region.

[FR Doc. E6-12186 Filed 7-28-06; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No. WY-035-FOR]

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing the receipt of additional explanatory information pertaining to a previously proposed amendment to the Wyoming regulatory program (hereinafter, "the Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). In lieu of changing the proposed rule language, as we suggested in our issue letter, Wyoming has submitted additional explanatory information about its self-bonding rules (Rule Package 1-U) with

respect to the inclusion of foreign assets as part of a company's tangible net worth and the eligibility of foreign companies to self-bond or guarantee a self-bond. We are seeking input on whether the Wyoming explanation provides sufficient basis for us to approve the proposed amendment.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t. August 15, 2006.

ADDRESSES: You may submit comments, identified by "SATS No. WY-035-FOR" by any of the following methods:

- *E-mail:* JFleischman@osmre.gov.

Include "SATS No. WY-035-FOR" in the subject line of the message.

- *Mail/Hand Delivery/Courier:* Jeffrey W. Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Rm 1018, Casper, Wyoming 82601-1018, 307/261-6550.

- *Fax:* 307/261-6552.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and "SATS No. WY-035-FOR." For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading under the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: Access to the docket, to review copies of the Wyoming program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement's (OSM) Casper Field Office. In addition, you may review a copy of the amendment during regular business hours at the following locations:

Jeffrey W. Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Rm. 1018, Casper, Wyoming 82601-1018, 307/261-6550, E-mail: JFleischman@osmre.gov.

John V. Corra, Director, Wyoming Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, 307/777-7046, E-mail: jcorra.state.wy.us.

FOR FURTHER INFORMATION CONTACT:

Jeffrey W. Fleischman, Telephone: 307/

261-6550; E-mail:

JFleischman@osmre.gov.

SUPPLEMENTARY INFORMATION:

- Background on the Wyoming Program
- Description of the Proposed Amendment
- Public Comment Procedures

I. Background on the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.11, 950.12, 950.15, 950.16, and 950.20.

II. Description of the Proposed Amendment

By letter dated March 7, 2006, Wyoming submitted an amendment to its program proposing revisions to and additions of rules concerning self-bonding requirements (Administrative Record No. WY-40-01) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming sent the amendment to reflect changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

We announced receipt of the proposed amendment in the April 21, 2006, **Federal Register** (71 FR 20604), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. WY-40-07). Because no one requested a public hearing or meeting, none was held. The public comment period ended on May 22, 2006. We received comments from two industry groups and one Federal agency.

During our review of the amendment, we identified concerns relating to the

newly-created provisions of Wyoming's Coal Rules and Regulations at Chapter 11, Section 2(a)(xii)(D) and (E) that would authorize the Administrator to accept guarantees from foreign companies for self-bonds for domestic mining companies and allow the inclusion of foreign assets as part of a company's tangible net worth when determining eligibility to guarantee a self-bond. We notified Wyoming of our concerns by letter dated May 26, 2006 (Administrative Record No. WY-40-08). Wyoming responded in a letter dated June 23, 2006, by submitting additional explanatory information (Administrative Record No. WY-40-09).

The additional explanatory information pertains to Chapter 11, Section 2(a)(xii)(D), which allows an operator to include foreign assets when calculating tangible net worth if the operator provides the information required under newly-created subsection (E), and Chapter 11, Section 2(a)(xii)(E), which details the additional requirements that apply before the Administrator may accept a foreign parent or non-parent corporate guarantee. Based on the additional explanatory information, Wyoming suggests that no further changes in the rule language are necessary.

Specifically, Wyoming states that Sections 2(a)(xii)(D) and (E) are a subset of a larger set of financial information required as part of the self-bond application process, and that the Administrator's approval is conditioned on the applicant's submission of additional financial data set forth in Sections 2(a)(xii)(A)-(E). Wyoming also

maintains that Section 2(a)(xii)(E)(I), which requires "A legal opinion from a firm recognized to do business in the country of the firm's international headquarters concerning the collectability of a self-bond in the foreign country," serves to verify that the self-bond can in fact be collected and will also explain how it is to be collected. Lastly, Wyoming explains that the availability of methods it plans to utilize for collecting assets of non-parent foreign guarantors will be addressed as part of the legal opinion required by Section 2(a)(xii)(E)(I), which must address the collectability of the bond or guarantee.

III. Public Comment Procedures

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your written comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Casper Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No.

WY-035-FOR" and your name and return address in your Internet message. If you do not receive confirmation that we have received your Internet message, contact the Casper Field Office at 307/261-6550. In the final rulemaking, we will not consider or include in the administrative record any electronic comments received after the time indicated under **DATES** or at e-addresses other than the Casper Field Office.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 28, 2006.

Allen D. Klein,

Director, Western Region.

[FR Doc. E6-12188 Filed 7-28-06; 8:45 am]

BILLING CODE 4310-05-P

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 25, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Negative Quality Control Review Schedule; Status of Sample Selection and Completion.

OMB Control Number: 0584-0034.

Summary of Collection: The legislative basis for the operation of the quality control system is provided by section 16 of the Food Stamp Act of 1977. State agencies are required to perform Quality Control (QC) reviews for the Food Stamp Program (FSP). As part of the Performance Reporting System, each State agency is required to provide a systemic means of determining the accuracy of household eligibility and measuring the extent to which households receive the food stamp allotment to which they are entitled. Section 275.21(a) requires State agencies to submit reports to enable the Food and Nutrition Service (FNS) to monitor their compliance with Program requirements relative to the Quality Control Review System. FNS will collect information using forms FNS-245 *Negative Case Action Review Schedule* and FNS-248 *Status of Sample Selection and Completion*.

Need and Use of the Information: FNS will collect information to record data in negative case reviews. Negative case actions include the denial, termination or suspension of benefits. FNS will also measure program operations and determination of a State's eligibility for enhanced administrative funding and to monitor the progress of sample selection and completion. If the information were not collected, it would delay the awarding of monetary incentives in which the negative error rate played a role.

Description of Respondents: State, Local, or Tribal Government; Federal Government; individuals or households.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 121,636.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6-12164 Filed 7-28-06; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Supplemental Form for Collecting Taxpayer Identifying Numbers

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 the Agency's proposed information collection of taxpayer identifying numbers.

DATES: Written comments must be submitted on or before September 29, 2006.

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 has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methods and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to Mark Porter, Grants Management Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Mark Porter at (703) 305-2847.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Form for Collecting Taxpayer Identifying Numbers, FNS-711.

OMB Number: 0584-0501.

Expiration Date: September 30, 2006.

Type of Request: Extension of a currently approved information collection.

Abstract: Section 31001(y) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), codified at 31 U.S.C. 3325(d), requires Federal agencies to include the taxpayer identifying number (TIN) of all persons or organizations they pay whenever a request for payment is submitted to Federal payment officials. Departmental Regulation 2100–2 reflects the statutory provision at 31 U.S.C. 7701(c) which requires all individuals and entities doing business with USDA to furnish a TIN. The purpose of the Supplemental Form for Collecting Taxpayer Identifying Numbers is to comply with Federal law by enabling the Agency to legally obtain a TIN from all persons and organizations who are entered into a direct payment relationship with FNS.

Affected Public: Individuals and entities who enter into a direct payment agreement with FNS under any of the various nutrition and nutrition education programs administered by FNS.

Estimated Number of Respondents: 800.

Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 800.

Hours per Response: 0.0833.

Total Annual Reporting Hours: 66.6.

Number of Recordkeepers: 8.

Estimated Annual Hours per Recordkeeper: 1.0.

Total Annual Recordkeeping Hours: 8.

Total Annual Burden Hours: 74.6 (annual reporting hours plus annual recordkeeping hours).

Dated: July 20, 2006.

Roberto Salazar,

Administrator, Food and Nutrition Service.
[FR Doc. E6–12141 Filed 7–28–06; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2006–0017]

Technical Service Center Operations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice, request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is reviewing the organization, operations, and services provided by its Technical

Service Center (TSC) in Omaha, Nebraska, with the intent of improving TSC programs that provide technical advice, guidance, and information to FSIS personnel, the regulated industry, and the general public. FSIS is particularly interested in improving TSC programs that assist small businesses. FSIS seeks comment from the public as part of this effort to improve TSC operations.

DATES: Comments on this notice must be received on or before August 30, 2006.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to <http://www.regulations.gov> and, in the “Search for Open Regulations” box, select “Food Safety and Inspection Service” from the agency drop-down menu, then click on “Submit.” In the Docket ID column, select the FDMS Docket Number FSIS–2006–0017 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the “Advanced Search” function in Regulations.gov.

Mail, including floppy disks or CD-ROMs, and hand- or courier-delivered items: Send to Program Evaluation and Improvement Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 3833 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700.

Electronic mail:
fsis.regulationscomments@fsis.usda.gov.

All submissions received must include the Agency name and docket number FSIS–2006–0017.

All comments submitted in response to this notice will be posted to the www.regulations.gov Web site and on the Agency’s Web site at http://www.fsis.usda.gov/regulations_&_policies/2006_Notices_Index/index.asp. The comments also will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR ADDITIONAL INFORMATION: Contact Matthew Michael, Director, Program Evaluation and Improvement Staff, Office of Program Evaluation, Enforcement & Review, FSIS, U.S. Department of Agriculture, Room 3833 South Building, 14th and Independence

Ave., SW., Washington, DC 20250–3700; telephone (202) 720–6735; fax (202) 690–1030; e-mail: matthew.michael@fsis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In 1997, FSIS established the TSC to serve as a vital component in implementing the Agency’s science-based inspection system. As part of the 1996 FSIS reorganization, the TSC was established to provide frontline inspectors and supervisors consistent technical guidance and expertise on the interpretation, enforcement, and application of regulations, policies, and systems. FSIS’ intent was to concentrate in one location the technical expertise previously located in numerous headquarters and field offices in order to provide comprehensive and consistent technical advice quickly during the implementation of this initiative. The center’s creation was critical to the successful implementation of the 1996 Hazard Analysis and Critical Control Point (HACCP) systems regulation, which established new requirements for the regulated industry and changed many of the tasks carried out by inspectors.

In November 2004, FSIS asked the National Advisory Committee on Meat and Poultry Inspection to provide input on how well the TSC is functioning, and what the center should be doing in light of the fact that HACCP implementation was complete. In its report to FSIS, NACMPI fully supported the continuation of the center to provide technical assistance to the Agency and the industry and made a number of suggestions to improve the center’s effectiveness, including improving consistency of answers, compiling helpful resources for the industry, and expanding formal correlation between FSIS and industry.

The TSC continues to assist the FSIS workforce, plant owners and operators, state and foreign government officials, industry representatives, and others by:

- Providing technical advice, guidance, and information related to the interpretation, application, implementation and enforcement of regulations, policies and systems concerning meat and poultry processing, slaughter, imports and egg products inspection activities;

- Contributing to the development of Agency policy on various matters, particularly issues involving inspection at slaughter and processing;

- Correlating inspection procedures and requirements with FSIS’ Office of Field Operations personnel and industry;

- Guiding the implementation of new and modified inspection programs and procedures;
- Interacting with other program areas to assure information exchange and uniformity of regulatory issues within the Agency;
- Working with the FSIS Center for Learning to develop and deliver training;
- Analyzing data in major Agency databases for recurring and specific project requirements; and
- Identifying emerging data analysis and management needs, including developing, piloting, implementing, and maintaining databases and reporting systems, and raising policy and program issues based on that analysis.

Significantly, the TSC does not provide a forum for resolving disputes between inspection personnel and plant management, nor does it rule on appeals. This is a function of the chain of command and the appeals process is described in 9 CFR 306.5. The role of the TSC is to assist decision making by providing all parties with the standards and other technical information needed to understand, implement, apply, and enforce regulatory requirements. Two TSC staffs, both within the FSIS Office of Policy, Program & Employee Development, provide the services described above. The Technical Assistance/Correlation Staff (TAC) provides technical expertise, guidance and correlation. The Program Analysis Staff (PAS) conducts data analysis and special studies concerning Agency program operations.

FSIS is now seeking broader input on the organization, operations, and services provided by the TSC, with the intent of improving TSC programs. As part of a comprehensive evaluation of TSC operations and services, the Agency is seeking comments from the public and especially from small businesses. Feedback from small businesses is being requested specifically as a result of the Agency's initiative to improve its outreach to small and very small plants to further improve their food safety programs.

Questions

All relevant comments are welcome, but FSIS specifically seeks responses from the regulated industry to the following questions:

- In what way has the availability of TSC services helped you with your operations?
- When you have contacted the TSC, has the response been prompt, clear, thorough, and courteous?
- Is the technical guidance provided by the TSC consistent with regulations

and policy as written? Is the technical guidance consistent with guidance given by FSIS inspection program personnel?

- Have you used the TSC website? If so, has it been useful?
- If you have contacted the TSC multiple times regarding the same topic, has the guidance been consistent over time?
- How could the TSC improve its services?
- Have you had difficulty in reaching the TSC staff?
- What recommendations do you have for TSC in communicating information to you?
- What specifically could the TSC do to improve its services to small businesses?

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS web page located at http://www.fsis.usda.gov/regulations/2006_Notices_Index/index.asp.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS web page. Through Listserv and the web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at http://www.fsis.usda.gov/news_and_events/email_subscription/ Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC, on July 26, 2006.

Barbara J. Masters,

D.V.M. Administrator.

[FR Doc. E6-12217 Filed 7-28-06; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of Timber Sale Contract Forms FS-2400-6 and FS-2400-6T

AGENCY: Forest Service, USDA.

ACTION: Notice of Availability; revised standard timber sale contracts.

SUMMARY: By this notice, the Forest Service is putting into use revised versions of its standard timber sale contracts, Form FS-2400-6, for scaled sale procedures, and Form FS-2400-6T, for tree measurement timber sale procedures. After the Forest Service issued substantially revised versions of these contracts on May 6, 2004, the agency continued to receive comments from industry stakeholders. In response to these comments, the Forest Service engaged a consultant to evaluate the contracts with regard to allocation of risk between the timber Purchaser and the agency. The present revisions reflect the agency's further analysis of the contracts in light of the stakeholders' comments and the consultant's conclusions. A side-by-side comparison of the revised contracts and the previous versions is available as provided in the **ADDRESSES** section of this notice.

DATES: The contract revisions will be implemented for contracts advertised after August 30, 2006.

ADDRESSES: These timber sale contract forms are available for public review on the Forest Service worldwide Web/Internet site at <http://www.fs.fed.us/forestmanagement/infocenter/newcontracts/index.shtml>.

Alternatively, the contracts can be reviewed in the office of the Director of Forest Management, Third Floor, Northwest Wing, Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205-0893 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lathrop Smith, Forest Management Staff, (202) 205-0858.

SUPPLEMENTARY INFORMATION:

Background

The Forest Service uses standard contracts for all large, complex sales of timber from National Forest System lands. The agency uses timber sale contract Form FS-2400-6 when timber

is measured for payment after it is harvested; it uses timber sale contract Form FS-2400-6T when the basis for payment is measurement prior to sale. These instruments are comprehensive in scope and are designed to fully set forth the respective rights and obligations of the Forest Service and the timber Purchaser.

The Forest Service first put the standard timber sale contracts into use in the early 1970s, after extensive discussions with representatives of the timber industry. Based upon its initial experience with the contracts, which included feedback from stakeholders, and because of certain policy changes, the Forest Service retooled the contracts in late 1973. The agency did not revise the contracts again until 2001, when it updated them to reflect changes in law and agency policy and to incorporate certain special provisions that, over time, had become applicable to most timber sales. These changes did not materially alter the rights and obligations of the Purchaser and the Forest Service.

On May 6, 2004, after notice and comment, the Forest Service released substantially revised versions of its FS-2400-6 and FS-2400-6T contracts. As a general matter, the agency sought to make the contracts more consistent with government contracts law and policy. In particular, the agency attempted to address many of the complicated issues that arise when the Forest Service must suspend, modify, or terminate a timber sale contract because of environmental considerations. In this regard, the agency sought to clarify and simplify existing contract remedies, and to establish new remedies for certain situations, such as liquidated damages and rate redetermination. The agency also sought to allow the Purchaser to protect its interests by giving it the right to terminate the contract under certain circumstances. Through these modifications, the Forest Service attempted to allocate risk fairly between itself and the Purchaser.

After the release of the revised contracts, some timber industry stakeholders continued to provide feedback to the Forest Service on an ad-hoc basis. Although comments varied, some industry stakeholders expressed concerns over the contracts' allocation of risk, including the provisions on delay, suspension, or termination of operations. In particular, some stakeholders suggested that the 2004 contracts did not provide fair compensation to the Purchaser for delay, suspension, and termination, and thus exposed the Purchaser to substantial risk. To explore these

concerns, the Forest Service decided to engage an outside consultant to review the contracts and to issue a report on the allocation of risk between the Purchaser and the agency.

The consultant's report generally concluded that the revised timber sale contracts allocated risk to the detriment of the Purchaser. In reaching this conclusion, the report focused upon provisions giving the Forest Service the unilateral right to delay, suspend, modify, or terminate the contracts. The consultant asserted that these provisions forced the Purchaser to accept too much uncertainty and, at the same time, failed to provide adequate compensation. However, the report also noted several key provisions that favored the Purchaser, including making liquidated damages available under certain circumstances and allowing for an emergency rate redetermination for severe decline in the timber market.

After evaluating the outside consultant's report and considering the feedback that it received from industry stakeholders, the Forest Service decided to revise certain provisions of the contracts to achieve a more equitable distribution of risk. In making these changes, the agency did not simply adopt the recommendations of the consultant or the comments of certain industry representatives. Rather, the agency used this information to broaden its frame of reference in dealing with some of the more complicated aspects of the timber sale contracts, while keeping in mind its fundamental obligations to protect the public interest and, under the Multiple-Use Sustained-Yield Act, to manage to National Forest System lands "in the combination that will best meet the needs of the American people." 16 U.S.C. 531. Considering the foregoing, the Forest Service has revised the contracts to balance risk fairly between the agency, as the steward of the Nation's forest lands, and the Purchaser, as a competitive enterprise.

Contract Revisions and Explanation

1. B4.22 Temporary Reduction of Downpayment. The timber sale contracts require the Purchaser to make a downpayment before commencing harvesting operations and to maintain it until completion of operations. The downpayment covers 10 percent of the advertised value of the timber sale plus 20 percent of the value of the bid premium to discourage speculative bidding. For larger timber sales, the amount of the downpayment can be substantial. The previous iteration of this provision required the Purchaser to wait 90 days, from the beginning of any delay or interruption ordered by the

agency, before the downpayment could be reduced and refunded or transferred to another account. After considering stakeholders' concern that the 90 day period unfairly froze the Purchaser's financial resources, the Forest Service has reduced the waiting period to 30 days.

2. B.5.27 Temporary Credit for Unamortized Specified Road Construction Cost. For the same rationale identified in Item 1, above, the Forest Service has reduced the applicable waiting period before credit can be issued to the Purchaser for the unamortized cost of specified roads. The period is reduced from 90 days to 30 days.

3. B6.24 Protection Measures Needed for Plants, Animals, Cultural Resources, and Cave Resources. This provision has been revised to clarify the respective responsibilities of the Forest Service and the Purchaser with regard to areas within the Sale Area needing special measures for the protection of plants, animals, cultural resources, and/or cave resources. The previous iteration of the contract placed an affirmative duty on the Purchaser to protect known and identified resources. To eliminate stakeholders' uncertainty as to the extent of the Purchaser's duty and to diminish potential liability, the Forest Service has revised this provision to contain a simple, negative duty not to damage or disturb designated areas.

Additionally, this provision retains the disclaimer applicable to the Forest Service's identification of protected areas. Because the agency cannot control environmental conditions affecting a sale, which are inherently subject to natural change, and because of its various obligations to protect the environment, which exist under federal law, the agency cannot warrant that specified protective measures will remain adequate over the life of a sale. Instead, the Forest Service must include a disclaimer to avoid exposure to liability.

4. B6.35 Equipment Cleaning. This provision has been revised primarily to clarify the circumstances that trigger the Purchaser's obligation to clean Off-Road Equipment to protect against the spread of invasive species of concern. If this provision materially increases the purchaser's operating costs, then the increased operating costs would be factored into the appraised value for the timber sale.

5. B8.33 Contract Suspension and Modification. This provision has been revised to clarify the remedies that are available to the Purchaser in the event that the Contracting Officer must delay, suspend, or modify contract operations.

References to termination contained in the previous iteration of this provision were confusing to stakeholders. Accordingly, the Forest Service has deleted these references and has substantially revised provisions B8.34 and B8.36 to address, among other things, the Purchaser's right to terminate the contract under various circumstances. The revised version of this provision also clarifies that out-of-pocket expenses, in addition to a rate redetermination, shall be available to the Purchaser when a delay or suspension accompanies a contract modification. Additionally, the subsection addressing the provision's applicability has been revised to affirm the Purchaser's ability to exercise its rights under the Contract Disputes Act. Ambiguity in the previous iteration caused some stakeholders to believe that the Forest Service had attempted to eliminate these rights.

6. B8.34 Contract Termination. The Forest Service has divided the main provision governing contract termination into three separate parts to eliminate ambiguity that existed in the previous iteration, and, thereby, to remove stakeholders' uncertainty as to the Purchaser's rights and obligations. After the introductory part, separate parts address termination by the agency and termination by the Purchaser. In response to comments from stakeholders and after conducting its own analysis, the Forest Service has decided to make replacement timber volume and liquidated damages available as a remedy for termination and partial termination. The agency has qualified the availability of liquidated damages, allowing this remedy only if, after good faith negotiations, the parties cannot agree on the location or stumpage for the replacement volume. However, if replacement volume is less than the deleted volume, liquidated damages shall be applicable to the shortfall. The Forest Service believes that the availability of replacement volume and/or liquidated damages substantially improves the contracts' allocation of risk and ensures that the Purchaser shall be fairly compensated in instances of full or partial termination.

7. B8.35 Out-of-Pocket Expenses. The revision responds to comments from stakeholders that the list of out-of-pocket expenses was too limited. The provision now specifically includes expenses for road maintenance, dust abatement, and certain authorized improvements. Additionally, in order to foster consistent application, the provision specifically lists items that do not qualify as out-of-pocket expenses. These items are disallowed because they

are not directly related to the Purchaser's operations under the contract. To facilitate expeditious and accurate claims processing, the provision requires the Purchaser to submit documentation and supporting analysis for expenses that it has paid or that it has a legal obligation to pay.

8. B8.36 Termination for Market Changes. This revision provides another set of circumstances under which the Purchaser may terminate the contract for market change during a delay or interruption under B8.33.

9. B9.13 Temporary Bond Reduction. Consistent with the changes to B4.22 and B5.27, described above, the revision allows the Purchaser's performance bond to be temporarily reduced after 30 days during a delay or a suspension.

A side-by-side comparison of the specific differences between the existing contracts and the proposed revised contracts is available electronically and in paper copy as provided in the **ADDRESSES** section of this notice.

Dated: July 19, 2006.

Dale N. Bosworth,
Chief.

[FR Doc. E6-12177 Filed 7-28-06; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Request for Proposals: Fiscal Year 2006 Funding Opportunity for Research on the Economic Impact of Cooperatives

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Initial Notice of Request for Proposals.

SUMMARY: Rural Business-Cooperative Service programs are administered through USDA Rural Development. USDA Rural Development announces the availability of approximately \$495,000 in competitive cooperative agreement funds for fiscal year (FY) 2006 to conduct research on the national economic impact of all types of cooperatives. USDA Rural Development hereby requests proposals from institutions of higher education interested in applying for a competitively awarded cooperative research agreement. The intent of the funding is to encourage research on the critical issue of the economic value of cooperatives.

DATES: Interested parties may submit completed applications for the cooperative agreement on paper or

electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than August 30, 2006, to be eligible for FY 2006 funding. Electronic copies must be received by August 30, 2006, to be eligible for FY 2006 funding. Late applications are not eligible for FY 2006 funding.

ADDRESSES: Applicants may obtain application forms, guides, and materials for the cooperative agreement at <http://www.rurdev.usda.gov/rbs/coops/reic.htm> or by contacting USDA Rural Development at (202) 690-0368, (TDD: (800) 877-8339, Federal Information Relay Service) and ask for the cooperative research agreement application kit.

Submit completed paper applications for a cooperative agreement to USDA Rural Development's Cooperative Programs, Attn: Cooperative Research, Mail STOP 3250, Room 4016—South, 1400 Independence Avenue SW., Washington, DC 20250-3250. The phone number that should be used for FedEx packages is (202) 720-7558.

Submit electronic applications at <http://www.grants.gov>, following the instructions found on this Web site.

FOR FURTHER INFORMATION CONTACT: Visit the program Web site at <http://www.rurdev.usda.gov/rbs/coops/reic.htm>, which contains application guidance, including an Application Guide and application forms. Or you may contact USDA Rural Development at (202) 690-0368 (TDD: (800) 877-8339 Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collections of information" by USDA Rural Development. The Act defines "collection of information" as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *." (44 U.S.C. 3502(3)(A)) Because the RFP will receive less than 10 respondents, the Paperwork Reduction Act does not apply.

Overview

Federal Agency: Rural Business-Cooperative Service.

Funding Opportunity Title: Research on the Economic Impact of Cooperatives.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number: 10.778.

Dates: You may submit completed applications for the cooperative

agreement on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than August 30, 2006, to be eligible for FY 2006 funding. Late applications are not eligible for FY 2006 funding.

Electronic copies must be received by August 30, 2006, to be eligible for FY 2006 funding. Late applications are not eligible for FY 2006 funding.

The Paperwork Reduction Act of 1995 (Pub. L. 104–13): There is no public reporting burden associated with this notice.

I. Funding Opportunity Description

This solicitation is issued pursuant to the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–97), as amended by the Department of Defense Appropriations Act, 2006 (Pub. L. 109–148) directing funds “for a cooperative research agreement with a qualified academic institution to conduct research on the national economic impact of all types of cooperatives.” The Secretary of Agriculture has delegated the program’s administration to USDA Rural Development.

The primary objective of this cooperative research agreement program is to facilitate university research on the national economic impact of cooperatives. The research program will need to develop a methodology for collecting and assembling basic impact data on a periodic basis; apply the methodology to collect data and estimate economic impact of cooperatives; estimate cooperative specific community impact multipliers; and conduct other appropriate studies to examine the cumulative economic impact of cooperatives on their local communities.

The cooperative agreement proposal must address the following deliverables:

1. Development of a methodology for collection and assembly of basic impact data on a periodic basis. This methodology will need to account for cooperative organizational complexity, such as a single organization’s several local, regional, and national locations, as well as sector differences.

2. Application of the developed methodology, by major sector, to collect data and estimate economic impact of cooperatives. Data items to be collected/measured must include:

- Number and location of cooperatives,
- Volume measures appropriate for each sector (revenues, dollar value, and other appropriate size indicators),

- Number of persons impacted by the cooperative (members, patrons, or investors), and

- Number of full-time equivalent jobs and other economic impact variables.

Sectors for which summary data should be prepared include:

- Housing,
- Health care,
- Daycare/elder care,
- Financial services,
- Grocery/consumer retail,
- Business-to-business (wholesaling, manufacturing),
- Agricultural marketing (including organic and conventional),
- Agricultural supplies and services,
- Public services (including transportation and education),
- Biofuels, and
- Utilities.

3. Creation and population of a database for individual cooperative and summary data collected. Database is to be delivered to USDA Rural Development.

4. Estimation of cooperative specific community impact multipliers for each of the following four categories or classes of cooperatives:

- i. Commercial sales or marketing—includes farm supply and marketing, grocery and consumer goods, business-to-business, emerging ethanol and biofuels related industry, and manufacturing.
- ii. Social and public services—includes housing, health care, day care/elder care, transportation, and educational services.
- iii. Financial services—includes credit unions, banks, and mutual insurance.
- iv. Utilities—includes electric, telephone, water, waste, and other regulated utilities.

5. Performance of subcontracting services, oversight, and financial controls for the overall project.

6. Submission of quarterly progress reports and quarterly financial reports to USDA Rural Development.

7. Preparation and submission of publishable quality written reports for Deliverables 2 and 4 to USDA Rural Development.

USDA Rural Development will competitively award one cooperative agreement to fund the collection and analysis of data to determine the national economic impact of cooperatives. An institution of higher education may subcontract or collaborate with others on the research and data collection. A formal consortium of academic institutions is allowed.

Definitions

The definitions at 7 CFR 3019.2 are incorporated by reference.

II. Award Information
Type of Award: Cooperative Agreement.

Fiscal Year Funds: FY 2006.
Approximate Total Funding: \$495,000.

Approximate Number of Awards: 1.
Approximate Average Award: \$495,000.

Floor of Award Range: None.
Ceiling of Award Range: \$495,000.
Anticipated Award Date: September 15, 2006.

Budget Period Length: 24 months.
Project Period Length: 24 months.

III. Eligibility Information

A. Eligible Applicants

Applicants must be institutions of higher education. Proposals may be submitted by public or private colleges or universities, research foundations maintained by a college or university, or private nonprofit organizations funded by a group of colleges or universities. Under the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(4)) which engages in lobbying activities, is not eligible to apply.

B. Cost Sharing or Matching

Matching funds are not required but are highly encouraged. Applicants must verify in their applications that matching funds are available for the time period of the agreement if the matching funds are required to complete the project. Matching funds must be provided by either the applicant or by a third party in the form of cash or in-kind contributions. Matching funds must be spent on eligible expenses and must be from eligible sources.

C. Other Eligibility Requirements

Indirect Cost Eligibility: Public Law 109–97, Sec. 708 states “No funds appropriated by this Act may be used to pay negotiated indirect cost rates on cooperative agreements or similar arrangements between the United States Department of Agriculture and nonprofit institutions in excess of 10 percent of the total direct cost of the agreement when the purpose of such cooperative arrangements is to carry out programs of mutual interest between the two parties.” Indirect costs in excess of 10 percent of the direct cost, therefore, will be ineligible for funding.

Activity Eligibility: A cooperative agreement reflects a relationship between the United States Government

and an eligible recipient where the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the eligible recipient to carry out the desired research; and substantial involvement is anticipated between USDA Rural Development acting for the United States Government and the eligible recipient during the performance of the research in the agreement. A cooperative agreement is not a grant. Therefore, the project proposed must include a description of USDA Rural Development's substantial participation. USDA Rural Development may subsequently negotiate its participation before the cooperative agreement is executed.

Applicants that propose budgets that include more than 10 percent of total project costs that are ineligible for the program will be ineligible, and the application will not be considered for funding. However, if an application with 10 percent or less of ineligible costs is selected for funding, all ineligible costs must be removed from the project and replaced with eligible activities or the amount of the award will be reduced accordingly.

Cooperative Agreement Period Eligibility: Applications that have a timeframe of more than 24 months will be considered ineligible and will not be considered for funding. Applications that request funds for a time period ending after September 30, 2008, will not be considered for funding.

Completeness Eligibility: Applications without sufficient information to determine eligibility will not be considered for funding. Applications that are missing any required elements (in whole or in part) will not be considered for funding.

IV. Application and Submission Information

A. Address to Request Application Package

If you plan to apply using a paper application, you can obtain the application package for this funding opportunity at <http://www.rurdev.usda.gov/rbs/coops/reic.htm>. If you do not have access to the Internet, or if you have difficulty accessing the forms online, you may contact the National Office by calling (202) 690-0368 (TDD: (800) 877-8339 Federal Information Relay Service). Application forms can be mailed to you. If you plan to apply electronically, you must visit <http://www.grants.gov> and follow the instructions.

B. Content and Form of Submission

You may submit your application in paper or in an electronic format. You may view the Application Guide at <http://www.rurdev.usda.gov/rbs/coops/reic.htm>.

If you submit your application in paper form, you must submit one signed original of your complete application along with two additional copies.

If you submit your application electronically, you must follow the instructions given at <http://www.grants.gov>. Applicants are advised to visit the site well in advance of the application deadline if they plan to apply electronically to insure that they have obtained the proper authentication and have sufficient computer resources to complete the application.

An application must contain all of the following elements. Any application that is missing any element or contains an incomplete element will not be considered for funding:

1. Form SF-424, "Application for Federal Assistance." In order for this form to be considered complete, it must contain the legal name of the applicant, the applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number, the applicant's complete mailing address, the name and telephone number of a contact person, the employer identification number (EIN), the start and end dates of the project, the Federal funds requested, other funds that will be used as matching funds, an answer to the question, "Is applicant delinquent on any Federal debt?", the name and signature of an authorized representative, the telephone number of the authorized representative, and the date the form was signed. Other information requested on the form may be applicable, but the above-listed information is required for an application to be considered complete.

The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Applicants can receive a DUNS number at no cost by accessing <http://www.dnb.com/us/> or calling (866) 705-5711.

2. Form SF-424A, "Budget Information—Non-Construction Programs." In order for this form to be considered complete, the applicant must fill out Sections A, B, C, and D. The applicant must include both Federal and any matching funds to be included.

3. Form SF-424B, "Assurances—Non-Construction Programs." In order for this form to be considered complete, the form must be signed by an authorized official and include the title, name of applicant, and date.

4. Title Page. The title page must include the title of the project as well as any other relevant identifying information. The length should not exceed one page.

5. Table of Contents. For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the title page.

6. Executive Summary. A summary of the proposal, not to exceed one page, must briefly describe the project, including goals, tasks to be completed, and other relevant information that provides a general overview of the project. In the event an applicant submits more than one page for this element, only the first page submitted will be considered.

7. Eligibility Discussion. A detailed discussion, not to exceed four pages, will describe how the applicant meets the eligibility requirements. In the event that more than four pages are submitted, only the first four pages will be considered.

i. Applicant Eligibility. The applicant must first describe how it meets the definition of an institution of higher education.

ii. Purpose Eligibility. The applicant must describe how the project purpose is eligible for funding. The project purpose is comprised of two components. First, the applicant must describe how the proposed project consists of activities needed to determine the national economic impact of all types of cooperatives. Second, the applicant must demonstrate that the combined activities are sufficient to estimate the national economic impact of all types of cooperatives.

8. Proposal Narrative. The narrative must include the following information:

i. Project Title. The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project. It should match the project title submitted on the SF-424. The project title does not need to appear on a separate page. It can be included on the title page and/or on the information sheet.

ii. Information Sheet. A separate one-page information sheet listing each of the evaluation criteria referenced in this funding announcement followed by the page numbers of all relevant material contained in the proposal that address or support each criterion.

iii. Goals of the Project. A clear statement of the ultimate goals of the project must be included. There must be an explanation of how economic benefit will be measured.

iv. Workplan. The narrative must contain a description of the project and

set forth the tasks involved in reasonable detail. The description should specify the activity, who will perform the activity, during what timeframe the activity will take place, and the cost of the activity. Please note that one of the proposal evaluation criteria evaluates the workplan and budget. Applicants should only submit the workplan and budget once, either in this section or as part of the workplan/budget evaluation criterion discussion.

v. Proposal Evaluation Criteria. Each of the proposal evaluation criteria referenced in this funding announcement must be addressed, specifically and individually, in narrative form.

9. Certification of Judgment.

Applicants must certify that the United States has not obtained a judgment against them. No Federal funds shall be used to pay a judgment obtained by the United States. It is suggested that applicants use the following language for the certification. “[INSERT NAME OF APPLICANT] certifies that the United States has not obtained a judgment against it.” A separate signature is not required.

10. Verification of Matching Funds. Applicants must provide a budget to support the workplan showing all sources and uses of funds during the project period. Applicants will be required to verify any and all matching funds, both cash and in-kind. All proposed matching funds must be specifically documented in the application. If the matching funds are to be provided by an in-kind contribution from the applicant, the application must include a signed letter from an authorized representative of the applicant verifying the goods or services to be donated, when the goods and services will be donated, and the value of the goods or services. Applicants should note that only goods or services for which no expenditure is made can be considered in-kind. If the applicant is paying for goods and services as part of the matching funds contribution, the expenditure is considered a cash match, and should be verified as such. If the matching funds are to be provided by a third party in cash, the application must include a signed letter from that third party verifying how much cash will be donated and when it will be donated. Verification for funds donated outside the proposed time period of the cooperative agreement will not be accepted. If the matching funds are to be provided by a third party in-kind donation, the application must include a signed letter from the third party verifying the goods or services to be donated, when the goods and services

will be donated, and the value of the goods or services. Verification for in-kind contributions donated outside the proposed time period of the cooperative agreement will not be accepted. Verification for in-kind contributions that are over-valued will not be accepted. The valuation process for the in-kind funds does not need to be included in the application, especially if it is lengthy, but the applicant must be able to demonstrate how the valuation was achieved at the time of notification of tentative selection for the award. If the applicant cannot satisfactorily demonstrate how the valuation was determined, the award may not be made.

If matching funds are in cash, they must be spent on goods and services that are eligible expenditures for this cooperative agreement program. If matching funds are in-kind contributions, the donated goods or services must be considered eligible expenditures for this program. The matching funds must be spent or donated during the agreement period. Some examples of acceptable uses for matching funds are: labor performing work required for the proposed project, office supplies, and travel expenses. Some examples of unacceptable uses of matching funds are: land, fixed equipment, buildings, vehicles, political activities, costs of preparing the application, and costs incurred prior to the effective date of the cooperative agreement. (See 7 CFR parts 3015 and 3019 for funds use eligibility rules.)

If acceptable verification for all proposed matching funds is missing from the application by the application deadline, the application will receive zero points for the Funding Match part of the evaluation criteria.

C. Submission Dates and Times

Application Deadline Date: August 30, 2006.

Explanation of Deadlines: Paper applications must be postmarked by the deadline date (see Section IV.F. for the address). Final electronic applications must be received by <http://www.grants.gov> by the deadline date. If your application does not meet the deadline above, it will not be considered for funding. You will be notified whether or not your application was received on time.

D. Intergovernmental Review of Applications

Executive Order (EO) 12372, Intergovernmental Review of Federal Programs, does not apply to this program.

E. Funding Restrictions

Funding restrictions apply to both Federal funds and matching funds. Funds may only be used for activities related to determining the economic impact of cooperatives.

No funds made available under this solicitation shall be used to:

1. Plan, repair, rehabilitate, acquire, or construct a building or facility, including a processing facility;
2. Purchase, rent, or install fixed equipment, including processing equipment;
3. Purchase vehicles, including boats;
4. Pay for the preparation of the cooperative agreement application;
5. Pay expenses not directly related to the funded project;
6. Fund political or lobbying activities;
7. Fund any activities prohibited by 7 CFR parts 3015 or 3019;
8. Fund architectural or engineering design work for a specific physical facility;
9. Purchase land;
10. Duplicate current services or replace or substitute support previously provided;
11. Pay costs of the project incurred prior to the date of agreement approval;
12. Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence; or
13. Pay any judgment or debt owed to the United States.

F. Other Submission Requirements

You may submit your paper application for a cooperative agreement to USDA Rural Development's Cooperative Programs, Attn: Cooperative Research, Mail STOP 3250, Room 4016-South, 1400 Independence Ave. SW., Washington, DC 20250-3250. The phone number that should be used for FedEx packages is (202) 720-7558. You may also choose to submit your application electronically at <http://www.grants.gov>. Final applications may not be submitted by electronic mail, facsimile, or by hand-delivery. Each application submission must contain all required documents in one envelope, if by mail or express delivery service.

V. Application Review Information

A. Criteria

All eligible and complete applications will be evaluated based on the following criteria and maximum point allowances. Failure to address any one of the following criteria by the application

deadline will result in a determination of incomplete and the application will not be considered for funding. The total points available for the set of criteria are 100.

1. Relevance of the project proposal (30 points). Proposals will be evaluated on how directly they address the stated objective of demonstrating economic impact of all types of cooperatives in the United States. Factors to be weighed by evaluators in scoring a proposal's relevance will include:

- Definition of clear and objective measures of impact;
- Definition of specific measurement strategies for obtaining impact measures from each major cooperative sector and each category of persons impacted by cooperatives;
- Description of sound data collection and analysis methodology; and

2. Quality of Workplan (30 points). The quality evaluations will be based on whether the proposal outlines a sound plan of work that will meet the objectives in a timely and cost-efficient manner. Factors to be weighed by evaluators in scoring a proposal's workplan will include:

- How well the steps for carrying out the work are defined;
- The logic of the sequence of proposed steps and the likelihood they will achieve their intended result;
- The establishment of clear benchmarks and timetables to measure progress of the project;
- The detail, accuracy, and reasonableness of the project's proposed budget; and

3. Quality of personnel and management plan (20 points). The quality of the management plan and the personnel involved in carrying out the proposed project will be evaluated in terms of the capabilities of individuals and institutions to carry out assigned roles in an effective manner. Factors to be weighed by evaluators in scoring a proposal's personnel and management plan will include:

- Experience of project leaders and the lead institution in managing complex research projects;
- Clear understanding of business models and general economic development
- Evidence of management controls, progress measurements, and reporting systems within a structured project management plan; and
- Experience and relevant skills of researchers, consultants, and subcontractors assigned to carry out specific roles in the project.

4. Funding match and cooperative community support (20 points). Points will be awarded on the basis of the

percentage match provided by the applicant and the level of support for the proposal from the cooperative community as evidenced by contribution of resources to the match and other indications of support.

- Up to 20 points will be awarded for matching funds provided by or arranged for by the applicant. Two points will be awarded for each 5 percent match, up to a maximum of 20 points for a 50 percent match.

B. Review and Selection Process

Each application will be initially reviewed by Rural Development personnel for eligibility and to determine whether all required elements are complete. A list of required elements follows:

- SF-424.
- SF-424A.
- SF-424B.
- Title Page.
- Table of Contents.
- Executive Summary.
- Applicant Eligibility Discussion.
- Purpose Eligibility Discussion.
- Project Title.
- Information Sheet.
- Goals of the Project.
- Work Plan.
- Proposal Evaluation Criterion 1.
- Proposal Evaluation Criterion 2.
- Proposal Evaluation Criterion 3.
- Proposal Evaluation Criterion 4.
- Certification of Judgment.
- Verification of any Matching Funds.

Any incomplete or ineligible applications will not be further evaluated or considered for funding.

All eligible and complete proposals will be evaluated by a team of at least three reviewers based on criteria 1 through 4 described in paragraph A of this section. Reviewers will represent the Rural Development broad mission area, and will include at least three employees of USDA.

Once the scores for criteria 1 through 4 have been independently completed by the three reviewers, the scores will be used to rank the proposals. If the three reviewers rank the best proposal differently then, with the aid of a facilitator, the three reviewers will develop a consensus ranking. If the three reviewers cannot reach a consensus, two additional reviewers will review the proposals and be added to the rankings. A final ranking will be obtained based on the consensus rankings of the three member review panel, or the average of the five reviewers' rankings. Final award recommendation will be sent to the Under Secretary for Rural Development for final selection concurrence.

After the award selection is made, all applicants will be notified of the status

of their applications by mail. The awardee must meet all statutory and regulatory program requirements in order to receive their award. In the event that an awardee cannot meet the requirements, the award will be withdrawn.

C. Anticipated Announcement and Award Dates

Award Date: The announcement of award selection is expected to occur on or about September 15, 2006.

VI. Award Administration Information

A. Award Notices

The successful applicant will receive a notification of tentative selection for funding from USDA Rural Development. The applicant must sign a mutually agreed to cooperative agreement and comply with all applicable statutes, regulations, and this notice before the award will receive final approval.

Unsuccessful applicants will receive notification, including mediation procedures and appeal rights, by mail.

B. Administrative and National Policy Requirements

This award is subject to 7 CFR parts 3015 and 3019. These regulations may be accessed at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>.

The following additional documentation requirements apply to the awardee selected for this program:

- Cooperative Agreement
- Form RD 1940-1, "Request for Obligation of Funds"
- Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions"
- Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions"
- Form AD-1049, "Certification Regarding a Drug-Free Workplace Requirements (Grants)"
- Form RD 400-1, "Equal Opportunity Agreement"
- Form RD 400-4, "Assurance Agreement"

Additional information on these requirements can be found at <http://www.rurdev.usda.gov/rbs/coops/reic.htm>.

Reporting Requirements: You must provide USDA Rural Development with an original or an electronic copy that includes all required signatures of the following reports. The reports should be submitted to the Agency contact listed on your Cooperative Agreement. Failure to submit satisfactory reports on time

may result in suspension or termination of your award.

1. Form SF-269 or SF-269A. A "Financial Status Report," listing expenditures according to agreed upon budget categories, on a quarterly basis. Reporting periods end each December 31, March 31, June 30, and September 30. Reports are due 30 days after the reporting period ends.

2. Quarterly performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the workplan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reporting periods end each December 31, March 31, June 30, and September 30. Reports are due 30 days after the reporting period ends. Supporting documentation must also be submitted for completed tasks. The supporting documentation for completed tasks include, but are not limited to, questionnaire or interview guides, publications of research findings, summaries of data collected, and any other documentation related to how funds were spent.

3. Final Project performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed and provide documentation supporting the reported results. If the original schedule provided in the workplan was not met, the report must discuss the problems or delays that affected completion of the project. Compliance with any special condition on the use of award funds should be discussed. Supporting documentation for completed tasks must also be submitted. The supporting documentation for completed tasks include, but are not limited to, publications of research findings, summaries of data collected, documentation of data and software delivered to USDA Rural Development, and any other documentation related to how funds were spent. The final performance report is due within 90 days of the completion of the project.

VII. Agency Contacts

For general questions about this announcement and for program technical assistance, please contact the USDA Rural Development's Cooperative Programs, Mail STOP 3250, Room 4016-South, 1400 Independence Avenue, SW., Washington, DC 20250-3250,

Telephone: (202) 690-0368 (TDD: (800) 877-8339 Federal Information Relay Service), e-mail: cpgrants@wdc.usda.gov.

VIII. Non-Discrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, DC. 20250-9410, or call (800) 795-3272 (voice), or (202) 720-6382 (TDD). "USDA is an equal opportunity provider, employer, and lender."

Dated: July 25, 2006.

Jackie J. Gleason,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. E6-12166 Filed 7-28-06; 8:45 am]

BILLING CODE 3410-XY-P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Notice.

SUMMARY: The Chemical Safety and Hazard Investigation Board (CSB) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine the effectiveness and usability of our written investigation products.

DATES: Written comments and recommendations on the proposed collection of information must be

received by the CSB on or before September 29, 2006.

ADDRESSES: You may submit comments on the proposed collection of information by any of the following methods:

- E-mail: anna.johnson@csb.gov.
- Mail/courier/hand-delivery: U.S.

Chemical Safety and Hazard Investigation Board, Attn: Anna M. Johnson, 2175 K Street, NW., Suite 400, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the proposed information collection should be directed to Anna M. Johnson at (202) 261-7639 or FAX (202) 974-7639. Upon written request, you may obtain a copy of the proposed information collection at no charge.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501-3521, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to sec. 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, CSB invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of CSB's functions, including whether the information will have practical utility; (2) the accuracy of CSB's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Chemical Safety Board Questionnaire.

OMB Control Number: Not yet assigned.

Type of Review: New collection of information.

Abstract: CSB online questionnaire will be used to collect feedback from readers of CSB investigation products. The general purpose of this voluntary collection of information is to obtain input on the quality and use of these products from readers.

Affected Public: Businesses, state, local, or tribal government, federal government, not for profit institutions, and for profit institutions.

Estimated number of respondents: 3500.

Estimated time per response: 10 minutes.

Frequency of response: Annual.
Estimated Annual Burden: 58 hours.
Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: July 25, 2006.

Anna M. Johnson,

Director, Office of Administration.

[FR Doc. E6-12229 Filed 7-28-06; 8:45 am]

BILLING CODE 6350-01-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: North Pacific Groundfish Observer Program Vessel/Plant Operator Comment Form.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.
Burden Hours: 500.

Number of Respondents: 400.

Average Hours Per Response: Comment form, 30 minutes; non-response follow-up form, 10 minutes.

Needs and Uses: The Comment Form will help the North Pacific Groundfish Observer Program (NPGOP) assess observer performance, ensure higher data quality, and provide the vessel/plant operators with a direct line of communication to the program management. Improved communication and outreach is a priority for the NPGOP. It is important to get the fishermen's opinions about the program and have a method for them to report their concerns and evaluations of the program. This is a tailored qualitative survey for Vessel/Plant Operators who have had observers on their vessels to provide direct feedback on observer and observer program performance to the National Marine Fisheries Service. This will be collected on a voluntary basis. The Vessel/Plant Operator Comment Form is available to all operators who have had a certified North Pacific Groundfish observer onboard their vessel or plant. Vessel operators or plant operators are the only ones who may complete the survey.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

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

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

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

Dated: July 26, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-12211 Filed 7-28-06; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: Bureau of Industry and Security (BIS).

Title: Commercial Encryption Items Under the Jurisdiction of the Department of Commerce.

Agency Form Number: N/A.

OMB Approval Number: 0694-0104.

Type of Request: Renewal of an existing collection.

Burden: 4507 hours.

Average Time Per Response: 5 minutes to 7 hours per response.

Number of Respondents: 635 respondents.

Needs and Uses: This collection is authorized by section 5(h) of the Export Administration Act of 1979, as amended (EAA) and section 203(a)(2) of the International Emergency Economic Powers Act (IEEPA), and authorized under Section 15(b) of the EAA and Section 203(a)(1) of the IEEPA. The Export Administration Act authorizes the President to control exports of U.S. goods and technology to all foreign destinations, as necessary for the purposes of national security, foreign policy and short supply. The International Emergency Economic Powers Act authorizes the President to take actions to deal with any unusual and extraordinary threat, which has its source in whole or substantial part

outside of the United States, to the national security, foreign policy, or economy of the United States. This policy has since been implemented and updated in the Export Administration Regulations (EAR). As described in these regulations, the U.S. encryption export control policy rests on three principles: Review of encryption products prior to sale, streamlined post-export reporting, and license review of certain exports of strong encryption to foreign government end-users. Consistent with these principles, national security requires that information be collected from the public as described both in this collection and in collection 0694-0088. The regulations developed by the Bureau of Industry and Security in consultation with other Federal agencies, implements the U.S. encryption export policy last revised in regulations published on December 9, 2004. This notice updates and revises the paperwork burden on the public imposed by these regulations.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

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

Dated: July 20, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-12212 Filed 7-28-06; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: U.S. Census Bureau.

Title: Advance Monthly Retail Trade Survey.

Form Number(s): SM-44(06)A, SM-44(06)AE, SM-44(06)AS, SM-72(06)A, SM-44(00)FA, SM-44(00)FAE, SM-44(00)FAS, SM-72(00)FA.

Agency Approval Number: 0607-0104.

Type of Request: Extension of a currently approved collection.

Burden: 4,500 hours.

Number of Respondents: 4,500.

Avg Hours per Response: 5 minutes.

Needs and Uses: The Advance Monthly Retail Trade Survey was developed in response to requests by government, business, and other users to provide an early indication of current retail trade activity at the United States level. MARTS also provides monthly sales of food service establishments and drinking places. Policymakers, such as the Federal Reserve Board, need to have the most timely estimates in order to anticipate economic trends and act accordingly. Data on sales from this survey provide the earliest possible look at consumer spending and are necessary for the calculation of the personal consumption portion of the Gross Domestic Product (GDP). Without the Advance Monthly Retail Trade Survey, the Census Bureau's earliest measure of retail sales is the "preliminary" estimate from the full monthly sample, released about 40 days after the reference period.

The Census Bureau tabulates the collected data to provide, with measured reliability, statistics on United States retail sales. These sales estimates, developed from the Advance Monthly Retail Trade Survey, are used by the Council of Economic Advisers, Bureau of Economic Analysis (BEA), Federal Reserve Board, and other government agencies, as well as business users in formulating economic decisions. These estimates have a high priority because of their timeliness. There would be approximately a one month delay in the availability of these data if this survey were not conducted.

Affected Public: Business or other for-profit.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395-5103.

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

Written comments and recommendations for the proposed

information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202-395-7245) or e-mail (susan_schechter@omb.eop.gov).

Dated: July 25, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-12213 Filed 7-28-06; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No.: 060607156-6203-02]

Solicitation of Applications for the National Technical Assistance Program

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and request for applications.

SUMMARY: The Economic Development Administration (EDA) is soliciting applications for FY 2006 National Technical Assistance Program funding. EDA's mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Through its National Technical Assistance Program, EDA works towards fulfilling its mission by funding research and technical assistance projects to promote competitiveness and innovation in urban and rural regions throughout the United States and its territories. By working in conjunction with its research partners, EDA will help States, local governments, and community-based organizations to achieve their highest economic potential.

DATES: Applications (on Form ED-900A, Application for Investment Assistance) for funding under this notice must be received by the EDA representative listed below under "Addresses" no later than August 30, 2006 at 5 p.m. EDT. Applications received after 5 p.m. EDT on August 30, 2006 will not be considered for funding. By September 29, 2006, EDA expects to notify the applicants selected for investment assistance. The selected applicants should expect to receive funding for their projects within thirty (30) days of EDA's notification of selection.

ADDRESSES: Applications submitted pursuant to this notice may be:

1. E-mailed to William P. Kittredge at wkittredge@eda.doc.gov; or

2. Hand-delivered to William P. Kittredge, Senior Program Analyst, Economic Development Administration, Room 7009, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; or

3. Mailed to William P. Kittredge, Senior Program Analyst, Economic Development Administration, Room 7009, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Applicants are encouraged to submit applications by e-mail. Applicants are advised that, due to mail security measures, EDA's receipt of mail sent via the United States Postal Service may be substantially delayed or suspended in delivery. EDA will not accept applications submitted by facsimile.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact William P. Kittredge at (202) 482-5442 or via e-mail at the address listed above.

SUPPLEMENTARY INFORMATION:

Electronic Access: The Federal Funding Opportunity (FFO) announcement for this competitive solicitation is available at www.grants.gov and at EDA's Internet website at www.eda.gov. Paper copies of the Form ED-900A, "Application for Investment Assistance" (OMB Control No. 0610-0094), and additional information on EDA and its National Technical Assistance Program may be obtained from EDA's Internet website at www.eda.gov.

Funding Availability: Funds appropriated under the Science, State, Justice, Commerce and Related Agencies Appropriations Act, 2006 (Pub. L. 109-108, 119 Stat. 2290 (2005)) are available for making awards under the National Technical Assistance Program authorized by section 207 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3147), as amended (PWEDA), and 13 CFR part 306, subpart A. Approximately \$500,000 is available, and shall remain available until expended, for funding awards pursuant to this competitive solicitation. This is the third FFO announcement published under this program during FY 2006. The first announcement under National Technical Assistance was published on June 16, 2006 and the second announcement under Research and Evaluation was published on July 18, 2006.

Statutory Authority: The authority for the National Technical Assistance Program is section 207 of PWEDA (42 U.S.C. 3147). You may access EDA's currently effective regulations (codified

at 13 CFR Chapter III) and PWEDA on EDA's Internet website at www.eda.gov.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.303, Economic Development-Technical Assistance.

Eligibility Requirement: Pursuant to PWEDA, eligible applicants for and eligible recipients of EDA investment assistance include a District Organization; an Indian Tribe or a consortium of Indian Tribes; a State; a city or other political subdivision of a State, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; an institution of higher education or a consortium of institutions of higher education; a public or private non-profit organization or association; a private individual; or a for-profit organization. See section 3 of PWEDA (42 U.S.C. 3122) and 13 CFR 300.3.

Cost Sharing Requirement: Generally, the amount of the EDA grant may not exceed fifty (50) percent of the total cost of the project. Projects may receive an additional amount that shall not exceed thirty (30) percent, based on the relative needs of the region in which the project will be located, as determined by EDA. See section 204(a) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(1). Under this competitive solicitation, the Assistant Secretary of Commerce for Economic Development (Assistant Secretary) has the discretion to establish a maximum EDA investment rate of up to one hundred (100) percent where the project (i) merits and is not otherwise feasible without an increase to the EDA investment rate; or (ii) will be of no or only incidental benefit to the recipient. See section 204(c)(3) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(4).

While cash contributions are preferred, in-kind contributions, consisting of assumptions of debt or contributions of space, equipment, and services, may provide the non-federal share of the total project cost. See section 204(b) of PWEDA (42 U.S.C. 3144). EDA will fairly evaluate all in-kind contributions, which must be eligible project costs and meet applicable federal cost principles and uniform administrative requirements. Funds from other federal financial assistance awards are considered matching share funds only if authorized by statute that allows such use, which may be determined by EDA's reasonable interpretation of the statute. See 13 CFR 300.3. The applicant must show that the matching share is committed to the project, available as needed and not conditioned or encumbered in any way

that precludes its use consistent with the requirements of EDA investment assistance. See 13 CFR 301.5.

Intergovernmental Review: Applications for funding under this competitive solicitation are not subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs."

Evaluation and Selection Procedures: To apply for an award under this announcement, an eligible applicant must submit a completed application (Form ED-900A, Application for Investment Assistance) to EDA during the timeframe specified in the "Dates" section of this notice. Applications received after 5 p.m. EDT on August 30, 2006 will be considered non-responsive and will not be considered for funding. By September 29, 2006, EDA expects to notify the applicants selected for investment assistance. Unsuccessful applicants will be notified by postal mail that their applications were not recommended for funding. Applications that do not meet all items required or that exceed the page limitations set forth in this competitive solicitation will be considered non-responsive and will not be considered by the review panel. Applications that meet all the requirements will be evaluated by a review panel comprised of at least three (3) EDA staff members, all of whom will be full-time federal employees.

Evaluation Criteria: The review panel will evaluate the applications and rate and rank them using the following criteria of approximate equal weight:

1. Conformance with EDA's statutory and regulatory requirements, including the extent to which the proposed project satisfies the award requirements set out below and as provided in 13 CFR 306.2:
 - a. Strengthens the capacity of local, State or national organizations and institutions to undertake and promote effective economic development programs targeted to regions of distress;
 - b. Benefits distressed regions; and
 - c. Demonstrates innovative approaches to stimulate economic development in distressed regions;
2. The degree to which an EDA investment will have strong organizational leadership, relevant project management experience and a significant commitment of human resources talent to ensure the project's successful execution (see 13 CFR 301.8(b));
3. The ability of the applicant to implement the proposed project successfully (see 13 CFR 301.8);
4. The feasibility of the budget presented; and
5. The cost to the Federal government.

Selection Factors: EDA expects to fund the highest ranking applications submitted under this competitive solicitation. The Assistant Secretary is the Selecting Official and will normally follow the recommendation of the review panel. However, the Assistant Secretary may not make any selection, or he may select an application out of rank order for the following reasons: (1) A determination that the application better meets the overall objectives of sections 2 and 207 of PWEDA (42 U.S.C. 3121 and 3147); (2) the applicant's performance under previous awards; or (3) the availability of funding.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, published in the **Federal Register** on December 30, 2004 (69 FR 78389), are applicable to this competitive solicitation. This notice may be accessed by entering the **Federal Register** volume and page number provided in the previous sentence at the following Internet website: <http://gpoaccess.gov/fr/retrieve.html>.

Paperwork Reduction Act.

This request for applications contains a collection of information subject to the requirements of the Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) has approved the use of the Application for Investment Assistance (Form ED-900A) under control number 0610-0094. The Form ED-900A also incorporates Forms SF-424 (Application for Financial Assistance), SF-424A (Budget-Non-Construction Programs) and SF-424B (Assurances-Non-Construction Programs). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless the collection of information displays a currently valid OMB control number.

Executive Order 12866.

This notice has been determined to be not significant for purposes of Executive Order 12866, "Regulatory Planning and Review."

Executive Order 13132.

It has been determined that this notice does not contain "policies that have Federalism implications," as that phrase is defined in Executive Order 13132, "Federalism."

Administrative Procedure Act/ Regulatory Flexibility Act.

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: July 25, 2006.

Benjamin Erulkar,

Deputy Assistant Secretary of Commerce, for Economic Development and Chief Operating Officer.

[FR Doc. E6-12250 Filed 7-28-06; 8:45 am]

BILLING CODE 3510-24-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 31-2006]

Foreign-Trade Zone 208 - New London, Connecticut, Expansion of Subzone and Manufacturing Authority-Subzone 208A, Pfizer Inc (Pharmaceutical Products), Groton, Connecticut

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the New London Foreign Trade Zone Commission, grantee of FTZ 208, requesting to expand the subzone and scope of manufacturing authority under zone procedures for Subzone 208A, at the Pfizer Inc (Pfizer) facility in Groton, Connecticut. It was formally filed on July 20, 2006.

Subzone 208A was approved by the Board in 2005 at Pfizer's plant (61 bldgs. on 57 acres/723,362 sq. ft., 195, 642 sq. ft. of which is devoted to manufacturing) located at 445 Eastern Point Road, Groton, Connecticut. The facility (400 employees) is used to produce and/or distribute a wide range of pharmaceuticals, with specific authority granted for the manufacture of a single product under zone procedures (Board Order 1391, 5/9/05).

Pfizer is now requesting authority to expand the subzone to include 2 additional parcels (31 bldgs. on 112 acres/3,480,165 sq. ft., approximately one-third of which is devoted to manufacturing) located at 38 Eastern Road in Groton, adjacent to the current site, for the manufacture of pharmaceutical reference standards (HTSUS 3822.00, duty-free). Reference

standards not qualifying for entry under HTSUS 3822.00 could qualify to be entered under the prototype provision of HTSUS 9817.85 (duty-free). Materials sourced from abroad account for approximately 20 percent of all materials used in production. The materials sourced from abroad primarily consist of organic chemicals but, due to the unique, wide-ranging nature of the reference standards, they may also include: animal by-products; corn starch; gums, resins and other vegetable saps and extracts; animal and vegetable fats, oils and waxes; lactose and lactose syrup; miscellaneous edible preparations; ethyl alcohol; salts, magnesium carbonate and talc; mineral oils and products; inorganic chemicals and compounds of precious metals; pharmaceutical products; tannins, pigments and acid dyes; essential oils; sulfonates, surface active agents, lubricating preparations and waxes; fish glue, gelatin, peptones, dextrans and enzymes; miscellaneous chemical products; plastics; rubber and rubber articles; paper and paperboard; printed books; cotton wadding; glass products; aluminum foil; base metals; optical, medical and surgical instruments; miscellaneous manufactured articles (gelatin, wax and vegetable materials); and chemicals (chapter 99). FTZ savings will result initially from imported materials used in the manufacture of reference standards subject to duty rates from duty-free to 7.5 percent.

The application also requests authority to include a broad range of inputs (listed above) for other finished pharmaceutical products that Pfizer may produce under FTZ procedures in the future. (New major activity involving these inputs/products would require review by the FTZ Board.) The duty rates for these inputs and final products range from duty-free to 10 percent.

Zone procedures would exempt Pfizer from Customs duty payments on foreign materials used in production for export. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials, and to choose the duty rate that applies to the finished products instead of the rates otherwise applicable to the foreign input materials. Pfizer also expects to realize additional savings through the use of weekly entry procedures. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is September 29, 2006. Rebuttal comments in response to material submitted during the forgoing period may be submitted during the subsequent 15-day period (to October 14, 2006).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: the City of New London's Office of Development and Planning, 111 Union Street, New London, CT 06320; and, Office of the Executive Secretary, Foreign-Trade Zones Board, Room 1115, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

Dated: July 20, 2006.

Andrew McGilvray,

Acting Executive Secretary.

[FR Doc. E6-12228 Filed 7-28-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-893

Certain Frozen Warmwater Shrimp from the People's Republic of China: Partial Rescission of the First Administrative Review

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

EFFECTIVE DATE: July 31, 2006.

FOR FURTHER INFORMATION CONTACT: P. Lee Smith or Erin Begnal, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482-1655 and (202) 482-1442, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2006, the Department published in the **Federal Register** a notice of initiation listing 163 firms for which it received timely requests for an administrative review of this antidumping duty order. *See Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China*, 71 FR 17813 (April 7, 2006) ("*Initiation*

Notice"). The period of review (POR) is July 16, 2004 through January 31, 2006.

On May 19, 2006, Petitioner¹ withdrew its request for an administrative review of one company: Polypro Plastics.

On July 6, 2006, Petitioner withdrew its request for an administrative review of 36 companies: Beihai Zhengwu Industry Co., Ltd.; Chaoyang Qiaofeng Group Co., Ltd. (Shantou Qiaofeng (Group) Co., Ltd.) (Shantou/Chaoyang Qiaofeng); Chengai Nichi Lan Foods Co., Ltd.; Citic Heavy Machinery; Dalian Ftz Sea-Rich International Trading Co., Ltd.; Dongri Aquatic Products Freezing Plants; Fuqing Dongwei Aquatic Products Industry Co. Ltd.; Gallant Ocean (Liangjiang) Co. Ltd.; Hainan Fruit Vegetable Food Allocation Co., Ltd.; Hainan Golden Spring Foods Co., Ltd./ Hainan Brich Aquatic Products Co., Ltd.; Jinfu Trading Co., Ltd.; Kaifeng Ocean Sky Industry Co., Ltd.; Leizhou Zhulian Frozen Food Co., Ltd.; Pingyang Xinye Aquatic Products Co. Ltd.; Savvy Seafood Inc.; Shanghai Taoen International Trading Co., Ltd.; Shantou Freezing Aquatic Product Food Stuff Co.; Shantou Jinhang Aquatic Industry Co., Ltd.; Shantou Jinyuan District Mingfeng Quick-Frozen Factory; Shantou Long Feng Foodstuffs Co., Ltd. (Shantou Longfeng Foodstuffs Co., Ltd.); Shantou Ruiyaun Industry Co., Ltd.; Shantou Shengping Oceanstar Business Co. Ltd.; Shantou Wanya Food Factory Co. Ltd.; Shantou Yuexing Enterprise Company; Xuwen Hailang Breeding Co., Ltd.; Yantai Wei-Cheng Food Co., Ltd.; Zhangjiang Bobogo Ocean Co., Ltd.; Zhangjiang Newpro Food Co., Ltd.; Zhanjiang Go-Harvest Aquatic Products Co., Ltd.; Zhanjiang Runhai Foods Co., Ltd.; Zhanjiang Universal Seafood Corp; Zhejiang Cereals, Oils, & Foodstuffs Import & Export Co., Ltd.; Zhoushan Cereals, Oils, and Foodstuffs Import and Export Co., Ltd.; Zhoushan Diciaryuan Aquatic Products; Zhoushan Lizhou Fishery Co., Ltd.; and Zhoushan Xifeng Aquatic Co., Ltd.

Partial Rescission

Pursuant to section 351.213(d)(1) of the Department's regulations, the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within ninety days of the date of publication of notice of initiation of the requested review.

Because the Petitioner's requests for withdrawal were timely and no other party requested a review of the following companies, in accordance

with section 351.213(d)(1) of the Department's regulations, we are rescinding this review with respect to the following 37 companies: Beihai Zhengwu Industry Co., Ltd.; Chaoyang Qiaofeng Group Co., Ltd. (Shantou Qiaofeng (Group) Co., Ltd.) (Shantou/Chaoyang Qiaofeng); Chengai Nichi Lan Foods Co., Ltd.; Citic Heavy Machinery; Dalian Ftz Sea-Rich International Trading Co., Ltd.; Dongri Aquatic Products Freezing Plants; Fuqing Dongwei Aquatic Products Industry Co. Ltd.; Gallant Ocean (Liangjiang) Co. Ltd.; Hainan Fruit Vegetable Food Allocation Co., Ltd.; Hainan Golden Spring Foods Co., Ltd./ Hainan Brich Aquatic Products Co., Ltd.; Jinfu Trading Co., Ltd.; Kaifeng Ocean Sky Industry Co., Ltd.; Leizhou Zhulian Frozen Food Co., Ltd.; Pingyang Xinye Aquatic Products Co. Ltd.; Polypro Plastics; Savvy Seafood Inc.; Shanghai Taoen International Trading Co., Ltd.; Shantou Freezing Aquatic Product Food Stuff Co.; Shantou Jinhang Aquatic Industry Co., Ltd.; Shantou Jinyuan District Mingfeng Quick-Frozen Factory; Shantou Long Feng Foodstuffs Co., Ltd. (Shantou Longfeng Foodstuffs Co., Ltd.); Shantou Ruiyaun Industry Co., Ltd.; Shantou Shengping Oceanstar Business Co. Ltd.; Shantou Wanya Food Factory Co. Ltd.; Shantou Yuexing Enterprise Company; Xuwen Hailang Breeding Co., Ltd.; Yantai Wei-Cheng Food Co., Ltd.; Zhangjiang Bobogo Ocean Co., Ltd.; Zhangjiang Newpro Food Co., Ltd.; Zhanjiang Go-Harvest Aquatic Products Co., Ltd.; Zhanjiang Runhai Foods Co., Ltd.; Zhanjiang Universal Seafood Corp; Zhejiang Cereals, Oils, & Foodstuffs Import & Export Co., Ltd.; Zhoushan Cereals, Oils, and Foodstuffs Import and Export Co., Ltd.; Zhoushan Diciaryuan Aquatic Products; Zhoushan Lizhou Fishery Co., Ltd.; and Zhoushan Xifeng Aquatic Co., Ltd.

For those companies that submitted information stating that they did not have any shipments of subject merchandise during the POR, and for which there remains an active request for review, we will evaluate the no shipment information and may rescind the review for such companies at a later date.

Assessment Rates

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. For those companies for which this review has been rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or

withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice.

Notification to Importers

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

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 24, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6-12219 Filed 7-28-06; 8:45 am]

BILLING CODE: 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-863

Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews

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

EFFECTIVE DATE: July 31, 2006.

SUMMARY: In June 2006, the Department of Commerce ("the Department")

¹ Ad Hoc Shrimp Trade Action Committee ("Petitioner").

received requests to conduct new shipper reviews of the antidumping duty order on honey from the People's Republic of China ("PRC"). We have determined that these requests meet the statutory and regulatory requirements for the initiation of new shipper reviews.

FOR FURTHER INFORMATION CONTACT:

Catherine Bertrand or Anya Naschak, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3207 or (202) 482-6375, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from Hangzhou Golden Harvest Health Industry Co., Ltd. ("Golden Harvest"), and Qingdao Aolan Trade Co., Ltd. ("Qingdao Aolan") in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act") and 19 CFR 351.214 (c), for new shipper reviews of the antidumping duty order on honey from the PRC, which has a December annual anniversary month, and a June semi-annual anniversary month. Golden Harvest and Qingdao Aolan identified themselves as producers and exporters of honey. As required by 19 CFR 351.214(b)(2)(i), and (iii)(A), Golden Harvest, and Qingdao Aolan certified that they did not export honey to the United States during the period of investigation ("POI"), and that they have never been affiliated with any exporter or producer which exported honey to the United States during the POI. Furthermore, the three companies have also certified that their export activities are not controlled by the government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to 19 CFR 351.214(b)(2)(iv), Golden Harvest and Qingdao Aolan submitted documentation establishing the date on which the subject merchandise was first entered for consumption in the United States, the volume of that first shipment and any subsequent shipments, and the date of the first sale to an unaffiliated customer in the United States.

The Department conducted Customs database queries and analyzed Customs entry packages to confirm that the shipments of Golden Harvest and Qingdao Aolan had officially entered the United States via assignment of an entry date in the Customs database by U.S. Customs and Border Protection ("CBP"). In addition, the Department

confirmed the existence of Golden Harvest and Qingdao Aolan and their U.S. customers. We note that although Golden Harvest and Qingdao Aolan submitted documentation regarding the volume of their shipments, and the date of their first sale to an unaffiliated customer in the United States, CBP entry documents and our Customs database query show that Qingdao Aolan's shipment entered the United States shortly after the anniversary month.

Under 19 CFR 351.214(f)(2)(ii), when the sale of the subject merchandise occurs within the period of review ("POR"), but the entry occurs after the normal POR, the POR may be extended unless it would be likely to prevent the completion of the review within the time limits set by the Department's regulations. The preamble to the Department's regulations states that both the entry and the sale should occur during the POR, and that under "appropriate" circumstances the Department has the flexibility to extend the POR. *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27319-27320 (May 19, 1997). In this instance, Qingdao Aolan's shipments entered in the month following the end of the POR. The Department does not find that this delay prevents the completion of the review within the time limits set by the Department's regulations.

Initiation of Review

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), and based on information on the record, we are initiating new shipper reviews for Golden Harvest and Qingdao Aolan. See Memorandum to the File through James C. Doyle, "New Shipper Review Initiation Checklist," dated June 24, 2006. We intend to issue the preliminary results of these reviews not later than 180 days after the date on which these reviews were initiated, and the final results of these reviews within 90 days after the date on which the preliminary results were issued.

Pursuant to 19 CFR 351.214(g)(1)(i)(A), the POR for a new shipper review, initiated in the month immediately following the semi-annual anniversary month, will be the six-month period immediately preceding the semi-annual anniversary month. As discussed above, under 19 CFR 351.214(f)(2)(ii), when the sale of the subject merchandise occurs within the POR, but the entry occurs after the normal POR, the POR may be extended. Therefore, the POR for the new shipper reviews of Golden Harvest and Qingdao

Aolan is December 1, 2005, through June 30, 2006.

Pursuant to the Department's regulations, in cases involving non-market economies, the Department requires that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Golden Harvest and Qingdao Aolan, including a separate rates section. The review will proceed if the responses provide sufficient indication that Golden Harvest and Qingdao Aolan are not subject to either *de jure* or *de facto* government control with respect to their exports of honey. However, if Golden Harvest or Qingdao Aolan do not demonstrate their eligibility for a separate rate, then that company will be deemed not separate from other companies that exported during the POI and the new shipper review will be rescinded as to that company.

In accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e), we will instruct CBP to allow, at the option of the importers, the posting, until the completion of the review, of a single entry bond or security in lieu of a cash deposit for certain entries of the merchandise exported by Golden Harvest and Qingdao Aolan. Specifically, since Golden Harvest and Qingdao Aolan have stated that they are both the producers and exporters of the subject merchandise for the sales under review, we will instruct CBP to limit the bonding option only to entries of merchandise that were both exported and produced by Golden Harvest and Qingdao Aolan, respectively. Interested parties that need access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act, 19 CFR 351.214(d), and 19 CFR 351.221(c)(1)(i).

Dated: July 20, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6-12223 Filed 7-31-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE**International Trade Administration**

A-570-863

Honey from the People's Republic of China: Notice of Rescission of Antidumping Duty New Shipper Review

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

EFFECTIVE DATE: July 31, 2006

SUMMARY: In response to a request from Tianjin Eulia Honey Co., Ltd. (Tianjin Eulia), the Department of Commerce published in the **Federal Register**, on January 31, 2006, a notice announcing the initiation of a new shipper review of the antidumping duty order on honey from the People's Republic of China (PRC) covering the period of December 1, 2004, through December 31, 2005. On July 12, 2006, Tianjin Eulia, withdrew its request for a new shipper review. Therefore, we are rescinding this review.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Judy Lao, Office 7, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202-482-0405 or 202-482-7924, respectively.

SUPPLEMENTARY INFORMATION:**Background**

The Department of Commerce (the Department) published the antidumping duty order on honey from the PRC on December 10, 2001. *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China*, 66 FR 63670 (December 10, 2001). On December 29, 2005, we received a timely request for a new shipper review of the antidumping duty order on honey from the PRC from Tianjin Eulia. Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d)(1), we initiated a new shipper review on January 31, 2006, for shipments of honey from the PRC produced and exported by Tianjin Eulia. *Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews*, 71 FR 5051 (January 31, 2006). Tianjin Eulia submitted responses to the Department's questionnaires and supplemental questionnaires on February 27, 2006, March 13, 2006, March 30, 2006, May 5, 2006, and June 14, 2006. On June 19,

2006, petitioners submitted to the Department comments regarding Tianjin Eulia. On June 22, 2006, Tianjin Eulia submitted a letter of intent to no longer participate in the new shipper review. On July 12, 2006, Tianjin Eulia withdrew its request for the new shipper review.

Rescission of New Shipper Review

Section 351.214(f)(1) of the Department's regulations provides that the Department may rescind a new shipper review if the party that requested the review withdraws its request for review within sixty days of the date of publication of the notice of initiation of the requested review. Although Tianjin Eulia withdrew its request after the 60-day deadline, we find it reasonable to extend the deadline because we have not yet committed significant resources to the Tianjin Eulia new shipper review. Specifically, we have not calculated a preliminary margin for Tianjin Eulia and we have not yet verified Tianjin Eulia's data. Further, Tianjin Eulia was the only party to request the review. Finally, we have not received any submissions opposing the withdrawal of the request for the review. *See Carbazole Violet Pigment 23 from India: Notice of Rescission of Antidumping Duty New Shipper Review*, 71 FR 26926 (May 9, 2006). For these reasons, we are rescinding the new shipper review of the antidumping duty order on honey from the PRC in accordance with 19 CFR 351.214(f)(1).

Notification

As of the date of the publication of this rescission notice in the **Federal Register**, we will instruct U.S. Customs and Border Protection (CBP) that importers will no longer have the option of posting a bond to fulfill security requirements for shipments of honey from the PRC produced and exported by Tianjin Eulia and entered, or withdrawn from warehouse, for consumption in the United States. We will issue assessment instructions within 15 days of the date of the publication of this notice and, in accordance with 19 CFR 351.212(c), we will instruct CBP to assess antidumping duties at the cash-deposit rate in effect at the time of entry for all shipments of honey from the PRC produced and exported by Tianjin Eulia and entered, or withdrawn from warehouse, for consumption during the period December 1, 2004, through December 31, 2005.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the

disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

This notice is published in accordance with section 751(a) of the Act and 19 CFR 351.214(f)(3).

Dated: July 24, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6-12224 Filed 7-28-06; 8:45 am]

BILLING CODE: 3510-DS-S

DEPARTMENT OF COMMERCE**International Trade Administration**

A-570-832

Notice of Extension of Final Results of the 2004-2005 Administrative Review of Pure Magnesium from the People's Republic of China

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

EFFECTIVE DATE: July 31, 2006.

FOR FURTHER INFORMATION CONTACT:

Robert Bolling or Hua Lu, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-3434 and (202) 482-6478, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On April 10, 2006, the Department of Commerce ("the Department") published the preliminary results of the administrative review of the antidumping duty order on pure magnesium from the People's Republic of China ("PRC"). *See Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 18067 (April 10, 2006) ("Preliminary Results"). In the Preliminary Results, we stated that we would issue our final results of review no later than 120 days after the date of publication of the preliminary results (*i.e.*, August 8, 2006).

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (“the Act”), requires the Department to issue the final results in an administrative review within 120 days of publication date of the preliminary results. However, if it is not practicable to complete the review within this time period, the Department may extend the time limit for the final results to 180 days. Completion of the final results within the 120-day period is not practicable because this review involves certain complex issues, such as valuation of various factors of production that both Petitioner and respondent addressed in their briefs.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing these final results of review by 30 days until September 7, 2006.

Dated: July 24, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6-12225 Filed 7-28-06; 8:45 am]

BILLING CODE: 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

(C-489-502)

Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey

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

SUMMARY: On April 6, 2006, the Department of Commerce (“the Department”) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty (“CVD”) order on certain welded carbon steel standard pipe from Turkey for the period January 1, 2004, through December 31, 2004. See *Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey*, 71 FR 17445 (April 6, 2006) (“*Turkey Pipe 2004 Preliminary*”). The Department has now completed the administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (“the Act”).

Based on our analysis of the comments received, the Department has not revised the net subsidy rate for the Borusan Group (“Borusan”), the producer/exporter of subject

merchandise covered by this review.¹ Further discussion of our analysis of the comments received is provided in the accompanying issues and decision memorandum. See Issues and Decision Memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, concerning the Final Results of Administrative Review of the Countervailing Duty Order on Certain Welded Carbon Steel Standard Pipe from Turkey (July 25, 2006) (“*Turkey Pipe 2004 Memorandum*”). The final net subsidy rate for Borusan is listed below in the “Final Results of Review” section.

EFFECTIVE DATE: July 31, 2006.

FOR FURTHER INFORMATION CONTACT:

Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4793.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 2006, the Department published the preliminary results in the **Federal Register** and invited interested parties to comment on the preliminary results. See *Turkey Pipe 2004 Preliminary*. On May 5, 2006, we received a case brief from Borusan.²

Pursuant to 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers only Borusan. The review covers the period January 1, 2004, through December 31, 2004, and 14 programs.

Scope of the Order

The products covered by this order are certain welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (pipe and tube) from Turkey. These products are currently provided for under the Harmonized Tariff Schedule of the United States (“HTSUS”) as item numbers 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided for convenience and customs purposes,

¹ During the review period, Borusan was comprised of Borusan Birlesik Boru Fabrikalari A.S., Mannesmann Boru Endustrisi T.A.S., Borusan Mannesmann Boru Sanayi ve Ticaret A.S., and Borusan Istikbal Ticaret T.A.S.

² Neither petitioners (Allied Tube & Conduit Corporation and Wheatland Tube Company) nor the Government of the Republic of Turkey submitted either a case or rebuttal brief. In addition, none of the interested parties requested a hearing.

the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in Borusan’s case brief are addressed in the Turkey Pipe 2004 Memorandum, which is hereby adopted by this notice. A list of the issues contained in that decision memorandum is attached to this notice as Appendix I. Parties can find a complete discussion of the issues raised in this review and the corresponding recommendations in that public memorandum, which is on file in the Central Records Unit, room B-099 of the Commerce Building. In addition, a complete copy of that memorandum can be accessed directly on the internet at <http://ia.ita.doc.gov/frn>, under the heading “**Federal Register Notices.**” The paper copy and electronic version of the decision memorandum are identical in content.

Final Results of Review

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an ad valorem subsidy rate for Borusan. For the review period, we determine the total net subsidy rate to be 0.27 percent *ad valorem*, which is *de minimis*, pursuant to 19 CFR 351.106(c).

We will instruct U.S. Customs and Border Protection (“CBP”), within 15 days of publication of the final results of this review, to liquidate shipments of subject merchandise by Borusan entered, or withdrawn from warehouse, for consumption on or after January 1, 2004, through December 31, 2004, without regard to countervailing duties. Moreover, the Department also will instruct CBP to collect cash deposits of estimated countervailing duties at zero percent *ad valorem* on all shipments of the subject merchandise by Borusan entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

We will also instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rate that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the Uruguay Round Agreements Act (“URAA”). If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is

applicable. *See Certain Welded Carbon Steel Pipe and Tube Products from Turkey; Final Results of Countervailing Duty Administrative Review*, 53 FR 9791 (March 25, 1988). The "all others" rate shall apply to all non-reviewed companies until a review of a company assigned this rate is requested.

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

This administrative review and this notice are issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act.

Dated: July 25, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

APPENDIX I - ISSUES AND DECISION MEMORANDUM

METHODOLOGY & BACKGROUND INFORMATION

- I. Company Information
- II. Subsidies Valuation Information
 - A. Benchmark Interest Rates

ANALYSIS OF PROGRAMS

- I. Programs Determined To Be Countervailable
 - A. Deduction from Taxable Income for Export Revenue
 - B. Pre-Shipment Export Credits
 - C. Foreign Trade Companies Short-Term Export Credits
 - D. Pre-Export Credits
- II. Programs Determined To Be Not Countervailable
 - A. Investment Allowance Under Article 19 of Law 4842
 - B. Investment Allowance Under Investment Incentive Certificate
- III. Programs Determined To Not Confer Countervailable Benefits
 - A. Export Credit Insurance
 - B. Inward Processing Certificate Exemption
- IV. Programs Determined To Not Be Used
 - A. VAT Support Program (Incentive Premium on Domestically Obtained Goods)
 - B. Post-Shipment Export Loans
 - C. Pre-Shipment Rediscount Loans
 - D. Subsidized Turkish Lira Credit Facilities
 - E. Subsidized Credit for Proportion of

Fixed Expenditures
F. Regional Subsidies

TOTAL AD VALOREM RATE ANALYSIS OF COMMENTS

Comment 1: Benchmark Interest Rate for Turkish Lira Loans

Comment 2: Indirect Exports

[FR Doc. E6-12227 Filed 7-28-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042606H]

Small Takes of Marine Mammals Incidental to Open-water Seismic Operations in the Chukchi Sea

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

ACTION: Notice; issuance of Incidental Harassment Authorization.

SUMMARY: Notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Conoco Phillips Alaska, Inc. (Conoco) to take small numbers of marine mammals, by harassment, incidental to conducting open-water seismic data acquisition in the Chukchi Sea during the summer and fall of 2006.

DATES: The authorization is effective July 7, 2006, through December 31, 2006.

ADDRESSES: Copies of the IHA and the application are available by writing to Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, or by telephoning the contact listed here. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (**FOR FURTHER INFORMATION CONTACT**) or online at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713-2289, ext 166.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct

the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On February 2, 2006, NMFS received an application from Conoco for the taking, by harassment, of several species of marine mammals incidental to conducting open-water seismic data acquisition in the Chukchi Sea from July through November, 2006. Seismic surveys such as the one described here provide accurate data on the location, extent, and properties of hydrocarbon

resources as well as information on shallow geologic hazards and seafloor geotechnical properties to explore, develop, produce, and transport hydrocarbons safely, economically, and in an environmentally safe manner. This information is utilized by both the oil and gas industry and the Minerals Management Service (MMS).

Description of the Activity

Conoco seeks an IHA for conducting open-water seismic surveys between July 1 and November 30, 2006. The seismic vessel planned for use is the motor vessel (MV) *Patriot*. Mobilization of operations will occur in mid-July, and seismic operations are scheduled to begin in late July. Open water seismic operations are ordinarily confined to no more than this five-month period because of the timing of ice melt and formation, which typically occurs during a four to five month period. The geographic region of activity encompasses a 2500–3600 km²-area (965–1390 mi²-area) in the northeastern Chukchi Sea. The approximate boundaries of the region are within 158°00' W. and 169°00' W. longitude and 69°00' N. and 73°00' N. latitude with eastern boundary located parallel to the coast of Alaska, north of Point Hope to Point Barrow, and ranging 40–180 km (25–112 mi) off the coast. The nearest approximate point of the project to Point Hope is 74 km (46 mi), Point Lay 90 km (56 mi), Wainwright 40 km (25 mi), and Barrow 48 km (30 mi). Water depths are typically less than 50 m (164 ft).

Conoco anticipates a work schedule of approximately 90–100 days to complete the planned 16,576 km (10,300 mi) of trackline, with about 30-percent downtime due to weather, ice conditions, repairs etc. In addition to the primary activity of the seismic vessel, there will also be support vessels. A supply vessel and a fuel bunkering vessel will be employed to bring supplies to the seismic vessel. The seismic crew will most likely be changed out by helicopter and fixed-wing support may be used to report ice conditions if necessary.

Description of Marine 3-D Seismic Data Acquisition

In the seismic method described here, reflected sound energy produces graphic images of seafloor and sub-seafloor features. The seismic system consists of sources and detectors, the positions of which must be accurately measured at all times. The sound signal comes from arrays of towed energy sources. These energy sources store compressed air which is released on command from the

towing vessel. The released air forms a bubble which expands and contracts in a predictable fashion, emitting sound waves as it does so. Individual sources are configured into arrays. These arrays have an output signal which is more desirable than that of a single bubble and also serves to focus the sound output primarily in the downward direction which is useful for the seismic method. This array effect also minimizes the sound emitted in the horizontal direction.

The downward propagating sound travels to the seafloor and into the geologic strata below the seafloor. Changes in the acoustic properties between the various rock layers result in a portion of the sound being reflected back toward the surface at each layer. This reflected energy is received by detectors called hydrophones, which are housed within submerged streamer cables (4 to 4.5-km long (2.5 to 2.8-mi long)) which are towed behind the seismic vessel. Data from these hydrophones are recorded to produce seismic records or profiles. Seismic profiles often resemble geologic cross-sections along the course traveled by the survey vessel.

Vessel and Seismic Source Specifications

The MV *Patriot* is owned by Western Geco. The MV *Patriot* has a length of 78 m (256 ft), a beam of 17 m (56 ft), a maximum draft of 5.9 m (19.4 ft), and 3586 gross tonnage. During seismic operations, the MV *Patriot* typically travels at 4–5 knots (7.4–9.2 km/hr). The MV *Patriot's* average speed when not using seismic is 12 – 15 knots (22 – 28 km/hr).

The energy source for the planned activity will be air gun array systems towed behind the vessel. There will be six to eight cables approximately 4 km (2.5 mi) in length spaced 100 m (328 ft) apart. Each source array consists of identically tuned Bolt gun sub-arrays operating at 2000 pounds per square inch (psi) air pressure operating about 8 m (26 ft) below the surface. The dominant frequency components are in the range of 5–70 Hz, the source level at those frequencies is about 209 dB, and the pulse length is 50 ms. The arrays will fire on interleaved 50-meter (164-ft) intervals (i.e., approximately every 15 seconds) and they are designed to focus energy in the downward direction. The proposal is to have two air-gun arrays, each approximately 1695-in³ size (27,776-cm³)(and spaced approximately 50 m (164 ft) apart). Together the two arrays will total approximately 3390³ in (55,552-cm³). The airgun array will fire approximately

every 25 m (82 ft) as the vessel is traveling at 4 to 5 knots (7.4–9.2 km/hr). The sub-array is composed of six tuning elements; two 2-gun clusters and four single guns. The clusters have their component guns arranged in a fixed side-by-side fashion with the distance between the gun ports set to maximize the bubble suppression effects of clustered guns. A near-field hydrophone is mounted about 1 meter (3.28 ft) above each gun station (one phone is used per cluster), one depth transducer per position is mounted on the gun's ultrabox, and a high pressure transducer is mounted at the aft end of the sub-array to monitor high pressure air supply. All the data from these sensors are transmitted to the vessel for input into the onboard systems and recording to tape. See Appendix A of the application for additional information on the array configuration.

Conoco will also operate two additional pieces of equipment throughout the planned study that emit sound at a frequency at or near that which a marine mammal could hear. The Simrad EA500 echo-sounder operates at 200 kHz, the maximum output is 185 dB re 1 μPa @ 1m, and the beam is directed downwards and can be up to 33° wide. The Sonardyne SIPS-2 acoustic positioning system operates at 55–110 kHz, the maximum output is 183 dB re 1 Pa @ 1m, and the beam is omnidirectional.

Characteristics of Airgun Pulses

Discussion of the characteristics of airgun pulses has been provided in the application and in previous **Federal Register** notices (see 69 FR 31792, June 7, 2004 or 69 FR 34996, June 23, 2004). Reviewers are referred to those documents for additional information.

Description of Marine Mammals and Habitat Affected by the Activity

A description of the Beaufort and Chukchi sea ecosystems and their associated marine mammals can be found in several documents (Corps of Engineers, 1999; NMFS, 1999; MMS, 2006, 1996 and 1992), though NMFS notes that there are some data gaps regarding abundance and distribution of marine mammals in the Chukchi Sea (as noted in NMFS' Finding of No Significant Impact (FONSI)). MMS' Programmatic Environmental Assessment (PEA) - Arctic Ocean Outer Continental Shelf Seismic Surveys - 2006 may be viewed at: <http://www.mms.gov/alaska/>.

Marine Mammals

A total of five cetacean species (bowhead, beluga, killer, gray, and

minke whales) and four pinniped species (ringed, bearded, spotted seals, and ribbon seals) are known to occur in the project area. The Alaska Eskimo Whaling Commission (AEWC) submitted a comment during the public comment period indicating that ribbon seals are occasionally seen in the Chukchi Sea at the time of year the seismic surveys are scheduled (they were not mentioned in the proposed IHA). However, little information is known about the abundance and distribution of this species during late summer and fall, local biologists present at the Open-water peer-review meeting in May did not raise concerns regarding this species, and NMFS believes that harassment of this species is unlikely (and authorization for this species unnecessary). Both minke whales and killer whales are very uncommon in the area and are not expected to be encountered during the seismic survey.

One of the species, the bowhead whale, is listed as endangered under the Endangered Species Act (ESA). Polar bears and the Pacific walrus also occur in the project area, but the U.S. Fish and Wildlife Service is responsible for both of these species and is conducting a separate process under the MMPA. Therefore, they are not discussed further in this document.

Table 1 includes estimated abundances and densities for the species expected to be potentially encountered during Conoco's seismic surveys. Abundance and density information for bowhead, gray, and beluga whales are based on the estimates provided in LGL's Healy Arctic Cruise Application (2005). In the Conoco application, ringed seal density was based on Bengston *et al.*'s (2005) estimates of density in the Chukchi Sea recorded in 1999 and 2000. Also in the Conoco application, bearded seal

densities were obtained by adjusting the density for ringed seals based on the ratio of bearded to ringed seals observed during surveys in the Chukchi Sea by Brueggerman *et al.* (1990, 1991). Both the bearded and ringed seal densities are likely high, since Bengston *et al.* (2005) surveys included an area south of the project area, where they reported ringed and bearded seal densities were considerably higher than north of Point Hope, which corresponds to the seismic project area. Accordingly, NMFS also provides the densities estimated by LGL (2005) for comparison. Additional information regarding the distribution of these species and how the estimated densities were calculated may be found in Conoco's application and NMFS' Updated Species Reports at: (<http://www.nmfs.noaa.gov/pr/readingrm/MMSARS/2005alaskasummarySARs.pdf>).

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Table 1. Estimated local abundance and density of marine mammals potentially encountered during Conoco's survey. *Estimated take column indicates estimated number of animals that may be exposed to 160 dB during the proposed survey. **The far right column is the estimated take divided by the abundance in the third column. Note that for ringed seals the population extends throughout the Arctic and the abundance here is based only on a survey of the eastern Chukchi (so the percent is an overestimate, and additionally, ringed seals are far denser near shore/ice than in open water).

Species		Abundance	Density	Estimated Take* (w/o mitigation)	Percent of Local Abundance**
Bowhead Whale	<i>Balaena mysticetus</i>	10,545	0.0064	399 - 418	3.8 - 4
Beluga Whale	<i>Delphinapterus leucas</i>	42,968	0.0034	347 - 361	0.76 - 0.8
Gray Whale	<i>Eschrichtius robustus</i>	18,813	0.0045	460 - 481	2.47 - 2.6
Killer Whale	<i>Orcinus orca</i>	> 100	N/A	0	0.0
Minke Whale	<i>Balaenoptera acutorostrata</i>	No est. available	N/A	0	0.0
Ringed Seal	<i>Phoca hispida</i>	> 249,000	0.25 - 0.53	54120 - 56458	10.2 - 22.7
Bearded Seal	<i>Erignathus barbatus</i>	250,000-300,000	0.01 - 0.24	24509 - 25567	0.48 - 9.3
Spotted Seal	<i>Phoca largha</i>	59,214	0.0001	10	0.019 - 0.2

Potential Effects on Marine Mammals

Summary of Potential Effects of Airgun Sounds on Marine Mammals

Disturbance by seismic noise is the principal means of taking by this activity. Support vessels and aircraft may provide a potential secondary source of noise. The physical presence of vessels and aircraft could also lead to non-acoustic effects on marine mammals involving visual or other cues. NMFS does not expect any takings to result from operations of the other sound sources discussed (echosounder and acoustic positioning system). For the echosounder, produced sounds are beamed downward, the beam is narrow, the pulses are extremely short, and the sound source is relatively low, and with

the acoustic positioning system, the beam is spherical, but the sound source is relatively low. Additionally, in the case of both of these pieces of equipment, the small area ensonified to a level that could potentially disturb marine mammals is entirely subsumed by the louder levels of airgun noise (which will also be running when these equipment are used.)

As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Effects of Seismic Surveys on Marine Mammals

NMFS anticipates that the effects of Conoco's seismic surveys on marine mammals will primarily consist of behavioral disturbance, masking (the animals cannot hear the other sounds around them as well while the seismic noise is present), TTS (temporary damage to the auditory tissues), and low-level physiological effects.

When the received levels of noise exceed some behavioral reaction threshold, cetaceans will show disturbance reactions. The levels, frequencies, and types of noise that will elicit a response vary between and within species, individuals, context, locations, and seasons. Behavioral changes may be subtle alterations in surface, respiration, and dive cycles. More conspicuous responses include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors, such as feeding, socializing, or mating,

may be less likely than resting animals to show overt behavioral reactions, unless the disturbance is directly threatening.

Although NMFS believes that some limited masking of low-frequency sounds (e.g., whale calls) is a possibility during seismic surveys, the intermittent nature of seismic source pulses (1 second in duration every 16 to 24 seconds, less than 7 percent) will limit the extent of masking. Bowhead whales are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (Greene *et al.*, 1999, Richardson *et al.*, 1986). Masking effects are expected to be absent in the case of belugas, given that sounds important to them are predominantly at much higher frequencies than are airgun sounds (Western Geophysical, 2000).

Hearing damage is not expected to occur during the Conoco seismic survey project. It is not positively known whether the hearing systems of marine mammals very close to an airgun would be at risk of temporary or permanent hearing impairment, but TTS is a theoretical possibility for animals within a few hundred meters of the source (Richardson *et al.*, 1995). However, planned monitoring and mitigation measures (described later in this document) are designed to avoid sudden onsets of seismic pulses at full power, to detect marine mammals occurring near the array, and to avoid exposing them to sound pulses that have any possibility of causing hearing impairment. Moreover, as mentioned previously, bowhead whales avoid an area many kilometers in radius around ongoing seismic operations, which makes hearing damage highly unlikely.

Reported species-specific responses of the marine mammals likely to be encountered in the survey area to seismic pulses are discussed later in this section. Masking, TTS, and behavioral disturbance as a result of exposure to low frequency sounds have been discussed in detail in other NMFS documents (70 FR 47797), as well as the 2006 MMS PEA.

In addition to TTS, exposure to intense seismic sounds is likely to result in other physiological changes that have other consequences for the health and ecological fitness of marine mammals. There is mounting evidence that wild animals respond to human disturbance in the same way that they respond to predators (Beale and Monaghan, 2004; Frid, 2003; Frid and Dill, 2002; Gill *et al.*, 2000; Gill and Sutherland, 2001; Harrington and Veitch, 1992; Lima, 1998; Romero, 2004). These responses manifest themselves as interruptions of

essential behavioral or physiological events, alteration of an animal's time or energy budget, or stress responses in which an animal perceives human activity as a potential threat and undergoes physiological changes to prepare for a flight or fight response or more serious physiological changes with chronic exposure to stressors (Frid and Dill, 2002; Romero, 2004; Sapolsky *et al.*, 2000; Walker *et al.*, 2005).

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Sapolsky *et al.*, 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it develops a biological response or defense that consists of a combination of the four general biological defense responses: behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune response.

The physiological mechanisms behind stress responses involving the hypothalamus-pituitary-adrenal glands have been well-established through controlled experiment in the laboratory and natural settings (Korte *et al.*, 2005; McEwen and Seeman, 2000; Moberg, 1985; 2000; Sapolsky *et al.*, 2005). Relationships between these physiological processes, animal behavior, neuroendocrine responses, immune responses, inhibition of reproduction (by suppression of pre-ovulatory luteinizing hormones), and the costs of stress responses have also been documented through controlled experiment in both laboratory and free-living animals (for examples see, Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005; Reneerkens *et al.*, 2002; Thompson and Hamer, 2000; Tilbrook *et al.*, 2000).

The available evidence suggests that: with the exception of unrelieved pain or extreme environmental conditions, in most animals (including humans) chronic stress results from exposure to a series of acute stressors whose cumulative biotic costs produce a pathological or pre-pathological state in an animal. The biotic costs can result from exposure to an acute stressor or from the accumulation of a series of different stressors acting in concert before the animal has a chance to recover.

Although few of these responses have been explicitly identified in marine mammals, they have been identified in

other vertebrate animals and every vertebrate mammal that has been studied, including humans. Because of the physiological similarities between marine mammals and other mammal species, NMFS believes that acoustic energy sufficient to trigger onset TTS is likely to initiate physiological stress responses. More importantly, NMFS believes that marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS, and that some of these stress responses rise to the level of Harassment.

The following species summaries are provided by NMFS to facilitate understanding of our knowledge of impulsive noise impacts on the principal marine mammal species that are expected to be affected.

Bowhead Whales

Seismic pulses are known to cause strong avoidance reactions by many of the bowhead whales occurring within a distance of a few kilometers, including changes in surfacing, respiration and dive cycles, and may sometimes cause avoidance or other changes in bowhead behavior at considerably greater distances (Richardson *et al.*, 1995; Rexford, 1996; MMS, 1997). Studies conducted prior to 1996 (Reeves *et al.*, 1984, Fraker *et al.*, 1985, Richardson *et al.*, 1986, Ljungblad *et al.*, 1988) have reported that, when an operating seismic vessel approaches within a few kilometers, most bowhead whales exhibit strong avoidance behavior and changes in surfacing, respiration, and dive cycles. In these studies, bowheads exposed to seismic pulses from vessels more than 7.5 km (4.7 mi) away rarely showed observable avoidance of the vessel, but their surface, respiration, and dive cycles appeared altered in a manner similar to that observed in whales exposed at a closer distance (Western Geophysical, 2000). In three studies of bowhead whales and one of gray whales during this period, surfacing-dive cycles were unusually rapid in the presence of seismic noise, with fewer breaths per surfacing and longer intervals between breaths (Richardson *et al.*, 1986; Koski and Johnson, 1987; Ljungblad *et al.*, 1988; Malme *et al.*, 1988). This pattern of subtle effects was evident among bowheads 6 km (3mi) to at least 73 km (3.7 to 45.3 mi) from seismic vessels. However, in the pre-1996 studies, active avoidance usually was not apparent unless the seismic vessel was closer than about 6 to 8 km (3.7 to 5.0 mi) (Western Geophysical, 2000).

Conoco's seismic survey will occur during a time when bowhead whales are

migrating west from Canada back across the North Slope of Alaska. Results from the 1996-1998 BP and Western Geophysical seismic program monitoring in the Beaufort Sea indicate that most migrating bowheads deflected seaward to avoid an area within about 20 km (12.4 mi) of an active nearshore seismic operation, with the exception of a few closer sightings when there was an island or very shallow water between the seismic operations and the whales (Miller *et al.*, 1998, 1999). The available data do not provide an unequivocal estimate of the distance at which approaching bowheads begin to deflect, but this may be on the order of 35 km (21.7 mi). It is also uncertain how far beyond (west of) the seismic operation the seaward deflection persists (Miller *et al.*, 1999). Although very few bowheads approached within 20 km (12.4 mi) of the operating seismic vessel, the number of bowheads sighted within that area returned to normal within 12-24 hours after the airgun operations ended (Miller *et al.*, 1999).

Inupiat whalers believe that migrating bowheads are sometimes displaced at distances considerably greater than suggested by pre-1996 scientific studies (Rexford, 1996) previously mentioned in this document. Also, whalers believe that avoidance effects can extend out to distances on the order of 30 miles (48.3 km), and that bowheads exposed to seismic also are "skittish" and more difficult to approach. The "skittish" behavior may be related to the observed subtle changes in the behavior of bowheads exposed to seismic pulses from distant seismic vessels (Richardson *et al.*, 1986).

Gray Whales

The reactions of gray whales to seismic pulses are similar to those documented for bowheads during the 1980s. Migrating gray whales along the California coast were noted to slow their speed of swimming, turn away from seismic noise sources, and increase their respiration rates. Malme *et al.* (1983, 1984, 1988) concluded that approximately 50 percent of the migrating gray whales showed avoidance when the average received pulse level was 170 dB (re 1 μ Pa). By some behavioral measures, clear effects were evident at average pulse levels of 160 dB or greater; less consistent results were suspected at levels of 140-160 dB. Recent research on migrating gray whales showed responses similar to those observed in the earlier research when the source was moored in the migration corridor 2 km (1.2 mi) from shore. However, when the source was placed offshore (4 km (2.5 mi) from

shore) of the migration corridor, the avoidance response was not evident on track plots (Tyack and Clark, 1998).

Beluga

The beluga is the only species of toothed whale (odontocete) expected to be encountered in the Beaufort Sea. Belugas have poor hearing thresholds at frequencies below 200 Hz, where most of the energy from airgun arrays is concentrated. Their thresholds at these frequencies (as measured in a captive situation), are 125 dB re 1 μ Pa or more depending upon frequency (Johnson *et al.*, 1989). Although not expected to be significantly affected by the noise, given the high source levels of seismic pulses, airgun sounds sometimes may be audible to belugas at distances of 100 km (62.1 mi) (Richardson and Wursig, 1997), and perhaps further if actual low-frequency hearing thresholds in the open sea are better than those measured in captivity (Western Geophysical, 2000). The reaction distance for belugas, although presently unknown, is expected to be less than that for bowheads, given the presumed poorer sensitivity of belugas than that of bowheads for low-frequency sounds.

As noted in the MMS PEA, effects on the immune system from seismic pulses have been documented by Romano *et al.* (2004). They summarized that "anthropogenic sound is a potential "stressor" for marine mammals. Not only can loud or persistent noise impact the auditory system of cetaceans, it may impact health by bringing about changes in immune function, as has been shown in other mammals" These authors identified neural immune measurements that may be "implicated as indicators of stress in a beluga and bottlenose dolphin that were either released acutely or changed over time during experimental period." Specifically, they found significant increases in aldosterone and a significant decrease in monocytes in a bottlenose dolphin after exposure to single impulsive sounds (up to 200 kiloPascals (kPa)) from a seismic water gun. Neural-immune changes following exposure to single pure tones (up to 201 dB re 1 μ Pa) resembling sonar pings were minimal, but changes were observed over time. A beluga whale exposed to single underwater impulses produced by a seismic water gun had significantly higher norepinephrine, dopamine and epinephrine levels after high-level sound exposure (>100 kPa) as compared with low-level exposures (<100kPa) or controls and increased with increasing sound levels.

Ringed, Spotted and Bearded Seals

No detailed studies of reactions by seals to noise from open water seismic exploration have been published (Richardson *et al.*, 1995). However, there are some data on the reactions of seals to various types of impulsive sounds (LGL and Greeneridge, 1997, 1998, 1999a; J. Parsons as quoted in Greene, *et al.*, 1985; Anon., 1975; Mate and Harvey, 1985). These studies indicate that ice seals typically either tolerate or habituate to seismic noise produced from open water sources.

Underwater audiograms have been obtained using behavioral methods for three species of phocinid seals, ringed, harbor, and harp seals (*Pagophilus groenlandicus*). These audiograms were reviewed in Richardson *et al.* (1995) and Kastak and Schusterman (1998). Below 30–50 kHz, the hearing threshold of phocinids is essentially flat, down to at least 1 kHz, and ranges between 60 and 85 dB (re 1 μ Pa @ 1 m). There are few data on hearing sensitivity of phocinid seals below 1 kHz. NMFS considers harbor seals to have a hearing threshold of 70–85 dB at 1 kHz (60 FR 53753, October 17, 1995), and recent measurements for a harbor seal indicate that, below 1 kHz, its thresholds deteriorate gradually to 97 dB (re 1 μ Pa @ 1 m) at 100 Hz (Kastak and Schusterman, 1998).

While no detailed studies of reactions of seals from open-water seismic exploration have been published (Richardson *et al.*, 1991, 1995), some data are available on the reactions of seals to various types of impulsive sounds (see LGL and Greeneridge, 1997, 1998, 1999a; Thompson *et al.*, 1998). These references indicate that it is unlikely that pinnipeds would be harassed or injured by low frequency sounds from a seismic source unless they were within relatively close proximity of the seismic array. For permanent injury, pinnipeds would likely need to remain in the high-noise field for extended periods of time. Existing evidence also suggests that, while seals may be capable of hearing sounds from seismic arrays, they appear to tolerate intense pulsatile sounds without known effect once they learn that there is no danger associated with the noise (see, for example, NMFS/ Washington Department of Wildlife, 1995). In addition, they will apparently not abandon feeding or breeding areas due to exposure to these noise sources (Richardson *et al.*, 1991) and may habituate to certain noises over time.

Safety Radii

NMFS has determined that for acoustic effects, using established acoustic thresholds in combination with corresponding safety radii is the most effective way to consistently both apply measures to avoid or minimize the impacts of an action and to quantitatively estimate the effects of an action. NMFS believes that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 μ Pa (rms) to avoid permanent physiological damage (Level A Harassment). NMFS also assumes that cetaceans or pinnipeds exposed to levels exceeding 160 dB re 1 μ Pa (rms) experience Level B Harassment. Thresholds are used in two ways: (1) To establish a mitigation shut-down or power down zone, i.e., if an animal enters an area calculated to be ensonified above the level of an established threshold, a sound source is powered down or shut down; and (2) to calculate take, in that a model may be used to calculate the area around the sound source that will be ensonified to that level or above, then, based on the estimated density of animals and the distance that the sound source moves, NMFS can estimate the number of marine mammals that may be “taken”.

In order to implement shut-down zones, or to estimate how many animals may potentially be exposed to a particular sound level using the acoustic thresholds described above, it is necessary to understand how sound will propagate in a particular situation. Models may be used to estimate at what distance from the sound source the water will be ensonified to a particular level. Safety radii represent the estimated distance from the sound source at which the received level of sound would be 190, 180, and 160 dB.

Conoco's application contains their initial proposed safety radii and take estimates. However, the initial model Conoco used did not take into consideration either the physical characteristics of the Chukchi Sea or the fact that the water was only 50–m (164–ft) deep, and NMFS was concerned that the proposed radii were too small. Subsequently, Conoco adopted a new model and submitted new proposed safety and take estimates. They used an advanced airgun array source model to predict the 190, 180, and 160 dB isopleths for the seismic survey in the Chukchi Sea. This model simulates the throttled injection of high-pressure air from airgun chambers into underwater air bubbles, simulates the complex oscillation of each bubble, taking into

account the hydrostatic pressure effects of the pressure waves from all other airguns, and includes effects such as surface-reflected pressure waves, heat transfer from bubble to the surrounding water, and the buoyancy of the bubbles. The model also takes into consideration the bathymetry, water properties, and geoacoustic properties of the sea bed layers in the survey area. The calculated safety radii from this model are as follows: the 190–dB radius is 230 m (754 ft), the 180–dB radius is 850 m (2,788), and the 160–dB radius is 4,590 m (2.85 mi).

Though the model considers some of the site-specific characteristics of the Chukchi Sea, because no sound propagation studies have previously been conducted in the survey area (against which model results can be prepared) NMFS believes that it is appropriate and necessary to field-verify the modeled safety radii. Accordingly, field verification will be conducted prior to initiation of the seismic survey and, until that time, Conoco will multiply the modeled 190–dB and 180–dB safety radii by 1.5 (which equals 345 m (1121 ft) and 1,275 m (4,174 ft), respectively) to conservatively establish the mitigation shutdown zones for marine mammals (see Mitigation section). The 1.5 correction factor will not be used in the take estimations and will not be used after the radii are field-verified.

Field verification will be conducted using an autonomous ocean bottom hydrophone. This hydrophone is suspended (upward, by float) from an anchor dropped to the ocean floor, and then released to the surface for data collection when a particular frequency tone is directed at the hydrophone. The MV *Patriot* will run directly, in a straight line, at, over, and past the hydrophone to establish received sound levels at distances in front of and behind the sound source. Then, the MV *Patriot* will do a lawnmower type zig-zag sideways to the hydrophone so that received levels at varying distances to the side of the sound source may be measured. Because of the shape of the array, sound propagates farther laterally from the source than forward or backward, so both orientations are measured, then a conservative combination of the two is used to calculate the safety radii. NMFS will use the field verified safety radii to establish power-down and shut-down zones for the MV *Patriot*.

Estimated Take by Incidental Harassment for Conoco's Seismic Survey

Given the required mitigation (see Mitigation later in this document), NMFS anticipates that takes will consist of Level B harassment, at most. The required mitigation measures are expected to minimize or eliminate the possibility of Level A harassment or mortality. Additionally, these numbers do not take into consideration either the effectiveness of the mitigation measures or the fact that some species will avoid the sound source at distances greater than those estimated to result in a take.

It is difficult to make accurate, scientifically robust, and observationally verifiable estimates of the number of individuals likely to be subject to Level B Harassment by the noise from Conoco's airguns. There are many uncertainties: in seasonally varying abundance, in local horizontal and vertical distribution; in marine mammal reactions to varying frequencies and levels of acoustic pulses; and in perceived sound levels at different horizontal and oblique ranges from the source.

NMFS believes the best estimate of potential "take by harassment" is derived by multiplying the estimated densities (per square kilometer) of each species within the survey area by the width of the 160-dB safety radii (4,590 m (2.85 mi)) over the length of Conoco's estimated trackline (16,576 km (10,300 mi)). Since Conoco revised its safety radii after submitting their application, the estimated take numbers presented here are higher than those predicted in its application. The total maximum estimated "take by harassment" is presented in Table 1. As mentioned previously, the upper limit of estimated take for ringed and bearded seals suggested in Table 1 is most likely an overestimate, as it is based on surveys of the animals conducted nearer to shore, where densities are higher than they are off-shore where the seismic surveys will be conducted. Additionally, the stocks of both of these animals are thought to extend throughout Arctic and the abundance estimates discussed here are minimum abundances.

Potential Effects on Habitat

Conoco states that the seismic survey will not cause any permanent impact on habitats and the prey used by marine mammals. A broad discussion on the various types of potential effects of exposure to seismic on fish and invertebrates can be found in LGL (2005; University of Alaska-Fairbanks

Seismic Survey across Arctic Ocean at <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha>), and includes a summary of direct mortality (pathological/ physiological) and indirect (behavioral) effects.

Mortality to fish, fish eggs and larvae from seismic energy sources would be expected within a few meters (0.5 to 3 m (1.6 to 9.8 ft)) from the seismic source. Direct mortality has been observed in cod and plaice within 48 hours of being subjected to seismic pulses two meters from the source (Matishov, 1992), however other studies did not report any fish kills from seismic source exposure (La Bella *et al.*, 1996; IMG, 2002; Hassel *et al.*, 2003). To date, fish mortalities associated with normal seismic operations are thought to be slight. Saetre and Ona (1996) modeled a worst-case mathematical approach on the effects of seismic energy on fish eggs and larvae, and concluded that mortality rates caused by exposure to seismic are so low compared to natural mortality that issues relating to stock recruitment should be regarded as insignificant.

Limited studies on physiological effects on marine fish and invertebrates to acoustic stress have been conducted. No significant increases in physiological stress from seismic energy were detected for various fish, squid, and cuttlefish (McCauley *et al.*, 2000) or in male snow crabs (Christian *et al.*, 2003). Behavioral changes in fish associated with seismic exposures are expected to be minor at best. Because only a small portion of the available foraging habitat would be subjected to seismic pulses at a given time, fish would be expected to return to the area of disturbance anywhere from 15–30 minutes (McCauley *et al.*, 2000) to several days (Engas *et al.*, 1996).

Available data indicates that mortality and behavioral changes do occur within very close range to the seismic source, however, the scheduled seismic acquisition activities in the Chukchi are predicted by Conoco to have a negligible effect to the prey resource of the various life stages of fish and invertebrates available to marine mammals occurring during the project's duration. The planned Conoco trackline is 16,576 km (10,300 ft) long, and will encompass approximately a 2500–3600 km²-area (965–1390 mi²-area) in the northeastern Chukchi Sea. Only a small fraction of the available habitat would be impacted by noise at any given time during the seismic surveys, and the constant movement of the seismic vessel would prevent any area from sustaining high noise levels for extended periods of time. Disturbance to fish species would

most likely be short-term and temporary. Thus, Conoco's activity is not expected to have any effects on habitat or prey that could cause permanent or long-term consequences for individual marine mammals or their populations, since operations will be limited in duration, location, timing, and intensity.

Potential Effects on Subsistence Use of Marine Mammals

Marine mammals are key in the subsistence economies of the communities bordering the seismic survey area, including Barrow, Wainwright, Point Lay, and Point Hope. Other communities that subsist on marine mammals are considerably beyond the project area, and their subsistence activities are unlikely to be affected by the seismic operations in the Chukchi Sea. The whale harvests have a great influence on social relations by strengthening the sense of Inupiat culture and heritage in addition to reinforcing family and community ties.

Bowhead whales are important for subsistence at all of the villages bordering the project area except Point Lay, which does not hunt bowhead whales. The harvest is based on a quota, established by the International Whaling Commission (IWC) and regulated by agreement between AEWG and NMFS, according to the cultural and nutritional needs of Alaska Eskimos as well as on estimates of the size and growth of the stock of bowhead whales (Suydam and George, 2004). In 2002 the IWC set a 5-year block quota of 67 strikes per year with a total landed not to exceed 280 whales (IWC 2003). The most recent data show that 37, 35, and 36 whales were landed in 2000–2004 for a total of 108 whales (Suydam and George 2004, Suydam *et al.* 2005). Between 23 and 28 were taken at Point Hope, Wainwright, and Barrow during these years, with most (60–90 percent) taken by Barrow each year.

Bowheads are hunted during the spring and fall migrations. Barrow hunts during the spring and fall migrations. Historically, Point Hope and Wainwright have predominantly hunted during the spring migration, however, due to changes in the Arctic weather and sea ice conditions they plan to also undertake fall whaling beginning this year. Barrow takes most bowheads during the spring migration. The spring bowhead hunt occurs after leads open due to the deterioration of pack ice, which typically occurs from early April until the first week of June. Because of the timing, the spring hunts of Point Hope, Wainwright, and Barrow should not be affected by seismic operation,

since the hunt should be completed before the start of seismic operations in July.

The autumn hunt at Barrow usually begins in mid-September, and mainly occurs in the waters east and northeast of Point Barrow in the Beaufort Sea. The whales have usually left the Beaufort Sea by late October (Treacy, 2002a,b). The location of the fall hunt depends on ice conditions, which can influence distance of whales from shore (Brower, 1996). Hunters prefer to take bowheads close to shore to avoid a long tow during which the meat can spoil, but Braund and Moorehead (1995) report that crews may (rarely) pursue whales as far as 80 km (50 mi), and in 2004 hunters harvested a whale up to 50 km (31 mi) northeast of Barrow (Suydam *et al.*, 2005).

Beluga whales are hunted for subsistence at Barrow, Wainwright, Point Lay, and Point Hope, with the most taken by Point Lay (Fuller and George 1997). Point Lay harvests belugas primarily during summer in Kasegaluk Lagoon, where they averaged 40 belugas per year over a 10-year period (Fuller and George, 1997). Compared to Point Lay, small numbers of belugas are harvested by Barrow with intermediate numbers harvested by Point Hope and Wainwright. Harvest at these villages generally occurs between April and July, with most taken in April and May when pack-ice conditions deteriorate and leads open up. Hunters usually wait until after the bowhead whale hunt to hunt belugas. The Alaska Beluga Whale Committee recorded 23 beluga whales harvested by Barrow hunters from 1987 to 2002, ranging from 0 in 1987, 1988 and 1995 to the high of 8 in 1997 (Fuller and George, 1999; Alaska Beluga Whale Committee 2002 in USDI/BLM 2005). The time of the project will not overlap hunts at Point Hope, Wainwright, and Barrow, and in any event Point Hope and Barrow should be largely beyond any influence of the project activities. Point Lay villagers hunt in Kasegaluk Lagoon, which is beyond the influence of the project activities. Furthermore, the lagoon is shallow and close to shore, which would greatly reduce any underwater seismic noise, in the unlikely event noise reached the lagoon.

Ringed, bearded, and spotted seals are hunted by all of the villages bordering the project area (Fuller and George, 1997). Ringed seals comprise the largest part of the subsistence hunt and spotted seal the least, particularly at Barrow where they are primarily hunted near shore. Spotted seals are considerably more abundant in the Chukchi than Beaufort Sea. At Barrow, spotted seals

are primarily hunted in Admiralty Bay, which is about 60 km east of Barrow. The largest concentrations of spotted seals in Alaska are in Kasegaluk Lagoon, where Point Lay hunters harvest them. (Frost *et al.* 1993). Braund *et al.* (1993) found that the majority of bearded seals taken by Barrow hunters are within approximately 24 km (15 mi) off shore. Ringed and bearded seals are hunted throughout the year, but most are taken in May, June, and July when ice breaks up and there is open water instead of the more difficult hunting of seals at holes and lairs. The timing slightly varies among villages, with peak hunting occurring incrementally later going from Point Hope to Barrow. Spotted seals are only hunted in spring through summer, since they winter in the Bering Sea. The seismic operation should have little to no effect on subsistence hunting since the seismic survey will no more than minimally overlap the end of the primary period when seals are harvested, and most hunting at the villages will be a considerable distance away from seismic operations, particularly at Point Hope (74 km (46 mi)) and Point Lay (90 km (56 mi)).

Natives in Alaska are very concerned about how seismic operations in the Chukchi Sea will impact their subsistence harvest of marine mammals. NMFS shares these concerns and some of the studies presented in the Effects section of this document further validate them. NMFS notes, though, that some of the types of behaviors that may affect the subsistence harvest may not be considered "harassment" (such as a minor migration route deflection). Following are a few of their primary concerns:

(1) Native knowledge suggests that sound from seismic surveys may cause bowhead whales or other subsistence stocks to change their behavior or migratory patterns in such a way that they are not present in traditional hunting grounds or in historical numbers. If so, natives may be unable to harvest any animals, or will have to harvest them from such a distance that the animal may spoil during the long tow back and human safety risks are increased during the extended trip.

(2) Native knowledge indicates that bowhead whales become increasingly "skittish" in the presence of seismic noise. Whales are more wary around the hunters and tend to expose a much smaller portion of their back when surfacing (which makes harvesting more difficult). Additionally, natives report that bowheads exhibit angry behaviors in the presence of seismic activity, such as tail-slapping, which translates to

danger for nearby subsistence harvesters.

(3) Natives are concerned that the cumulative effects of increased numbers of concurrent seismic surveys in the Chukchi and Beaufort Seas may have population-level effects on subsistence stocks that will permanently affect their subsistence harvest. An additional concern is the perception by the IWC of the increased risk of population-level effects, which could lead to lower, or even no subsistence quotas for Alaska Natives.

Plan of Cooperation

Regulations at 50 CFR 216.104(a)(12)(i) require IHA applicants for activities that take place in Arctic waters to provide a plan of cooperation (POC) or information that identifies what measures have been taken and/or will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. Representatives of Conoco have been in continued coordination with the AEWC and met with the whaling captains of the potentially affected villages in March, 2006. Additionally, both Conoco and the AEWC had representatives present at the Open-Water Seismic meeting held in Alaska in April and further negotiated appropriate measures to minimize impacts to the subsistence harvest.

Conoco has signed a Conflict Avoidance Agreement (CAA) with the AEWC. The CAA incorporates all appropriate measures and procedures regarding the timing and areas of the operator's planned activities (i.e., times and places where seismic operations will be curtailed or moved in order to avoid potential conflicts with active subsistence whaling and sealing); communications system between operator's vessels and whaling and hunting crews; provisions for marine mammal observers/Inupiat communicators aboard all project vessels; conflict resolution procedures; and provisions for rendering emergency assistance to subsistence hunting crews.

Based on the contents of the signed CAA, as well as additional mitigation and monitoring measures discussed later in this document (see Mitigation), NMFS has determined that the Conoco's seismic survey will not have an unmitigable adverse impact on the subsistence harvest of the affected species or stocks.

Comments and Responses

On May 12, 2006 (71 FR 27685), NMFS published a notice of a proposed IHA for Conoco's request to take marine mammals incidental to conducting

open-water seismic surveys in the Chukchi Sea, and requested comments, information and suggestions concerning the request. During the 30-day public comment period, NMFS received comments from one private citizen and several sets of comments from non-governmental organizations, including the Center for Biological Diversity (CBD) (which were also on behalf of EarthJustice, Pacific Environment, Alaska Coalition, Alaska Wilderness League, the Natural Resources Defense Council (NRDC), Greenpeace, Inc., Oceana, and the Northern Alaska Environmental Center), joint comments from the AEWG and the North Slope Borough (NSB) Department of Wildlife Management, the Native Village of Point Hope, Conoco Phillips Alaska, Inc., and the Alaska Oil and Gas Association (AOGA).

Comment 1: AOGA asked comments they submitted addressing the PEA be inserted into the admin record for the IHA. CBD suggested that NRDC's comments on the PEA also be considered for the issuance of the IHA.

Response: These comments have been considered in the Final PEA and in NMFS' and MMS' FONSI's. Many of the comments are specific to the PEA. However, where either of these sets of comments raise issues germane to the IHA issue that have not been addressed already, NMFS has addressed them in this section.

Comment 2: The Marine Mammal Commission submitted comments on the Shell open-water seismic survey IHA application that also reference the Conoco application.

Response: These comments are addressed in the Federal Notice announcing the issuance of the Shell IHA.

Comment 3: One commenter recommends NMFS deny an IHA to Shell unless and until NMFS can ensure that mitigation measures are in place to truly avoid adverse impacts to all species and their habitats.

Response: The requirements of the MMPA are that impacts be reduced to the lowest level practicable, not that no adverse impacts be allowed. NMFS believes that the mitigation measures required under Shell's IHA will reduce levels to the lowest level practicable.

Comment 4: The CBD states that NMFS' failure to address the scientific literature linking seismic surveys with marine mammal stranding events, and the threat of serious injury or mortality renders NMFS' conclusionary determination that serious injury or mortality will not occur from Shell's activities arbitrary and capricious.

Response: The evidence linking marine mammal strandings and seismic surveys remains inconclusive at best. Two papers, Taylor *et al.* (2004) and Engel *et al.* (2004) reference seismic signals as a possible cause for a marine mammal stranding. Taylor *et al.* (2004) noted two beaked whale stranding incidents related to seismic surveys. The statement in Taylor *et al.* (2004) was that the seismic vessel was firing its airguns at 1300 hrs on September 24, 2004 and that between 1400 and 1600 hrs, local fishermen found live-stranded beaked whales some 22 km (12 nm) from the ship's location. A review of the vessel's trackline indicated that the closest approach of the seismic vessel and the beaked whales stranding location was 18 nm (33 km) at 1430 hrs. At 1300 hrs, the seismic vessel was located 25 nm (46 km) from the stranding location. What is unknown is the location of the beaked whales prior to the stranding in relation to the seismic vessel, but the close timing of events indicates that the distance was not less than 18 nm (33 km). No physical evidence for a link between the seismic survey and the stranding was obtained. In addition, Taylor *et al.* (2004) indicates that the same seismic vessel was operating 500 km (270 nm) from the site of the Galapagos Island stranding in 2000. Whether the 2004 seismic survey caused to beaked whales to strand is a matter of considerable debate (see Cox *et al.*, 2004). NMFS believes that scientifically, these events do not constitute evidence that seismic surveys have an effect similar to that of mid-frequency tactical sonar. However, these incidents do point to the need to look for such effects during future seismic surveys. To date, follow-up observations on several scientific seismic survey cruises have not indicated any beaked whale stranding incidents.

Engel *et al.* (2004), in a paper presented to the IWC in 2004 (SC/56/E28), mentioned a possible link between oil and gas seismic activities and the stranding of 8 humpback whales (7 off the Bahia or Espirito Santo States and 1 off Rio de Janeiro, Brazil). Concerns about the relationship between this stranding event and seismic activity were raised by the International Association of Geophysical Contractors (IAGC). The IAGC (2004) argues that not enough evidence is presented in Engel *et al.* (2004) to assess whether or not the relatively high proportion of adult strandings in 2002 is anomalous. The IAGC contends that the data do not establish a clear record of what might be a "natural" adult stranding rate, nor is

any attempt made to characterize other natural factors that may influence strandings. As stated previously, NMFS remains concerned that the Engel *et al.* (2004) article appears to compare stranding rates made by opportunistic sightings in the past with organized aerial surveys beginning in 2001. If so, then the data are suspect.

Second, strandings have not been recorded for those marine mammal species expected to be harassed by seismic in the Arctic Ocean. Beaked whales and humpback whales, the two species linked in the literature with stranding events with a seismic component are not located in the Chukchi Sea seismic area. Finally, if bowhead and gray whales react to sounds at very low levels by making minor course corrections to avoid seismic noise and mitigation measures require Shell to ramp-up the seismic array to avoid a startle effect, strandings are highly unlikely to occur in the Arctic Ocean. In conclusion, NMFS does not expect any marine mammals will incur injury or mortality as a result of Arctic Ocean seismic surveys in 2006.

Comment 5: Several commenters list concerns regarding cumulative effects (including the other scheduled seismic surveys, activities in other areas, and global warming, among other things) and to what extent they were considered in NMFS negligible impact determination for this IHA.

Response: Under section 101(a)(5)(D) of the MMPA, "the Secretary shall authorize... taking by harassment of small numbers of marine mammals of a species or population stock by such citizens while engaging in that activity within that region if the Secretary finds that such harassment during each period concerned (I) will have a negligible impact on such species or stock, and (II) will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses." NMFS cannot make a negligible impact determination for an IHA under this provision of the MMPA based on the cumulative effects of other actions.

As stated previously, cumulative impact assessments are NMFS' responsibility under NEPA, not the MMPA. In that regard, the MMS' Final PEA addresses cumulative impacts, as did its Draft PEA. The PEA's cumulative activities scenario and cumulative impact analysis focused on oil and gas-related and non-oil and gas-related noise-generating events/activities in both Federal and State of Alaska waters that were likely and foreseeable. Other appropriate factors, such as Arctic warming, military activities and noise

contributions from community and commercial activities were also considered. Appendix D of that PEA addresses similar comments on cumulative impacts, including global warming. That information is incorporated in this document by citation. NMFS has adopted the MMS Final PEA as its own NEPA document (see NEPA later in this document) and is part of its Administrative Record.

Additionally, NMFS and MMS considered the potential for cumulative impacts in the development of the mitigation measures in the PEA and, because of the need to avoid significance pursuant to NEPA, several additional protective measures (such as expanded shutdown zones and a research monitoring plan) meant to address these concerns, as well as the uncertainty, have been incorporated into the IHA.

Comment 6: The CBD believes that NMFS cannot issue an IHA to Conoco because it has not complied with the MMPA's requirement to specify the specific geographic region where the activity will occur.

Response: NMFS defines "specified geographical region" as "an area within which a specified activity is conducted and which has certain biogeographic characteristics" (50 CFR 216.103). NMFS believes that Conoco's description of the activity and the locations for conducting seismic surveys meet the requirements of the MMPA. Conoco has provided a well-defined area, within which certain biogeographic characteristics occur (the entire area is approximately 50-m (164-ft) deep or less), in which they will conduct their operations. More specific locations within the Lease Sale area described are considered proprietary.

Comment 7: Commenters say that NMFS does not have evidence to support an unmitigable adverse impact to subsistence hunting finding and point out that Kaktovik and Point Hope have passed resolutions opposing offshore oil development.

Response: NMFS acknowledges that these villages have passed resolutions objecting to offshore oil development. However, the village whaling captains of these villages (in addition to villages of Nuiqsuk and Wainwright and the AEWC) have signed a CAA indicating to NMFS that there will not be an unmitigable adverse impact on subsistence uses of marine mammals. This is discussed in detail later in this document (see Impact on Subsistence).

Comment 8: Commenters state that because the MMPA explicitly requires that "means effecting the least practicable impact" on the species,

stock or habitat be included [in mitigation measures], an IHA [notice] must explain why measures that would reduce the impact on a species were not chosen (i.e., why they were not practicable). Neither the proposed IHA [notice], Conoco's application, nor the PEA attempt to do this.

Response: Neither the MMPA nor NMFS regulations implementing the incidental take program require NMFS to itemize and discuss all measures that were determined to be impracticable. Such an effort can quickly become a matter of speculation. For example, drones, manned balloons, and satellites are currently considered impracticable for technological and safety reasons and usually need not be discussed in issuing IHAs. Helicopters and other aircraft may be practicable depending upon distance between landing and activity location, weather and safety and are usually discussed if safety zones cannot be visually monitored effectively. Also, active and passive acoustics are often discussed when issuing an IHA if the safety zone cannot be visually monitored effectively. Time and area closures or restrictions are discussed when appropriate. In many cases, monitoring larger zones to simply reduce the Level B harassment take, is viewed as secondary to effectively monitor the Level A harassment zone, in order to prevent marine mammal injury. A final mitigation measure mentioned by commenters to the Draft PEA of using vibroseis technology in winter instead of open water seismic is not practical due to human safety concerns and must be limited to extremely shallow water depths.

NMFS has several standard, recognized mitigation measures for different types of activities. In the case of these Arctic seismic IHAs, the Open-water Seismic meeting is the starting point for development of new, potentially more effective mitigation measures. Suggestions are often both made or dismissed there after an open discussion. If specific recommendations were made during the public comment that had not previously been vetted or addressed, NMFS would address their appropriateness or practicability in this **Federal Register** notice.

Comment 9: Pursuant to Section 7 of the ESA, NMFS may only authorize incidental take of the bowhead whale where such take occurs while "carrying out an otherwise lawful activity". One commenter contends that NMFS is not in compliance with the MMPA or NEPA due to some of the issues addressed above and that NMFS is therefore also in violation of the ESA.

Response: For the reasons stated above and throughout the text of this notice, NMFS believes we are in compliance with both the MMPA and NEPA, and, therefore, the ESA.

Comment 10: The CBD states that the tables in the proposed IHA notice provide no support for NMFS' "conclusion" on small numbers and negligible impact. For Shell's proposed seismic surveys in the Chukchi, the number of bowheads likely to be exposed to sounds of 160 dB or greater, and, therefore, "harassed" according to NMFS' operative thresholds, is 418. In absolute terms these numbers cannot be considered "small." Even relative to population size, the higher estimate represents 4 percent of the estimated population of bowheads. Similar for beluga whales.

Response: NMFS has made a determination that the takes of the affected marine mammal species will be small. The species most likely to be harassed during seismic surveys in the Arctic Ocean area is the ringed seal, with a modeled maximum estimate of approximately 56,000 animals being exposed to sound levels of 160 dB or greater. This number is approximately 22 percent of the abundance measured in the eastern Chukchi Sea, but a much smaller percentage of the entire population. The numbers produced by the model do not take into consideration the implementation of mitigation measures, the likely avoidance of the sound by certain animals and, in the case of ringed seals, the density on which the take calculations were based are overestimates (which means the take estimates are overestimates) because ringed seals are far denser in the inshore and ice areas than in the open ocean where the surveys are to occur. Additionally, Moulton and Lawson (2002) indicate that most pinnipeds exposed to seismic sounds lower than 170 dB do not visibly react to that sound; pinnipeds are not likely to react to seismic sounds unless they are greater than 170 dB re 1 μ Pa (rms)). Further, these estimates are calculated based upon line miles of survey effort, animal density and the calculated zone of influence (ZOI). While this methodology is valid for seismic surveys that transect long distances, those surveys that "mow the lawn," that is, remain within a relatively small area, transiting back and forth while shooting seismic, numbers tend to be highly inflated. As a result, NMFS believes that these exposure estimates are conservative and may actually affect far fewer animals.

The mitigation measures set forth IHA ensure that there will be negligible

impacts on the marine mammals. Cetaceans are expected, at most, to show an avoidance response to the seismic pulses. Mitigation measures such as visual marine mammal monitoring, and shut-downs when marine mammals are detected within the defined ranges should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity. Due to these mitigation measures, and other reasons discussed in the Conclusions of this document, NMFS believes the impacts will be negligible.

Comment 11: Commenters recommended that Conoco be required to cease operations at night or in low visibility conditions.

Response: It is NMFS opinion that once a safety zone is determined visually to be free of marine mammals, seismic may continue into periods of poor visibility. It should be understood that the safety zone is not stationary but is moving along with the ship at whatever speed the ship is progressing. For example, if the ship is making 5 knots, the safety zone will be 5 nm (9.3 km) upstream in an hour. With a 180-dB exclusion zone of approximately 1.3 km (0.7 nm), marine mammals potentially affected by seismic noise would have ample time to move away from the source, as evidenced by bowhead, beluga and gray whale avoidance behavior. A review of previous monitoring programs indicates these species will not be within a distance to incur Level A harassment. For pinnipeds, NMFS believes that because they are not likely to even react to seismic sounds unless the received levels are >170 dB re 1 μ Pa (rms), hearing impairment is also unlikely at an SPL as low as 190 dB. Therefore, it is unlikely that marine mammals will be harmed as a result of continuing seismic into periods of poor visibility in Arctic waters. As a result, NMFS has determined that it is only if daytime activities have a large abundance of marine mammals and/or a significant number of shutdowns, should nighttime seismic be prohibited.

Also as a general rule, termination of seismic during nighttime and poor visibility is simply not practicable due to cost considerations and ship time schedules. The cost to operate a large seismic vessel is approximately \$40–50,000 per day. If the vessels were prohibited from operating during nighttime, each trip could require several additional Arctic survey operations to complete, depending on average daylight at the time of work. In the Chukchi and Beaufort seas, fog is common even though there is 24 hours of daylight per day until late August,

but by late September there is less than 12 hours of daylight and by late October there would be only 3–4 hours of daylight, seriously limiting operations later in the year if a daylight and clear weather requirement were imposed.

Comment 12: One commenter suggested that Conoco should be required to lower their source level to reduce impacts to marine mammals.

Response: In Conoco's application, they requested authorization for take of marine mammals incidental to the operation of both a 16-gun array and a 24-gun array. After discussions with NMFS they changed their action to only include the 16-gun array.

Comment 13: In submitted comments on the MMS Draft PEA, (and referenced by CBD), the NRDC states that harassment of marine mammals can occur at levels below the 160 dB threshold for Level B harassment, and that NMFS should reassess its harassment thresholds for acoustic impacts. To support this recommendation, NRDC reports that harbor porpoises have been reported to avoid a broad range of sounds at very low SPLs, between 100 and 140 dB.

Response: As discussed in reference to bowhead whale reactions, NMFS does not believe that all types of avoidance rise to the level of MMPA harassment.

The 160-dB rms isopleth is based on work by Malme et al. (1984) for migrating gray whales along the California coast. Clark et al. (2000) replicating the work by Malme et al. (1984) indicated that this response is context dependent, as gray whales did not respond to simulated airgun noise when the acoustic source was removed from the gray whale migratory corridor. This indicates to NMFS that establishing a 160-dB isopleth for estimating a safety zone for low-frequency hearing specialists when exposed to a low frequency source is conservative. For mid- or high-frequency hearing specialists, a 160-dB ZOI for a low-frequency source is likely overly conservative.

In this action, empirical research indicates that bowhead whales respond to sounds at levels lower than 160 dB during periods of important biological behavior (migration) but possibly not during other important periods (feeding). As a result, to reduce the uncertainty over whether these same avoidance characteristics will occur in the Chukchi Sea as they appear to have in the Beaufort Sea, MMS and NMFS have established conservative ZOIs where additional mitigation measures can be imposed to further protect these

species during critical periods in Arctic waters.

Comment 14: One commenter states that the preparation of an EIS is necessary pursuant to NEPA, especially considering the increased controversy that has arisen.

Response: NMFS has addressed all of the NEPA significance criteria in our Finding of No Significant Impact (FONSI), which may be viewed at our website. (See ADDRESSES)

Comment 15: Conoco notes that an important overarching point that is not made in the assessment is the health of the marine mammal populations in the Arctic, following exposure to over 25 years of seismic and other oil and gas activities in the Beaufort and Chukchi Seas. The bowhead whale population has increased to near the carrying capacity of its habitat (Brandon and Wade 2004). The health of the population is reflected further in the high rates of growth and reproduction reported in recent years (George et al. 2004a, b). The gray whale population has recovered to its pre-exploitation level while exposed to far more disturbances throughout its range than marine mammals that spend most or all of the year off the coast of Alaska. These populations individually and collectively demonstrate their resiliency to adapt to their environment and prosper. The healthy status of these populations needs to be described by NMFS in their assessment of Conoco's application, since it demonstrates that the short term and temporary effects of seismic operations on marine mammal are biologically insignificant. Moreover, the healthy status of these populations is in direct contrast with the speculation about noise impacts on the behavior, physiology, reproduction, and communication of bowhead whales that is discussed at length by NMFS in their assessment of the application. Conoco suggests that NMFS avoid speculation in the assessment and focus on using the best available science.

Response: NMFS acknowledges the health of the bowhead and gray whale populations. However, we cannot know whether the increases in these populations would have been significantly greater in the absence of exposure to over 25 years of seismic and other oil and gas activities in the Beaufort and Chukchi Seas, as no data were collected that can speak to this issue.

The healthy condition of the whale populations and the anticipated short term and temporary effects of seismic operations were taken into account by NMFS in making our MMPA negligible impact determination based on

Conoco's activities this year in the Chukchi Sea. However, due to our responsibilities under NEPA, which include doing an Environmental Impact Statement unless we can determine that the activity will have no significant impact pursuant to the application of several specific criteria (including uncertainty, which exists regarding the distribution and specific needs of marine mammals in the Chukchi Sea, as described at length in the PEA and FONSI), NMFS must take a precautionary approach in how mitigation is applied in the issuance of this IHA.

Further, the wide-ranging effects of anthropogenic sound, and seismic noise in particular, on the behavior, physiology, reproduction, and communication of marine mammals is well documented in the literature, as referred to in the PEA and the Biological Opinion in addition to this document. Though data regarding some of the referenced effects of seismic sound on bowhead whales in particular may be lacking, NMFS' effects analysis is far from speculative.

Comment 16: The calculation of the percent of stock represented by the estimated take of ringed and bearded seals is not correct. The population estimates for these two species are minimum values, since the surveys used for the estimates were limited to a relatively small portion of their total habitat as discussed in the text of the **Federal Register**. Consequently, the percent of stock values are exaggerated and convey a much greater impact on the population than warranted by the sizes of the populations. For instance, the actual population estimates for ringed seals could be as high as 1 to 3.6 million seals, based on earlier studies by Frost and Lowry (1988) and Frost *et al.* (1988). The estimated take based on these values would be 1.5 to 5.6 percent of the stock. These values should be substantially adjusted downward to better reflect more realistic estimates of population size.

Response: NMFS notes this overestimation of the percent of stock for ringed and bearded seals in Estimate of Take and Conclusions sections of this document.

Comment 17: The calculations of take and safety radii should be based on a range and not a single value from the model used by Conoco to calculate sound propagation from the air gun array. NMFS used the most conservative of the three scenarios run on the Conoco model. Since the values are estimates that will be validated in the field, a more accurate presentation of take and safety radii would be to use a range to

represent the uncertainty of the estimated values. For example, the range of take for bowhead whales from the three scenarios would be 151 to 418 animals, which is a more accurate estimate of take than the 418 value provided by NMFS.

Response: The calculations of take and safety radii are two separate issues. NMFS stands by its use of the most conservative safety radii.

For the take estimates, Conoco presented the results of three propagation models. As suggested above, NMFS has now incorporated the estimated take from two of the models into our take table (bowheads take is estimated as 399 to 418). However, the third model presented safety radii based on Sound Exposure Levels (SELs - an energy metric) instead of Sound Pressure Levels (SPLs). NMFS does not have standard thresholds for SELs as we have for SPLs (190, 180, and 160) and is not prepared to use SEL isopleths as safety radii for this activity. In the first-ever issuance of an IHA using SEL levels (for non-explosive sounds) as thresholds, which was for mid-frequency tactical sonar (71 FR 38710, July 7, 2006), NMFS and the Navy worked hard to establish SEL thresholds that were specifically applicable to mid-frequency tactical signals. NMFS has not yet conducted this level of analysis for seismic noise and, therefore, it is not appropriate to use safety radii or calculate take based on the modeled SEL results.

Comment 18: Conoco notes that NMFS expanded the already conservative safety radii by adding a correction factor of 1.5 times the model values for the 180 and 190 dB shut down distances. The correction factor is scientifically unwarranted and should be eliminated from the safety radii calculations.

Response: Because Conoco will be doing the field verification first, before beginning any surveys, NMFS has decided that the 1.5 correction factor is not necessary. This is reflected in the IHA.

Comment 19: The temporary deflection of migrating bowhead whales during the fall around the active seismic vessel discussed by NMFS in the **Federal Register** ignores several key points. Not only are the deflections short in distance relative to the migration route and temporary, but they occur within the migration corridor. Consequently, there is no evidence that the anticipated deflections cause migrating bowhead to abandon or move outside the migration corridor or change their migratory behavior when encountering an active seismic vessel.

They simply go around the seismic vessel and continue along the migration corridor to the wintering grounds. The temporary nature of this behavior is further reflected by the harvest of bowheads during the subsistence hunt, which has been very consistent over the last 5–10 years between 1994 and 2003 where it averaged 40 and ranged from 34 to 49; weather was largely responsible for annual variation (Suydam and George, 2004 and Suydam *et al.*, 2004). In addition, the average number of whales landed by village by year is similar between 1974 and 1977 (before IWC quota) and from 1978 to 2003 (Suydam and George, 2004). Consequently, there is no evidence that the deflection around seismic operations more than temporarily affects the migration of bowhead whales, nor does it affect their availability for subsistence harvest.

Response: This comment does not acknowledge the fact that more than one vessel will be operating seismic in the area at one time, and that we do not know exactly how this combination of effects may elicit more severe or long term responses by nearby animals. Also, as mentioned previously, the capture of any particular number of whales in a given year does not mean that a higher number would not have been captured in the absence of some disturbance factor. Additionally, the absence of evidence regarding effects of these actions on marine mammals does not mean we can assume they will not occur. These points and others supporting NMFS determinations are presented elsewhere in this document and in the PEA.

Comment 20: There is no scientific basis for establishing a 120-dB exclusion zone for bowhead and other marine mammals. The 120-dB restrictions are based on misinterpretation of data reported by John Richardson (1999), which concludes that deflections of migrating whales were not significant to the individual or population of bowhead whales. The commenter expresses a similar concern for the 160-dB safety zone.

Response: The justifications for the 120 dB (and the 160-dB) safety radii have been thoroughly discussed in the PEA. Regardless of the conclusions Richardson makes, absent an EIS NMFS has to make a determination pursuant to NEPA based on several specific criteria, that this action is not significant. Due to the scientific uncertainty surrounding the potential responses of bowheads to multiple seismic vessels in the Chukchi Sea and the lack of knowledge regarding their behavioral patterns and needs in

the Chukchi Sea, NMFS determined that the 120-dB safety zone (and the 160-dB safety zone) was necessary in order to make a FONSI.

Comment 21: The 120 dB level is so conservative that it approaches and at times may be masked by ambient sound levels, which range from 68–100 dB in the Chukchi Sea and under certain ice conditions can increase to 124–137 dB.

Response: This information does not change the fact that NMFS believes this measure is necessary. Additionally, the measure was implemented based on the animal's responses to seismic noise, which is different in character from ice noises and may well be discernible even in the presence of higher level ice noise.

Comment 22: Monitoring a 120-dB exclusion zones would be impracticable, presents significant and unwarranted safety risks and, ultimately, defeats the purpose of the seismic survey program. The enormous size of the zone combined with poor weather conditions and the remote location of the seismic operations in the Chukchi and Beaufort Seas would make monitoring impractical and unnecessarily hazardous.

Response: NMFS appreciates the need for the safety of the crews responsible for monitoring this large area, which is why the IHA only requires this additional monitoring weather permitting and when the area can be aerially monitored safely.

Comments of AEWC on Specific Pages in Federal Register Notice of Proposed IHA

Comment 23: In the proposed IHA on page 27692, column 1, 1st paragraph: The statement attributed to "Craig George, personal communication" is a misleading misrepresentation of what was actually stated. While George did note that "some whales are being reported off Barrow in summer between migrations," he in no way stated that "subsistence in Barrow should not be affected by seismic operations since the location of the hunt is a considerable distance from the project area" -in fact, just the opposite. This statement should be retracted and corrected.

Response: This statement was submitted with the Conoco application and NMFS mistakenly inserted it into the FR notice without verifying the reference (additionally, the mistaken statement runs counter to opinions that Craig George has expressed at past Open-water Seismic meetings). NMFS apologizes for the mistake, has removed the inaccurate text, and notes the correction here.

Comment 24: In the proposed IHA on page 27687, Column 2: "detailed

description of the Beaufort and Chukchi ecosystems and their associated marine mammals" do not exist, contrary to what is stated here. There are many data gaps. Many of the data that do exist are outdated and inappropriate for comparison to the current ecosystem dynamics in the Chukchi and Beaufort Sea regions, especially in light of current climate change concerns.

Response: NMFS amended the text at this page to reflect that there are data gaps, though we do not believe that the data used in this notice are inappropriate.

Comment 25: In the proposed IHA on page 27687, Column 2, 2nd paragraph: There are listed only three pinniped species known to occur in the study area (ringed, bearded and spotted). Ribbon seals also occasionally occur in these areas during the time period of this planned seismic operation. In the same paragraph, it is mentioned that both minke and killer whales are very uncommon in the area, but NMFS does not cite the source of this information. When was the last survey of these species during this time period conducted? We are experiencing a period of rapid change in the area in question and many species that were uncommon 15–20 years ago are being seen more often.

Response: NMFS amended the text of the **Federal Notice** notice to reflect the occasional occurrence of ribbon seals noted by the commenter. NMFS' 2004 stock assessment for killer whales indicates the occasional presence of transient killer whales along the northern coast of Alaska, but does not include the Chukchi Sea in the distribution map. NMFS' 2001 stock assessment indicates that migratory minke whales are sometimes seen in the Bering and Chukchi Seas. Though the comment questioned the surveys for these species, it does not provide information suggesting that these species were more abundant than suggested in the proposed IHA **Federal Register** notice, and local biologists at the Open-water peer review meeting did not express concerns regarding these species. NMFS still believes that the likelihood of encountering, much less harassing, any individuals of these species is very low.

Comment 26: In the proposed IHA on page 27687 Column 3, 3rd paragraph: The ratio of density for ringed seals (from which the density of bearded seals is deduced) is from work that is over 15 years old. It may not be valid to base densities on this information. If the abundance estimates are not current, especially in light of environmental changes that have been noted in the

Chukchi and Beaufort Sea regions, it is not scientifically appropriate to use these old population estimates for this exercise, even if this is the only data available. The population estimates should be based on current data, and if none is available, additional population assessments should be conducted. This is an example of one of the many data gaps that exist.

Response: Ringed seal density was based on survey data from 1999 and 2000. The ratio used to calculate bearded seal data from ringed seal data was from was based on data gathered in 1990 and 1991. However, actual bearded seal density surveyed in 1999 and 2000 was 5 to 10 times less than the number used here, but that number was not used because the surveyor was unable to correct for missed animals. Though NMFS has a responsibility to use the best available science and to be precautionary in the absence of data, the MMPA does not mandate that NMFS deny authorizations until data are available.

Comment 27: In the proposed IHA on page 27687, Chart: The estimated take of 10.7–22.7 percent of the ringed seals in the area without mitigation seems like a very high number of animals to take. Additionally, the estimates for gray whales should probably be revised, depending on when the data were collected. From recent tagged gray whale data and hunter observations, increasing numbers of gray whales are remaining in the Bering/Chukchi region for extended periods of time than previously thought. (B. Mate, personal communication). These data should include a seasonality dimension as a fine tuning method, as many of these species are more likely to be present in certain areas at certain times of the year.

Response: The take estimate for ringed seals, and other animals, does not take into account either the effectiveness of the required mitigation or the fact that most animals are expected to move to avoid the seismic sounds. Additionally, these animals are not removed from the populations, nor does their response to Level B harassment far offshore in the Chukchi Sea necessarily affect their behavior at all inshore where they are hunted. The abundance and density data used for calculating gray whales were gathered in 2002. When available, NMFS incorporates seasonally specific abundance information into the calculation of take.

Comment 28: In the proposed IHA on page 27687, Column 3, point 4, below chart: The chronic effects of noise exposure and the fact that we know very

little about this in marine mammals should be included in these points.

Response: Point 6 mentions that chronic exposure to noise could result in noise-induced physiological stress that might in turn have negative effects on the well-being or reproduction of the animals involved.

Comment 29: In the proposed IHA on page 27688, Column 1, point 7: It is not valid to compare seismic effects in terrestrial mammals with those in marine mammals. The sound is perceived in a totally different environment by species that have evolved to receive auditory sounds in a completely different way.

Response: Statements in the paragraph this commenter refers to were actually verified in laboratory TTS research conducted on trained odontocetes so it is not necessary to rely on an extrapolation from terrestrial mammal data. However, NMFS notes that while it may not be appropriate to use terrestrial mammal data to extrapolate to actual levels of different types of sound that may affect marine mammals, the physical construction of the ears bears enough resemblance that experts in the field deem that it is sometimes appropriate to compare processes between the two taxa.

Comment 30: In the proposed IHA on page 27688, Column 1, point 6: In addition to the well being and reproduction, the feeding and migration behaviors of these animals may be affected.

Response: NMFS has acknowledged elsewhere in this FR notice that noise may affect the feeding and migration behaviors of marine mammals. This point specifically refers to potential chronic effects and larger-scale effects such as a reduction in fitness or reproductive success.

Comment 31: In the proposed IHA on page 27688, Column 1, paragraph 4: The seismic geological survey work that will also be conducted during the time period (University of Texas Austin (UTA) Institute of Geology) should be added to the list of seismic surveys.

Response: The UTA program is a separate action that is currently under internal NMFS review following a public comment period (see 71 FR 27997, May 15, 2006). Essentially, that program is significantly farther north in the Chukchi Sea than are the oil company surveys, is for a shorter period of time during the summer, will have completed its work prior to the bowhead migration, and establishes very conservative safety zones to protect marine mammals. A final decision on implementation of mitigation measures will be made later this month.

Comment 32: In the proposed IHA on page 27688, Column 2, paragraph 2: With respect to masking: some bowhead whales stop calling altogether (C. Clark, pers. comm.), and only one study has found that bowheads continue to call in the present of seismic activity. This needs to be considered as a possible outcome of seismic disturbance.

Response: NMFS acknowledges the fact that a possible outcome of seismic disturbance is that some cetaceans will sometimes stop calling and, in fact, this reaction has been documented in other species besides bowheads.

Comment 33: In the proposed IHA on page 27688, column 2, 2nd paragraph: The absence of masking effects in beluga whales cannot be assumed secondary to the fact that they communicate on higher frequencies. There are no data available on this subject. These noises will most certainly be audible to this species and there is no peer reviewed evidence investigating the impacts of these sounds on beluga whales. Until these investigations are conducted, these conclusions should not be made. It appears here that the lower sensitivity of belugas to seismic pulses is "presumed".

Response: The hearing thresholds of belugas have been tested in a laboratory and we know that belugas demonstrate significantly greater sensitivity to sounds of greater frequency than those used in seismic surveys (meaning they hear it at a lower volume). NMFS is not asserting that belugas will not hear the seismic sounds, only that the lower frequency seismic sounds will not mask (meaning block out) the higher frequency sounds that are known to be important to them, such as the vocalizations of conspecifics or predators.

Comment 34: In the proposed IHA on page 27688, column 2, 2nd paragraph: It is true that there is no evidence that there has been damage to auditory systems in bowhead whales, however, there have been no investigations that have focused on this issue. There are no data. This lack of data does not mean this damage does not occur.

Response: This is true. However, based on the limited data, the known avoidance of the sound sources by bowheads, and the protective measures incorporated in this IHA, NMFS does not expect any hearing damage to result from this seismic survey.

Comment 35: In the proposed IHA on page 27688, column 2, 3rd paragraph: "Moreover, bowheads avoid an area many kilometers in radius around ongoing seismic operations, precluding any possibility of hearing damage." This statement is not valid.

Response: NMFS amended the text and removed the words "precluding any possibility" and replaced it with "making hearing damage highly unlikely".

Comment 36: In the proposed IHA on page 27688, column 2, 3rd paragraph: If bowheads or other marine mammals are involved in feeding or other vitally important functions, they may not move away from seismic operations, potentially resulting in physical harm.

Response: This is true; however, NMFS anticipates that bowheads involved in feeding will be detected by the additional protective measures required in the IHA and that the extended shut-down zones will minimize effects on any marine mammals engaged in these activities.

Comment 37: In the proposed IHA on page 27688, Column 3, 1st paragraph: We wish to emphasize, once again, that there has been very little study on the chronic effects of seismic disturbance on marine mammals. This includes disruption of cow/calf pairs (leading to increased neonatal mortality) and displacement of whales (and other marine mammals) from migratory routes or preferred feeding areas (possibly resulting in suboptimal body condition).

Response: NMFS acknowledges that there has been little study of these specific effects, and that is why we have not specifically addressed these issues in this FR Notice. However, NMFS has included of a summary of potential physiological effects, including stress.

Comment 38: In the proposed IHA on page 27689, center column: NMFS cites Miller et al., (1999) to assert that when the issue of bowhead deflection due to seismic activity was studied, though very few bowheads approached a seismic operation within 20 km (6.5 mi), the few bowheads sighted within that area "returned to normal" within 12 to 24 hours after airgun operations ended. This paragraph refers to observations made by Miller et al., in Richardson et al. (1999). The study suggested that bowheads reoccupy a previously active seismic area within 12 to 24 hours of cessation of seismic activity. This paragraph overstates the conclusions in Richardson et al. (1999). First, Richardson et al. stated that their analysis of reoccupation was preliminary but MMS does not treat it as such in the PEA. Secondly, the number of observations within a 20 km (6.5 mi) zone around the previously active seismic activity was small (only 13 whales were observed between zero and 96 hours after seismic activity). This small sample size means that the statistical power (i.e. ability) to detect a

difference is low. Second, the data could reasonably be interpreted in other ways, such as: (1) the overall results (over the entire survey period, 0 to 96 hours after seismic activity, the density of whales in the 0 to 20 km zone was lower than the density in the 20 to 80 km (6.5 to 26 mi) zone, $p < 0.001$ indicated that whales did not reoccupy the active seismic zone even after 96 hours, but there were no data collected beyond 96 hours, so the reoccupation might have taken longer than 96 hours; or (2) the whales immediately reoccupied the active zone because the multiple comparison tests (binomial tests) did not show a difference in density of whales between the zones in the category of 1 to 12 hours after seismic. These two wildly different interpretations provide evidence that the analysis was preliminary and the sample size too small to adequately test the question of reoccupation.

Response: NMFS acknowledges the commenter's alternate interpretation of the Miller study. NMFS presented this study as one of several pieces of information that relate to this topic. Though the commenter has presented alternate interpretations, the information is not such that it will affect NMFS' findings.

Comment 39: In the proposed IHA on page 27690, column 2, 2nd paragraph: NMFS recommends the 160-dB isopleth as the level to estimate the numbers of marine mammals taken by level B harassment. This level is inappropriate. Data exist to show that bowheads are essentially excluded from areas with seismic sounds to levels below 120 dB (Richardson *et al.*, 1999). The 120 dB level is the appropriate level to use. If bowheads or other marine mammals are involved in feeding or other vitally important functions, they may not move away from seismic operations potentially resulting in physical harm.

Response: Bowhead whales have been shown to avoid areas ensonified to above 120 dB. Though this deflection could potentially affect the success of the subsistence hunt of this species, NMFS does not believe that this effect rises to the level of MMPA harassment. Based on the work of Malme *et al.*, NMFS believes that 160 dB is the appropriate threshold for Level B Harassment. NMFS does not believe that seismic surveys will result in physical harm to whales at levels lower than 180 dB and the mitigation measures require that Conoco cease operating seismic if an animal approaches this close. Additionally, this IHA includes additional mitigation measures that require a powerdown (or avoidance)

when aggregations of feeding mysticetes are found within the 160-dB isopleth.

Comment 40: In the proposed IHA on page 27690, column 3, 1st paragraph: These sound level output radii are highly dependent on the environment. The uncertainty of these figures should be noted. Factors (such as ice cover or permafrost) may alter these radii significantly. Why will the 1.5 factor not be used in take estimations?

Response: NMFS has noted previously that sound level output radii are dependent on the environment, which is why this IHA requires that Conoco field-verify the radii prior to conducting the surveys. For the take estimates, Conoco contracted with Jasco, which ran a model that incorporates the physical characteristics of the area where seismic surveys will be conducted. NMFS believes that this is an appropriate model to use to estimate take (and, as discussed later in this document, the model probably overestimates take as the estimates do not consider avoidance and mitigation). The 1.5 safety radii correction factor is an extra protective measure NMFS added only to be used prior to the field-verification. We do not believe it is appropriate to adjust the take estimates based on this precaution.

Comment 41: In the proposed IHA on page 27690, column 3, 1st paragraph: Will the M/V *Patriot* be towing a passive array for additional acoustic data collection? We strongly support the use of a towed passive acoustic array for monitoring marine mammals. Conducting aerial surveys in conjunction with the passive acoustic monitoring would be more appropriate and effective than either technique alone. Use of acoustic monitoring should routinely be required for seismic exploration in these areas and can only add to the information being gathered about marine mammals. *Response:* The mitigation and monitoring required by this IHA, which includes both an aerial component and a passive acoustic component, is discussed in detail in subsequent sections of this notice.

Comment 42: In the proposed IHA on page 27691, first column: the estimate of take by harassment is calculated by multiplying the estimated densities per km² of bowhead whales within the proposed survey area by the width of the 160 dB safety radii (4,590 m (15059 ft)) over the length of Conoco's estimated trackline. However, it is unclear how the estimated densities are calculated. This is important because the estimated take is very sensitive to the estimated density used in the formula. Also, there is no information provided on the time period for which

the estimated density figure was measured, nor during which season. These two factors are highly variable and would greatly influence the estimated density figure. Finally, it is important to note that if the migration path is concentrated in the seismic exploration area, then the number of takes could be an order of magnitude higher than .0064 per km². This is significant because NMFS has predicated its preliminary decision to authorize the harassment on its conclusion that "the number of potential harassment takings is estimated to be relatively small in light of the population size." See page 27695 of the proposed IHA.

Response: The density estimates for bowhead whales are based on Moore *et al.* (2000), who reported the densities of belugas, bowheads, and gray whales during summer in the Beaufort and Chukchi Seas. Additionally, even if the seismic activities are in the middle of the migration, NMFS believes many whales will avoid the sound source (which equates to avoiding take for some animals), and the successful implementation of the mitigation measures will also decrease the amount of take.

Comment 43: In the proposed IHA on page 27691, column 1, 1st paragraph: There is no way of knowing that only level B harassment will occur, especially in pinnipeds. The lack of data on this subject precludes making this conclusion.

Response: There is no way of absolutely ensuring that Level A Harassment will not occur as a result of this action, however, for the reasons stated in the above-referenced section and throughout the FR notice (mitigation, avoidance of whales, etc.) NMFS believes that it is very unlikely that Level A Harassment will result and, therefore, NMFS is not authorizing Level A Harassment. If any take of marine mammals that is not authorized occurs, Conoco is required to alert NMFS within 24 hours and the authorization may be modified, suspended, or revoked.

Comment 44: In the proposed IHA on page 27691, column 3, 1st paragraph: Please produce a citation for your statement that "zooplankton consumed by mysticetes would only respond to a seismic impulse very close to the source." Recent work in invertebrates has shown that this may not be the case, and it is not only prey number that is a concern, but also prey distribution. Impacts from seismic on the distribution of prey species have been found. If (for example) krill distribution is affected, distributing them in a different area of

the water column or breaking up their distribution (thereby making them a less concentrated resource), bowheads are likely to be impacted. This is yet another example of the data gap related to the proposed seismic exploration.

Response: NMFS could not find the citation and has removed the sentence from the text. However, the commenter did not provide a citation for the information it presented above, either, and therefore, no specific viewpoint regarding the potential effects of seismic on zooplankton is presented.

Comment 45: In the proposed IHA on page 27691: Potential Effects on Subsistence Use of Marine Mammals. There is a statement that Point Hope and Wainwright hunt only during the spring migration. In fact, Point Hope and Wainwright plan to undertake fall whaling beginning in 2006 due to changes in Arctic weather and sea ice conditions.

Response: NMFS has corrected the text per the AEWC's suggestion.

Comment 46: In the proposed IHA on page 27692, column 1, 2nd paragraph: It is important to note that even if direct conflicts with hunting times are avoided, bowheads may still be impacted in ways that will adversely affect the hunt. Examples of this include (but are not limited to): disruption of cow/calf pairs (leading to increased neonatal mortality) and displacement of whales (and other marine mammals) from migratory routes or preferred feeding areas (possibly resulting in suboptimal body condition).

Response: NMFS notes the lack of direct evidence to support the thought that seismic surveys will result in effects on subsistence hunting through the mechanisms discussed above. However, because of the uncertainty surrounding the issue, NMFS has incorporated additional mitigation (including enlarged safety zones, see below) to address the AEWC's concerns.

Comment 47: In the proposed IHA on page 27693, column 2, bullet 3: Bowhead whales are known to hold their breath for 45–60 minutes at a time (H. Brower, pers. comm.). Thus, 30 minutes is not a sufficient waiting time with respect to this species.

Response: Seismic vessels are moving continuously (because of long towed array) and NMFS believes that unless the animal submerges and follows at the speed of the vessel (highly unlikely), the vessel will be far beyond the length of the safety radii within 30 minutes, and therefore it will be safe to start the airguns again.

Comment 48: In the proposed IHA on page 27693, column 3, 2nd paragraph: Night vision goggle devices have proven

ineffective for nighttime monitoring of marine mammals in other instances. It is unlikely that these will be of use in visualizing the entire exclusion zone, especially if it is not set at the 180 dB isopleth.

Response: NMFS is aware that night vision goggles are not 100 percent effective. However, the airguns will be ramped up, the animals are likely to avoid the ongoing sound, and the goggles are effective to a certain degree. NMFS believes that Conoco will be able to effectively monitor out to the 180 dB isopleth.

Comment 49: In the proposed IHA on page 27695, column 2, paragraph 1: The statement “no known rookeries, mating grounds, areas of concentrated feeding or other areas of special significance for marine mammals are known to occur within or near the planned areas of operations” is incorrect. The western Beaufort Sea supports concentrations of feeding bowhead whales. Also, the Chukchi Sea area represents a “black box” with respect to data on marine mammal usage in general, and for bowhead whales in particular, but several sensitive life stages occur there for bowheads, belugas, ice seals and walrus for calving, nursing, mating and feeding. For instance, bowhead mother-calf pairs occur there in spring, as well as the feeding of adults and sub-adults.

Response: NMFS has amended this statement to indicate that an important migration pathway is present here. Though mother/calf pairs of bowheads swim through the area and other species do feed in aggregations in the broad area, NMFS stands by its assertion that “no known rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals are known to occur within or near the planned areas of operations during the season of operations.”

Comment 50: In the proposed IHA on page 27695: Potential Impacts on Subsistence Uses of Marine Mammals. NMFS predicates its preliminary decision that the proposed seismic activity will not have an unmitigable adverse impact on the subsistence uses of bowhead whales on the timing of the activities, as well as the existence of a CAA between Conoco and the AEWC. We urge NMFS to use caution in relying too heavily on the CAA as a mitigation tool when the proposed activity involves several concurrent operations in what could be a concentrated area of the Arctic. Without knowledge of either where the individual seismic vessels will be located and in consideration of how little is actually known of bowhead distribution and abundance in the Chukchi Sea, the CAA is in fact limited

as a mitigation tool. It can only accomplish so much to protect the fall hunt in Barrow because the success of that hunt will depend not only on the effects of multiple seismic operations in the Chukchi Sea, but also potentially adverse effects from Shell's Beaufort Sea seismic operations, seismic operations in the Canadian Beaufort Sea, barging operations attendant to oil and gas development, and production operations at the Northstar facility.

Response: While sympathetic to the concern of increasing industrialization of the Arctic Ocean and resultant impacts on the subsistence lifestyle of its inhabitants, section 101(a)(5)(D)(i) limits NMFS' authority for making its determination regarding impacts on availability of marine mammals for subsistence uses to the specific activity itself. As a result, NMFS works cooperatively with the AEWC to ensure that activities that might result in marine mammal harassment and have a potential impact on availability for subsistence uses have an authorization under the MMPA and that the applicant enters into discussions with the AEWC regarding a CAA. However, under NEPA, NMFS and MMS are required to look at cumulative effects and, as a result of this analysis we have incorporated additional mitigation measures (research monitoring, expanded safety zones, etc., see below) to address these larger scale concerns.

Mitigation and Monitoring

Three categories of mitigation and monitoring measures are required by the IHA and discussed in the following sections. In the first subsection, the mitigation and monitoring measures proposed by Conoco in their application are discussed. In the second subsection, NMFS discusses an additional set of mitigation measures that are intended to ensure that NMFS' can adopt MMS' PEA and subsequently issue a Finding of No Significant Impact. The third subsection refers to an additional comprehensive monitoring plan that Conoco, Shell, and GXT have agreed to implement, which is intended to further reduce impacts to the subsistence hunt and help fill some of the marine mammal data gaps in the Chukchi Sea.

Mitigation and Monitoring Measures in Conoco's Application

Mitigation

Conoco's proposed mitigation measures include (1) speed or course alteration, provided that doing so will not compromise operational safety requirements, (2) power-or shutdown procedures for the 180-dB safety zone,

(3) no start up of airgun operations unless the full 180-dB safety zone is visible for at least 30 minutes during day or night, (4) ramp-up procedures, and (5) seasonal restrictions near certain whaling villages and communication with whalers to ensure minimization of effects on subsistence hunt pursuant to the CAA. Details regarding these measures are provided below:

Speed or Course Alteration: If a marine mammal is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course may, when practical and safe, be changed in a way that avoids the marine mammal and also minimizes the effect on the seismic program. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safety radius, further mitigative actions will be taken, i.e., either further course alterations or power down or shut down of the airgun(s).

Power-down Procedures: A power down involves decreasing the number of airguns in use such that the radius of the 180-dB (or 190-dB) zone is decreased to the extent that marine mammals are not in the safety zone. A power down may also occur when the vessel is moving from one seismic line to another. During a power down, one airgun is operated. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut down occurs when all airgun activity is suspended. If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's speed and/or course cannot be changed to avoid having the mammal enter the safety radius, the airguns may (as an alternative to a complete shut down) be powered down before the mammal is within the safety radius. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be powered down if doing so leaves the animals outside of the new safety radii around the airguns still operating, else they will be shut down. Following a power down, airgun activity will not resume until the marine mammal has cleared the safety zone. The animal will be considered to have cleared the safety zone if it:

- Is visually observed by marine mammal observers (MMOs) to have left the safety zone, or

- Has not been seen within the zone for 15 min in the case of pinnipeds or belugas, or

- Has not been seen within the zone for 30 min in the case of bowhead, gray, or killer whales.

Shut-down Procedures: The operating airgun(s) will be shut down completely if a marine mammal approaches or enters the safety radius and a power down will not succeed in removing the animal from within the 180 dB isopleth. The operating airgun(s) will also be shut down completely if a marine mammal approaches or enters the estimated safety radius of the source that would be used during a power down. The shutdown procedure should be accomplished within several seconds (of a "one shot" period) of the determination that a marine mammal is within or about to enter the safety zone. Airgun activity will not resume until the marine mammal has cleared the safety radius. The animal will be considered to have cleared the safety radius if it is visually observed to have left the safety radius, or if it has not been seen within the radius for 15 minutes (beluga and seals) or 30 minutes (bowhead, gray, and killer whales).

Ramp-up Procedures: A "ramp up" procedure will be followed when the airgun array begins operating after a specified-duration period without airgun operations. Under normal operation conditions (4–5 knots (7.4–9.2 km/hr)) a ramp-up would be required after a "no shooting" period lasting 2 minutes or longer. NMFS normally requires that the rate of ramp up be no more than 6 dB per 5 minute period. The specified period depends on the speed of the source vessel and the size of the airgun array that is being used. Ramp up will begin with the smallest gun in the array that is being used for all subsets of the array. Guns will be added in a sequence such that the source level in the array will increase at a rate no greater than 6 dB per 5–minutes, which is the normal rate of ramp up for larger airgun arrays. During the ramp up (i.e., when only one airgun is operating), the safety zone for the full 16-airgun system will be maintained.

If the complete safety radius has not been visible for at least 30 minutes prior to the start of operations in daylight or nighttime, ramp-up will not commence unless one gun has been operating during the interruption of seismic survey operations. This means that it will not be permissible to ramp up the source from a complete shut down in thick fog or at other times when the full safety zone is not visible (i.e., sometimes at night). If the entire safety radius is visible using vessel lights and/

or Night Vision Devices (NVDs) (as may be possible under moonlit and calm conditions), then start up of the airguns from a shut down may occur at night. If one airgun has operated during a power-down period, ramp up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away if they choose. Ramp-up of the airguns will not be initiated if a marine mammal is sighted within or near the applicable safety radii during the day or a night. For operations in the Chukchi during summer and autumn months, there will be enough daylight to monitor beyond a 12-hour cycle.

Seasonal Restrictions: Once fall bowhead whaling starts, seismic operators (and others) will take all reasonable steps to avoid adverse effects on the bowhead whale subsistence hunt and on the behavior of migrating bowhead whales. If alerted to an adverse effect, the operators will promptly reduce the level and volume of geophysical operations and if such adverse effects continue, operators should promptly move operations to an area where seismic operations are feasible and consistent with the CAA. If adverse effects continue and negotiations are unsuccessful, the seismic operations are to cease in the area of the reported adverse effect until the affected village has completed its bowhead whale hunting for 2006.

If requested, post-season meetings will also be held to assess the effectiveness of the 2006 CAA, to address how well conflicts (if any) were resolved; and to receive recommendations on any changes (if any) might be needed in the implementation of future CAAs.

Monitoring

Vessel-based observers will monitor marine mammals near the seismic vessel during: (1) all daytime hours; (2) 30 minutes before all start ups (day or night), and (3) at night when marine mammals are suspected (based on observations of the bridge crew) of either approaching or being within the safety radii. When feasible, observations will also be made during daytime periods during transits and other operations when guns are inactive.

During seismic operations observers will be based aboard the vessel. Marine mammal observers (MMOs) will be hired by Conoco, with NMFS approval. One resident from the NSB, preferably from Point Hope, Point Lay, Wainwright, or Barrow, who is knowledgeable about marine mammals

of the project area will be included in the MMO team aboard the vessel. Observers will follow a schedule so at least two observers will simultaneously monitor marine mammals near the seismic vessel during ongoing daytime operations and nighttime start ups of the airgun. Use of two simultaneous observers will increase the proportion of the animals present detected near the source vessel. MMO(s) will normally be on duty in shifts no longer than 4 hours. The vessel crew will also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey the crew will be given additional instruction on how to do so.

The vessel is a suitable platform for marine mammal observations. When stationed on the flying bridge, the eye level will be approximately 10 m (32.8 ft) above sea level, and the observer will have an unobstructed view around the entire vessel. If surveying from the bridge, the observer's eye level will be about 10 m (32.8 ft) above sea level and approx. 25 of the view will be partially obstructed directly to the stern by the stack. During daytime, the MMO(s) will scan the area around the vessel systematically with reticle binoculars (e.g., 7 50 Bushnell or equivalent) and with the naked eye. Laser range finders (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. They are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly. During darkness, NVDs will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), if and when required.

MMOs will collect the following data during their watch:

- (1) Marine mammals - species, number, age/size/gender, behavior, movement, distance and bearing from ship, point of closest approach;
- (2) Ship - location, heading, speed, seismic state, time, other ships; and
- (3) Environment - sea state, ice cover, visibility, glare.

All observations and airgun shut downs will be recorded in a standardized format. Data will be entered into a custom database using a notebook computer. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to

statistical, graphical, or other programs for further processing and archiving.

Results from the vessel-based observations will provide:

- (1) The basis for real-time mitigation (airgun shut-down and power-down).
- (2) Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS.
- (3) Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.
- (4) Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity.
- (5) Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Additional Mitigation and Monitoring Measures Required by NMFS

Chase Boat Monitoring of 160-dB Isopleth

In addition to MMOs onboard the seismic vessels, Conoco will also have MMOs onboard a "chase boat" or "guard boat". During seismic operations, a chase boat remains very near to the stern of the source vessel anytime a member of the source vessel crew is on the back deck deploying or retrieving equipment related to the seismic array. Once the seismic array is deployed the chase boat then serves to keep other vessels away from the seismic vessel and its array (including the hydrophone streamer) during production of seismic data and provide additional emergency response capabilities. Whenever source vessel members are not working on the back deck and radar indicates no vessels approaching the source vessel, the chase boat will conduct observations of the area delineated by the 160-dB isopleth to look for bowhead and gray whale aggregations.

Conoco's chase boat will have MMOs onboard to collect marine mammal observations. The observations collected will likely be limited in scope due to the typical operating location of the chase boats (described previously). However, the observers aboard the chase boat will provide additional observations on the water to document any marine mammals in the vicinity of seismic operations. MMOs on the chase boat will be able to contact the seismic vessel if marine mammals are sighted. To maximize the amount of time during the day that an observer is on duty, observers aboard the chase boat will rarely work at the same time. As on the source vessel, shifts will be limited to 4

hours in length and 12 hours total in a 24-hour period.

Aerial Monitoring of 120-dB Isopleth

Based on the PEA, NMFS has determined that in order to make a Finding of No Significant Impact under NEPA regulations, Conoco must conduct aerial monitoring in the Chukchi Sea after September 25, once research vessel monitoring has detected 5 or more cow/calf pairs during a vessel transit (see Research Monitoring) or once bowhead whale hunters have determined that cow/calf pairs are passing Barrow AK in significant numbers (a "pulse" of cow/calf pairs, verified by the AEWC), whichever is sooner. Once initiated, aerial monitoring will take place daily (weather permitting), whenever Conoco's seismic vessel is conducting seismic surveys and is operating within an area of the Chukchi Sea that can be covered safely and practically. The primary objectives of the offshore aerial surveys will be to (1) document the occurrence, distribution, and movements of bowhead and gray whales, and other marine mammals in and near the area where they might be affected by the seismic sounds and (2) detect bowhead whale cow/calf pairs in or near the area ensounded to a 120-dB SPL near the seismic survey vessel.

Mitigation Associated With 120- and 160-dB Safety Radii

NMFS notes that the additional mitigation measures described here are project-specific. They do not establish NMFS policy applicable to other projects or other locations. These mitigation measures apply exclusively to the Chukchi and Beaufort seas and seismic survey activities conducted there during the 2006 open water season. These measures have been developed based upon available data specific to the project areas and times. NMFS and MMS intend to gather and receive additional information from all sources, including industry, non-governmental organizations, Alaska Natives and other federal and state agencies. MMS and NMFS anticipate that mitigation measures applicable to future seismic and other activities will change and evolve based on newly-acquired data.

160-dB Feeding Aggregation Shutdown: Whenever the support "chase" vessel monitoring program described in the monitoring section above detects an aggregation of 12 or more non-migratory balaenopterid whales (bowhead or gray whales) within an acoustically verified 160-dB rms zone ahead of, or perpendicular to, the

seismic vessel track, Conoco must: (a) Immediately power-down the seismic airgun array and/or other acoustic sources to ensure that sound pressure levels at the shortest distance to the aggregation do not exceed 160 dB rms; and (b) Refrain from powering up the seismic airgun array until biological observers on board the support "chase" vessel(s) or survey aircraft confirm that no balaenopterid aggregations have been detected within the 160-dB zone based upon ship course, direction and distance from last sighting and the last aggregation sighting.

120-dB Bowhead Cow/Calf Shutdown: Whenever the aerial monitoring program described in the Monitoring section above detects 4 or more bowhead whale cow/calf pairs within an acoustically-verified 120-dB monitoring zone, Conoco must: (a) Immediately power-down or shut-down the seismic airgun array and/or other acoustic sources to ensure that sound pressure levels are reduced by at least 50 percent; and (b) Refrain from ramping up the seismic airgun array until two consecutive aerial or support vessel surveys confirm that there are no more than 3 bowhead cow/calf pairs within the area to be seismically surveyed within the next 24 hours.

Passive Acoustic Optional 120-dB Shutdown: If an aerial monitoring program cannot be implemented due to human safety concerns, and vessel surveys are used to monitor the 120-dB monitoring zone instead, a dedicated passive acoustic monitoring program capable of locating the position of the vocalization must be employed and monitored at all times that seismic is operating on the vessel. If the passive acoustic system detects one or more bowhead vocalizations within the 120-dB zone, the holder of this Authorization must: (a) Immediately shut-down the seismic airgun array and/or other acoustic sources; and (b) not proceed with ramping up the seismic airgun array until the passive acoustic monitoring program confirms that bowhead whales are not within the eastern portion of the 120-dB zone ahead of the ship's trackline over the next 24 hours.

Additional Comprehensive Monitoring Plan

On April 19–20, 2006, NMFS held a scientific open-water seismic meeting in Anchorage, AK to discuss appropriate mitigation and monitoring measures for Arctic Ocean seismic activities in 2006. The workshop participants recommended several monitoring measures to increase our knowledge of marine mammal distribution and

abundance in the Chukchi Sea. These included use of passive acoustics, either towed from a vessel or set out in a series of arrays along the Chukchi Sea coast. Conoco has agreed to participate in a joint monitoring plan with Shell and GXT, the two other companies conducting surveys semi-concurrently with Conoco. The details of the plan have been reviewed by NMFS staff, NSB biologists, and representatives of the AEWG. The major components of the plan are summarized below, however, some of the finer details of the plan are still being discussed and may still be modified. The Comprehensive Monitoring Plan may be viewed at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha>.

Aerial Surveys

Shell, CPA and GXT will conduct a joint aerial survey of coastal areas approximately 20 miles offshore between Point Hope and Point Barrow to collect data and report on the distribution, numbers, orientation and behavior of marine mammals, particularly beluga whales, near traditional hunting areas in the eastern Chukchi Sea. This aerial survey will begin in early July and will continue until mid-November or until all seismic operations in the Chukchi Sea are completed, whichever comes first. Weather and equipment permitting, aerial surveys will be conducted twice per week during this time period. Transects will be flown in a saw-toothed pattern extending from Point Barrow to Point Hope. This design will permit completion of the survey in one day and will provide representative coverage of the nearshore area from the mainland or outer barrier island shore to 20 nm (37 km) offshore. This includes waters where belugas would be available to subsistence hunters. Survey altitude will be at least 305 m (1000 ft) with an average survey speed of 100–120 knots (185–222 km/hr). Coordination will be undertaken with coastal villages to avoid disturbance of the beluga whale subsistence hunt. Three MMOs will be aboard the aircraft during key beluga hunting periods. When large concentrations of belugas are encountered during the saw-toothed pattern surveys or during return (direct) flights, the survey will be interrupted to photograph the groups in order to obtain counts of the number of belugas present. Detailed information on this survey can be found in LGL (2006).

Dedicated Vessel-Based Marine Mammal Surveys

Shell, CPA and GXT will sponsor a dedicated vessel-based marine mammal

survey to collect systematic visual data and acoustic information on the distribution and abundance of marine mammals in the Chukchi Sea during the 2006 open water season. The MV *Torsvik* (or another vessel, depending upon its capability to tow the passive acoustic array) will be used for these surveys. Visual observations will be made by two teams of three observers each following standard marine mammal ship survey line transect procedures. Acoustic data will be collected using a towed hydrophone passive acoustic monitoring (PAM) equipment. The PAM will be monitored in real time by an acoustics technician and continuous recordings will be made during all on-effort periods.

Three dedicated marine mammal surveys will be conducted during the course of the open-water period. During each of these dedicated surveys, a systematic survey route composed of ten, 50 nm (92 km) line transects (in a saw-toothed pattern) will be run by the vessel (weather, ice and logistics permitting). The transect line has been designed to be covered in approximately 3 days of surveying. The start of the survey route will be randomly selected from within a 10 nm (19 km) area and the entire survey line shifted based on that start location. The survey route has been designed to cover a large portion of the Outer Continental Shelf (OCS) Chukchi Sea lease sale area and remain in waters of similar depths. The three surveys are scheduled to occur in early July, mid-August, and mid-October. By repeating nearly the same route during each survey, seasonal differences in sighting rates and densities may be more readily detected. In addition to dedicated marine mammal surveys, whenever Shell, Conoco and/or GXT's seismic vessel is conducting surveys in an area too distant for safe aerial surveys during the fall bowhead migration in the fall, the M/V *Torsvik* (or another similar vessel) will undertake surveys to look for bowhead cow/calf pairs within the upcurrent portion of the area delineated by the 120 dB isopleth of the vessel's seismic array (see Mitigation).

Passive Acoustic Monitoring

A towed hydrophone array will be used to monitor for vocalizing marine mammals during the dedicated marine mammal surveys. The array will contain two hydrophone elements designed to receive sounds in approximately the 100-Hz to 45-kHz range. This range covers the frequency of calls known to be produced by cetaceans and pinnipeds likely to be encountered in the Chukchi Sea during the open-water season (gray and bowhead whales

ranging from 100 Hz–4 kHz; beluga whales ranging up to approximately 10 kHz; pinnipeds ranging up to 5 kHz). The hydrophone array will be monitored during all daylight hours during the research portion of the survey and day and night during the mitigation phase (as mentioned above and later in this document). One bioacoustician will be required during the research phase and two or more during the mitigation phase if seismic vessels operate outside the zone for safe and effective aerial monitoring. Information on operations of the PAM can be found in LGL's Marine Mammal Monitoring, Mitigation, and Investigatory Plan (2006).

Acoustic Net Array

In addition to using PAM onboard the dedicated research vessel, an acoustic "net" array has been designed and will be deployed along the Chukchi Sea coast to collect information on the occurrence and distribution of beluga, and possibly bowhead whales that may be available to subsistence hunters near coastal villages. A suite of autonomous seafloor recorders (pop-ups) will be deployed by the industry to collect acoustic data from strategically situated sites in the Chukchi Sea. The basic plan will be to deploy horizontal line arrays (HLA) of pop-ups in four areas from approximately Pt. Hope to the western Beaufort Sea east of Barrow, Alaska. Each of the four HLAs will contain 4 pop-ups separated by approximately 6–8 nm (11–15 km) so as to have an end-to-end length of approximately 18–24 nm (33–44 km) thus forming an inshore-to-offshore "net." An additional 4 pop-ups will be deployed at sites about 50–75 nm (92–139 km) offshore. The specific geometries and placements of the arrays are primarily driven by the objectives of (1) detecting the occurrence and approximate offshore distributions of beluga and possibly bowhead whales during the July to mid-August period and primarily bowhead whales during the mid-August to late October period, (2) measuring ambient noise, and (3) measuring received levels of seismic survey activities. Timing of deployment, number of pop-ups, and final positions will be subject to equipment availability, weather and ice conditions, and consultation with local villages so as to not interfere with subsistence hunting or fishing activities.

Reporting

Conoco will submit a report to NMFS approximately 90 days after completion of the 2006 season. The 90-day report will: (1) present the results of the 2006 shipboard marine mammal monitoring;

(2) estimate exposure of marine mammals to industry sounds; (3) provide data on marine mammal sightings (e.g., species, numbers, locations, age/size/gender, environmental correlates); (4) analyze the effects of seismic operations (e.g., on sighting rates, sighting distances, behaviors, movement patterns); (5) provide summaries of power downs, shut downs, and ramp up delays; (6) provide an analysis of factors influencing detectability of marine mammals; (7) provide summaries on communications with hunters and potential effects on subsistence activities; and (8) present the results of the field verification of the safety radii.

Following the 2006 open water season, Conoco, Shell, and GXT will submit a single comprehensive report describing the acoustic, vessel-based, and aerial monitoring programs for all industrial seismic programs covered by IHAs will be prepared. This comprehensive report will describe the methods, results, conclusions and limitations of each of the individual data sets in detail. The report will also integrate (to the extent possible) the studies into a broad based assessment of industry activities and their impacts on marine mammals in the Chukchi Sea during 2006. The report will help to establish long term data sets that can assist with the evaluation of changes in the Chukchi Sea ecosystem. The report will also incorporate studies being conducted in the Beaufort Sea and will attempt to provide a regional synthesis of available data on industry activity in offshore areas of northern Alaska that may influence marine mammal density, distribution and behavior.

This comprehensive report will consider data from many different sources including two relatively different types of aerial surveys; several types of acoustic systems for data collection (net array, PAM, and Ocean Bottom Hydrophone systems), and vessel based observations. Collection of comparable data across the wide array of programs will help with the synthesis of information. However, interpretation of broad patterns in data from a single year is inherently limited. Many of the 2006 data will be used to assess the efficacy of the various data collection methods and to help establish protocols that will provide a basis for integration of the data sets over a period of years. Because of the complexity of this comprehensive report, NMFS is requiring that this report be submitted in draft to NMFS by April 1, 2007, in order for consideration, review and comment at the 2007 open water

meeting prior to completion of a final comprehensive report.

Endangered Species Act

NMFS has issued a biological opinion regarding the effects of this action (among others) on ESA-listed species and critical habitat under the jurisdiction of NMFS. That biological opinion concluded that this action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. A copy of the Biological Opinion is available upon request (see **ADDRESSES**).

National Environmental Policy Act (NEPA)

The MMS prepared a Draft PEA for the 2006 Arctic Outer Continental Shelf (OCS) Seismic Surveys. NMFS was a cooperating agency in the preparation of the MMS Draft and Final PEAs. NMFS noted that the MMS had prepared a PEA for the 2006 Arctic seismic surveys and made this Draft PEA available upon request (71 FR 26055, May 3, 2006). In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has determined that the MMS Final PEA contains an in-depth and detailed description of the seismic survey activities, reasonable alternatives to the proposed action, the affected environment, mitigation and monitoring measures identified to reduce impacts on the human environment to non-significant levels, and the potential effects of the action on the human environment. In view of the information presented in this document and the analysis contained in the supporting PEA, NMFS has determined therefore that issuance by NMFS of an IHA to Conoco and other companies for conducting seismic surveys this year in the Arctic Ocean will not significantly impact the quality of the human environment as described above and in the supporting Final PEA and hereby adopts MMS' final PEA. Therefore, an Environmental Impact Statement is not necessary.

A determination of non-significance is predicated however on full implementation of standard mitigation measures for preventing injury or mortality to marine mammals, in addition to area specific mitigation measures, such as implementation of (1) a 120-dB rms monitoring-safety zone for cow/calf pairs of bowhead whales in the Beaufort and Chukchi seas; (2) a 160-dB rms monitoring-safety zone for aggregations of feeding bowheads and gray whales in the Beaufort and

Chukchi seas; (3) seismic shut-down criteria to protect bowhead and gray whales when inside the 120-dB or 160-dB monitoring-safety zones; and (4) a joint industry cooperative program on marine mammal research in the Chukchi Sea. A copy of the MMS Final PEA for this activity is available upon request and is available online (see **ADDRESSES**).

Preliminary Conclusions

Summary

Based on the information provided in Conoco's application and the MMS PEA, and dependent upon the implementation of the required mitigation and monitoring measures, NMFS has determined that the impact of Conoco conducting seismic surveys in the northeastern Chukchi Sea in 2006 will have a negligible impact on marine mammals and that there will not be any unmitigable adverse impacts to subsistence communities, provided the mitigation measures required under the authorization are implemented and a CAA is implemented.

Potential Impacts on Marine Mammals

NMFS has preliminarily determined that the relatively short-term impact of conducting seismic surveys in the U.S. Chukchi Sea may result, at worst, in a temporary modification in behavior by small numbers of certain species of marine mammals and/or low-level physiological effects (Level B Harassment). While behavioral and avoidance reactions may be made by these species in response to the resultant noise, this behavioral change is expected to have a negligible impact on the affected species and stocks of marine mammals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the area of seismic operations, the number of potential harassment takings is estimated to be relatively small in light of the population size (see Table 1). NMFS anticipates the actual take of individuals to be lower than the numbers depicted in the table because those numbers do not reflect either the implementation of the mitigation numbers or the fact that some animals will avoid the the sound at levels lower than those expected to result in harassment. Additionally, for both ringed seals and bearded seals, the abundance estimates used to calculate the percentages only represent part of the population (which means the estimated percentages are further over

estimates). Further, for ringed seals, the numbers are even lower because the density used for the calculation did not account for the fact that ringed seals are much denser near the shore and ice than they are in the open ocean where the seismic survey is primarily being conducted.

In addition, no take by death and/or serious injury is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the required mitigation measures described in this document. This determination is supported by (1) the likelihood that, given sufficient notice through slow ship speed and ramp-up of the seismic array, marine mammals are expected to move away from a noise source that it is annoying prior to its becoming potentially injurious; (2) TTS is unlikely until levels above 180 dB re 1 μ Pa are reached; (3) the fact that injurious levels of sound are only likely very close to the vessel; and (4) the likelihood that marine mammal detection ability by trained observers is close to 100 percent during daytime and remains high at night close to the vessel.

Finally, aside from the migration pathway (which has been addressed in this document) no known rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals are known to occur within or near the planned areas of operations during the season of operations.

Potential Impacts on Subsistence Uses of Marine Mammals

NMFS believes that the seismic activity by Conoco in the northern Chukchi Sea in 2006 will not have an unmitigable adverse impact on the subsistence uses of bowhead whales and other marine mammals. This determination is supported by the following: (1) Seismic activities in the Chukchi Sea will not begin until after July 10 by which time the spring bowhead hunt is expected to have ended; (2) the fall bowhead whale hunt in the Beaufort Sea will be governed by a CAA between Conoco and the AEWC and village whaling captains, which includes conditions that will significantly reduce impacts on subsistence uses; (4) while it is possible, but unlikely, that accessibility to belugas during the spring subsistence beluga hunt could be impaired by the survey, very little of the planned survey is within 25 km (15.5 mi) of the Chukchi coast, meaning the vessel will usually be well offshore away from areas where seismic surveys would influence beluga hunting by communities; and (5)

because seals (ringed, spotted, bearded) are hunted in nearshore waters and the seismic survey will remain offshore of the coastal and nearshore areas of these seals, it should not conflict with harvest activities.

Authorization

As a result of these preliminary determinations, NMFS has issued an IHA to Conoco for conducting a seismic survey in the northern Chukchi Sea in 2006, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 7, 2006.

James H. Lecky,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 06-6584 Filed 7-28-06; 8:45 am]

BILLING CODE 3510-22-C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072606B]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on August 15-16, 2006. The Council will convene on Tuesday, August 15, 2006, from 9 a.m. to 5 p.m., and the Administrative Committee will meet from 5:15 p.m. to 6 p.m., on that same day. The Council will reconvene on Wednesday, August 16, 2006, from 9 a.m. to 5 p.m., approximately.

ADDRESSES: The meetings will be held at The Buccaneer Hotel, 5007 Estate Shoys, Lt. 7, St. Croix, Christiansted, U.S.V.I.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918-1920, telephone: (787) 766-5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 122nd regular public meeting to discuss the items contained in the following agenda:

August 15, 2006

9 a.m. - 5 p.m.

Call to Order

Election of Officials
Adoption of Agenda
Consideration of 121st Council Meeting
Verbatim Transcription
Executive Director's Report
Update on NOAA/NOS Integrated Coral Reef Ecosystem Mapping Monitoring Studies in the U.S. Caribbean - Mark Monaco

Marine Protected Areas (MPAs) Puerto Rico - Maria del Mar Lopez
Update on Research: Trap Impacts on Coral Reefs and Associated Habitats in the USVI and Puerto Rico - Ron Hill
International Commission for the Conservation of Atlantic Tunas (ICCAT) - Bill Hogarth
Billfish Strategies P.R. Update - Jamitza Rodriguez

5:15 p.m. - 6 p.m.

Administrative Committee Meeting
Advisory Panel (AP)/Scientific and Statistical Committee/Habitat AP Membership

Budget 2006, 2007
Other Business

August 16, 2006

9 a.m. - 5 p.m.

Bycatch Strategies - Milagros Cartagena
Marine Recreational Fishery Statistics Survey (MRFSS) Report Puerto Rico - Zulena Cortes
Puerto Rico Fisheries from a Global Perspective - Manual Valdes-Pizzini
Queen Conch Manual Proposal - Monica Valle

Enforcement Reports
Puerto Rico
U.S. Virgin Islands
NOAA
U.S. Coast Guard

Administrative Committee
Recommendations (August 15, 2006 meeting)

Meetings Attended by Council Members and Staff
Other Business
Next Council Meeting

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically 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. For more information or request for sign language interpretation and/or other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918-2577, telephone: (787) 766-5926, at least 5 days prior to the meeting date.

Dated: July 26, 2006.

Tracey L. Thompson,

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

[FR Doc. E6-12231 Filed 7-28-06; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072606D]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held August 14-17, 2006.

ADDRESSES: These meetings will be held at the Baton Rouge Marriott, 5500 Hilton Avenue, Baton Rouge, LA 70808.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348-1630.

SUPPLEMENTARY INFORMATION:

Council

Wednesday, August 16, 2006

12 noon - Convene.

12:15 p.m. - 2:30 p.m. - Receive public testimony on "A Framework Measure to Address the Bycatch Reduction Criterion for Shrimp Trawls in the Gulf of Mexico West of Cape San Blas,

Florida Under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico Including Environmental Assessment, Regulatory Impact Review, and Regulatory Flexibility Act Analysis, as well as exempted fishing permits (if any).

2:30 p.m. - 3:30 p.m. - Receive the Reef Fish Committee Report.

3:30 p.m. - 4:30 p.m. - Open public comment period regarding any fishery issue or concern.

4:30 p.m. - 5:30 p.m. - Convene the Southeast Data, Assessment, and Review Panel (SEDAR) Selection Committee and the Advisory Panel (AP) Selection Committee (CLOSED SESSION).

Thursday, August 17, 2006

8:30 a.m. - 9:30 a.m. - Continue with the Reef Fish Committee Report.

9:30 a.m. - 9:45 a.m. - Publicly report the Council action on the SEDAR Selection Committee and AP Selection Committee/Council sessions.

9:45 a.m. - 12 noon - Receive the Joint Reef Fish/Shrimp Committees Report.

1:30 p.m. - 2 p.m. - Receive the Sustainable Fisheries/Ecosystem Committee Report.

2 p.m. - 2:15 p.m. - Receive the Administrative Policy Committee Report.

2:15 p.m. - 2:45 p.m. - Receive the Migratory Species Committee Report.

2:45 p.m. - 3:30 p.m. - Receive the Mackerel Committee Report.

3:30 p.m. - 4:30 p.m. - Other Business (Includes miscellaneous written reports filed under Tabs O, P, Q, and R of briefing book), as well as any special announcements.

4:30 p.m. - 4:45 p.m. - Election of Chairman and Vice Chairman

Committees

Monday, August 14, 2006

8:30 a.m. - 11:30 a.m. - Conduct an Orientation Session for new Council members.

1 p.m. - 5:30 p.m. - The Reef Fish Management Committee will meet to receive a report on the Madison-Swanson and Steamboat Lumps Marine Protected Areas Monitoring Program by NMFS and a status report on the development of an Individual Fishing Quota (IFQ) system for the grouper fishery. The Committee will also review stock assessments for greater amberjack, vermilion snapper, gray triggerfish, and gag along with recommendations from the Scientific and Statistical Committee (SSC) and Reef Fish AP. The Committee will also consider scheduling stock assessment updates for red snapper and goliath grouper.

Tuesday, August 15, 2006

8:30 a.m. - 12:30 p.m. - The Joint Reef Fish/Shrimp Management Committees will receive a report on the status and health of shrimp stocks in the Gulf, as well as a report from the Ad Hoc Shrimp Effort Working Group on the status of existing effort in the shrimp fishery and possible relationships to optimal effort. The Committee will also consider final action on a regulatory amendment to potentially change the bycatch reduction criterion for Bycatch Reduction Devices (BRDs) used in shrimp trawls west of Cape San Blas, Florida. Finally, the Committee will consider approving Joint Amendment 27 to the Reef Fish Fishery Management Plan (FMP)/Amendment 14 to the Shrimp FMP for public hearings.

2 p.m. - 3 p.m. - The Sustainable Fisheries/Ecosystem Committee will review and possibly approve the Ecosystem SSC's recommended budget for workshops and consider recommending an extension to the ecosystem budget into 2007.

3 p.m. - 3:30 p.m. - The Administrative Policy Committee will meet to consider a proposed pool of non-government organizations (NGO's) that would be used to select representatives to future SEDAR workshops. The Committee will also review the Statement of Organization Practices and Procedures' (SOPPs) provisions on the Standing Scientific and Statistical Committee (SSC).

3:30 p.m. - 4:30 p.m. - The Migratory Species Management Committee will receive a report from NMFS Headquarter on the International Convention for the Conservation of Atlantic Tunas (ICCAT).

Wednesday, August 16, 2006

8:30 a.m. - 10:30 a.m. - The Mackerel Management Committee will review recommendations from the SSC regarding a report from a special scientific committee made up of scientists appointed by the Council and the South Atlantic Fishery Management Council (SAFMC). This report includes recommendations regarding the stock assessment for king mackerel in the Gulf and Atlantic regions. The Committee will also consider the recommendations of the SAFMC regarding this report and other king mackerel issues.

The committee reports will be presented to the Council for consideration later on Wednesday and on Thursday, August 17, 2006.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-

Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: July 26, 2006.

Tracey L. Thompson,

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

[FR Doc. E6-12232 Filed 7-28-06; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072606C]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat/MPA/Ecosystem Advisory Panel in August, 2006, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Tuesday, August 15, 2006 at 10 a.m.

ADDRESSES: The meeting will be held at the Sheraton Ferncroft, 50 Ferncroft

Road, Danvers, MA 01923; telephone: (978) 777-2500; fax: (978) 750-7959.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION: The panel will brief and review the Draft Essential Fish Habitat (EFH) Designation Management Alternatives for inclusion in the EFH Omnibus Amendment 2. The panel will also review continued work on the Advisory Panel gear description document/workshop. In addition, the panel will review development of recommendations to the Committee on Habitat Area of Particular Concern alternatives. Other topics may be covered at the committee and Advisory Panel's discretion.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

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

Dated: July 26, 2006.

Tracey L. Thompson,

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

[FR Doc. E6-12248 Filed 7-28-06; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patent Prosecution Highway (PPH) Pilot Program.

Form Number(s): PTO/SB/20.

Agency Approval Number: 0651-00XX.

Type of Request: New collection.

Burden: 1,000 hours annually.

Number of Respondents: 500 responses per year.

Avg. Hours per Response: The USPTO estimates that it will take the public approximately two hours (2.0 hours) to gather the necessary information, prepare the form, and submit the completed request.

Needs and Uses: The Patent Prosecution Highway (PPH) pilot program is being established between the United States Patent and Trademark Office (USPTO) and the Japan Patent Office (JPO). This program will allow applicants whose claims are determined to be patentable in the office of first filing to have the corresponding application that is filed in the office of second filing be advanced out of turn for examination. At the same time, this program will allow the office of second filing to exploit the search and examination results of the office of first filing, which will increase examination efficiency and improve patent quality. This information collection includes one proposed form, Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the JPO and the USPTO (PTO/SB/20), which may be used by applicants to request participation in the pilot program and to ensure that they meet the program requirements.

Affected Public: Businesses or other for-profits, not-for-profit institutions.

Frequency: On occasion.

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

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

Copies of the above information collection proposal can be obtained by any of the following methods:

E-mail: Susan.Brown@uspto.gov. Include "0651-00XX PPH Pilot Program copy request" in the subject line of the message.

Fax: 571-273-0112, marked to the attention of Susan Brown.

Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

Written comments and recommendations for the proposed

information collection should be sent on or before August 30, 2006 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: July 24, 2006.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division.

[FR Doc. E6-12220 Filed 7-28-06; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD-2006-OS-0167]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, The Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the function 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received on or before September 29, 2006.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy

for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request additional information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness) (Military Personnel Policy/ Accession Policy) ATTN: Major Thomas M.W. Downs, 4000 Defense Pentagon, Washington, DC 20301-4000, or call (703) 695-5527.

Title, Associated Form, and OMB Control Number: Medical Screening of Military Personnel; DD Form 2807-1 and DD Form 2807-2; OMB Control Number 0704-0413.

Needs and Uses: Title 10, U.S.C. Chapter 31: Section 504 and 505, and Chapter 33, section 532, require applicants to meet accession medical standards prior to enlistment into the armed Forces (including the Coast Guard). If applicants' medical history reveals a medical condition that does not meet the accession medical standards, they are medically disqualified for military entrance. This form also will be used by all Service members not only in their initial medical examination but also for required periodic medical examinations.

Affected Public: Individuals or Households, Not-for-Profit Institutions.

Annual Burden Hours: 708,333.

Number of Respondents: 850,000.

Responses per Respondent: 1.

Average Burden Per Response: 50 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

These forms obtain medical information which affects entrance physical examinations, routine in-service physical examinations, separation physical examinations, and other medical examinations as required. The respondents are all applicants for enlistment, induction or commissioning. The applicant(s) completes the medical history information recorded on the form. This information collected provides the Armed Services with the medical history of applicants. The DD Forms 2807-1 and 2807-2 are the method of collecting and verifying medical data on applicants applying for entrance. These

DD Forms are the official DoD medical documents used by the Services through which historical medical information is collected, reviewed and maintained.

Dated: July 20, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06-6575 Filed 7-28-06; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD-2006-OS-0166]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received on or before September 29, 2006.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instruction for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov>

www.regulations.gov as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness) (Military Personnel Policy)/ Accession Policy. ATTN: Major Thomas M.W. Downs. 4000 Defense Pentagon, Washington, DC 20301-4000, or call at (703) 695-5527.

Title, Associated Form, and OMB Control Number: Police Record Check; DD Form 369; OMB Control Number 0704-0007.

Needs and Uses: This information collection requirement is necessary to obtain information about arrests and criminal records on applicants to the Armed Forces of the United States. The DD Form 369, Police Record Check, is used to identify any disqualifying history regarding arrests or convictions.

Affected Public: State, local or tribal government.

Annual Burden Hours: 112,500.

Number of Respondents: 250,000.

Responses Per Respondent: 1.

Average Burden per Response: 27 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information is collected to provide the Armed Services with background information on an applicant. History of criminal activity, arrests, or confinement is disqualifying for military service. The respondents will be local and state law enforcement agencies. The DD Form 369, Policy Record Check, is the method of information collection; responses are to reference any records on the applicant. The information will be used to determine suitability of the applicant for the military service.

Dated: July 20, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06-6576 Filed 7-28-06; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD-2006-OS-0165]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the paperwork reduction Act of 1995, The Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the function 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received on or before September 29, 2006.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request additional information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness), (Military Personnel Policy/

Accession Policy) ATTN: Major Thomas M.W. Downs, 4000 Defense Pentagon, Washington, DC 20301-4000, or call (703) 695-5527.

Title, Associated Form, and OMB Control Number: Record of Military Processing, Armed Forces of the United States; DD Form 1966; OMB Control Number: 0704-0173.

Needs and Uses: This information collection is necessary to obtain data on individuals applying for enlistment in the Armed Forces of the United States to determine eligibility for enlistment. The information collected accompanies the applicant throughout the enlistment process. It also is used for establishing personnel records on those who enlist.

Affected Public: Individuals or households.

Annual Burden Hours: 213,333.

Number of Respondents: 640,000.

Responses per Respondent: 1.

Average Burden per Response: 20 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Title 10 U.S.C. 504, 505, 508, 12102 and 520a, Title 14 U.S.C. 351 and 632, and Title 50 U.S.C. 451, require applicants to meet standards for enlistment into the Armed Forces. This information collection is the basis for determining eligibility of applicants for enlistment in the Armed Forces and is needed to verify data given by the applicant and to determine his/her qualification of enlistment. The information collected aids in the determination of qualifications, term of service, and grade in which a person, if eligible, will enter active duty or reserve status.

Dated: July 20, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06-6577 Filed 7-28-06; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Department of the Air Force

[No. USAF-2006-0010]

Proposed Collection; Comment Request

AGENCY: Air Force Research Laboratory/Air Force Office of Scientific Research (AFRL/AFOSR), DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork

Reduction Act of 1995, the Department of the Air Force, Air Force Research Laboratory/Air Force Office of Scientific Research (AFRL/AFOSR) is announcing a proposed new public information collection and seeks public comment 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 29, 2006.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Air Force Office of Scientific Research, ATTN: AFOSR/PID, 875 North Randolph Street, Suite 325, Room 3112, Arlington, VA 22203-1768, or e-mail SFFP@afosr.af.mil and NRCCRRA@afosr.af.mil, or call AFOSR/PID at 703-696-7323.

Title and OMB Number: AFRL/AFOSR Summer Faculty Fellowship Program (SFFP) and USAF/NRC Resident Research Associateships Program; OMB Number 0701-TBD.

Needs and Uses: The Air Force Office of Scientific Research (AFOSR) manages the entire basic research investment for the US Air Force. As part of the Air Force Research Laboratory (AFRL), AFOSR's technical experts support and

fund research programs within the AFRL and other Air Force research activities. Applications for fellowships and associateships at AFRL research sites and the research activities at the US Air Force Academy and the Air Force Institute of Technology (AFIT), and the associated award forms, provide information used to identify some of the Nation's most talented scientific personnel for award of fellowships and associateships at Air Force research activities. Summer fellowships provide research opportunities for 8-14 weeks at an Air Force research site. Research Associates generally spend 1 to 3 years at an Air Force research site.

SFFP and NRC/RRA provide postdoctoral and senior scientists and engineers of unusual promise and ability opportunities for conducting research on problems that are defense requirements. Application information will be used for evaluation and selection of scientists and engineers to be awarded fellowships and associateships.

Failure to respond renders the applicant ineligible for a fellowship.

Affected Public: Individuals and households.

Annual Burden Hours: 4,480.

Number of Respondents: 280.

Responses per Respondent: 1.

Average Burden per Response: 16 hours.

Frequency: Annually (SFFP) and quarterly (NRC/RRA).

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are postdoctoral, senior, and university scientists and engineers desiring to conduct stimulating research projects and activities at Air Force research sites. The on-line, electronic application process provides information necessary for evaluation and selection of researchers. Associated award forms provide required information for direct deposit of stipends and reporting to the Internal Revenue Service.

Dated: May 26, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06-6574 Filed 7-28-06; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management

Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 30, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The 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.

Dated: July 26, 2006

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Communications and Outreach

Type of Review: Revision.

Title: Application for the Presidential Scholars Program.

Frequency: Annually.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 2,600.

Burden Hours: 41,600.

Abstract: The United States Presidential Scholars Program is a

national recognition program to honor outstanding graduating high school seniors. Candidates are invited to apply based on academic achievements on the SAT or ACT assessments, or on artistic merits based on participation in a national arts talent search. This program was established by Presidential Executive Orders 11155 and 12158.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3160. 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. E6-12180 Filed 7-28-06; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 30, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested

Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The 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.

Dated: July 25, 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 information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 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. E6-12181 Filed 7-28-06; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Office of Science; Climate Change Science Program Product Development Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Climate Change Science Program Product Development Advisory Committee. Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, August 17, 2006, 10 a.m. to 5 p.m.; Friday, August 18, 2006, 9 a.m. to 12:30 p.m.

ADDRESSES: American Geophysical Union, 2000 Florida Avenue, NW., Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Dr. Anjali S. Bamzai (301-903-0294; anjuli.bamzai@science.doe.gov) Designated Federal Officer, Climate Change Science Program Product Development Advisory Committee, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, Climate Change Research Division, SC-23.3/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585-1290. The most current information concerning this meeting can be found on the Web site: <http://www.science.doe.gov/ober/cpdac/announcement.html>

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To draft specific Climate Change Science Program (CCSP) Synthesis and Assessment Products at the request of the Department of Energy, in accordance with the CCSP Guidelines for Producing the CCSP Synthesis and Assessment Products related to climate models, scenarios of greenhouse gas emissions

and concentrations, and development and application of integrated scenarios of greenhouse gas emissions.

Tentative Agenda

Thursday, August 17, and Friday,

August 18, 2006:

- Comments from the Office of Science.
- Discussion of outline of report on climate models.
- Discussion of report on updated scenarios of greenhouse gas emissions and concentrations.
- Discussion of report on state-of-the-art review of the development and application of integrated scenarios of greenhouse gas emissions.
- Public comment (10 minute rule).

Public Participation: The day and a half meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Anjali Bamzai at the address or telephone number listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provisions will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 26, 2006.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6-12209 Filed 7-28-06; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR06-18-000]

Acadian Gas Pipeline System; Notice of Petition for Rate Approval

July 21, 2006.

Take notice that on July 11, 2006, Acadian Gas Pipeline System (Acadian)

filed a petition for rate approval for NGPA Section 311 maximum interruptible transportation rates, pursuant to section 284.123(b)(2) of the Commission's regulations. Acadian requests that the Commission approve an increase in its maximum rate for interruptible transportation from \$0.1659 per MMBtu to \$0.25 per MMBtu for gas transported under section. 311.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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 August 14, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6-12238 Filed 7-28-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. EL06-87-000]

Cottonwood Energy Company, LP; Notice of Petition for Declaratory Order

July 21, 2006.

Take notice that on July 17, 2006, Cottonwood Energy Company, LP (Cottonwood) submitted a petition requesting that the Federal Energy Regulatory Commission issue a declaratory order disclaiming jurisdiction over: (1) A proposed transmission line to be constructed for the sole purpose of delivering the output Cottonwood's generating facility in the SERC Reliability Corporation's region of Texas to a utility within the Electric Reliability Council of Texas (ERCOT) region; (2) transmission service over the proposed transmission line; and (3) the electric utility in ERCOT that is not presently a public utility under the Federal Power Act to which the proposed transmission lines will interconnect.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail

FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on August 16, 2006.

Magalie R. Salas,
Secretary.

[FR Doc. E6-12234 Filed 7-28-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. PR06-19-000]

Cypress Gas Pipeline, LLC; Notice of Compliance Filing

July 21, 2006.

Take notice that on July 11, 2006, Cypress Gas Pipeline, LLC (Cypress) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations. Cypress states that it proposes to increase its maximum interruptible rate from \$0.0825 per MMBtu to \$0.1476 per MMBtu for the transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the

"eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on August 14, 2006.

Magalie R. Salas,
Secretary.

[FR Doc. E6-12239 Filed 7-28-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket Nos. ER06-1098-000 ER06-1098-001]

JJR Power LLC; Notice of Issuance of Order

July 21, 2006.

JJR Power LLC (JRR Power) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. JRR Power also requested waivers of various Commission regulations. In particular, JRR Power requested approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by JRR Power.

On July 21, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by JRR Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is August 21, 2006.

Absent a request to be heard in opposition by the deadline above, JRR Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of JRR Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of JRR Power's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order 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 filed to access the document. 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 electronic filings.

Magalie R. Salas,

Secretary

[FR Doc. E6-12235 Filed 7-28-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR06-2-002]

Lee 8 Storage Partnership; Notice of Refund Report

July 21, 2006.

Take notice that on July 12, 2006, Lee 8 Storage Partnership (Lee 8) filed its Refund Report pursuant to Article III of Lee 8's Stipulation and Agreement dated March 22, 2006, approved by Commission letter order dated April 13, 2006. Lee 8 states that the refund report is for the period November 15, 2005 through April 20, 2006.

Any person desiring to protest this rate 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 August 14, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6-12240 Filed 7-28-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04-360-008]

Maritimes & Northeast Pipeline L.L.C.; Notice of Report of Refunds

July 21, 2006.

Take notice that on July 19, 2006, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing a refund report in the above captioned proceeding pursuant to sections 154.501 and 154.502 of the Commission's regulations.

Maritimes states that the report documents refunds made to customers in accordance with Section 1.2 of a Stipulation and Agreement filed with the Commission on June 28, 2005 in Docket No. RP04-360, and approved by the Commission's Order issued on May 15, 2006. Maritimes states that it completed the refunds on June 20, 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 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 August 1, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6-12241 Filed 7-28-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 24, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG06-64-000.

Applicants: Mesquite Wind LLC.

Description: Mesquite Wind, LLC

Submits a Notice of Self-Certification of Exempt Wholesale Generator Status pursuant to sections 366.1 and 3.66.7 of the Commission's Regulations and section 1266 of PUHCA.

Filed Date: 07/19/2006.

Accession Number: 20060719-5036.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 9, 2006.

Docket Numbers: EG06-65-000.

Applicants: FPL Energy Mower County, LLC.

Description: FPL Energy Mower County, LLC submits a Notice of Self

Certification of Exempt Wholesale Generator Status pursuant to Sections 366.7 of Commission's Regulations and PUHCA.

Filed Date: 07/19/2006.

Accession Number: 20060719-5051.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 9, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER94-389-024; ER02-2509-003; ER00-840-004; ER01-137-002; ER98-1767-007; ER99-2992-004; ER99-3165-004; ER02-1942-003; ER01-596-002; ER01-2690-006; ER02-77-006; ER02-2550-004; ER00-1780-004; ER99-415-011; ER01-389-004.

Applicants: Tenaska Power Services Company; Kiowa Power Partners, LLC; Tenaska Alabama Partners, L.P.; Tenaska Alabama II Partners, L.P.; Tenaska Frontier Partners, Ltd.; Tenaska Gateway Partners, Ltd.; Tenaska Georgia Partners, L.P.; Tenaska Virginia Partners, L.P.; Alabama Electric Marketing, LLC; California Electric Marketing, LLC; New Mexico Electric Marketing, LLC; Tenaska-Oxy Power Services, L.P.; Texas Electric Marketing, LLC; Commonwealth Chesapeake Company, LLC; Calumet Energy Team, LLC.

Description: Tenaska Power Services Company, et al. submit Updated Market Power Analysis.

Filed Date: 07/19/2006.

Accession Number: 20060724-0044.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 9, 2006.

Docket Numbers: ER97-2801-012.

Applicants: PacifiCorp.

Description: PacifiCorp Energy submits Second Revised Sheets 1 and No. 5 to FERC Tariff, Fourth Revised Volume No. 12, effective 3/21/06.

Filed Date: 07/20/2006.

Accession Number: 20060724-0090.

Comment Date: 5 p.m. Eastern Time on Thursday, August 10, 2006.

Docket Numbers: ER98-2783-009; ER99-3822-008; ER00-3696-005; ER99-2602-005; ER96-1947-019; ER05-1266-003; ER98-2682-011; ER01-1619-008; ER02-443-007; ER98-2681-011; ER98-2680-011; ER99-1785-010.

Applicants: Bridgeport Energy LLC; Casco Bay Energy Company, LLC; Griffith Energy LLC; LSP-Kendall Energy, LLC; LS Power Marketing, LLC; Ontelaunee Power Operating Company, LLC; LSP Oakland, LLC; LSP Mohave, LLC; LSP Arlington Valley, LLC; LSP Morro Bay, LLC; LSP Moss Landing, LLC; LSP South Bay, LLC.

Description: LSP Entities submit supplemental information to the notice

of non-material change in status filed on 6/2/06.

Filed Date: 07/19/2006.

Accession Number: 20060721-0053.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 9, 2006.

Docket Numbers: ER99-2948-008; ER00-2918-007; ER00-2917-007; ER05-261-004; ER01-556-006; ER01-557-006; ER01-558-006; ER01-559-006; ER01-560-006; ER01-1654-009; ER01-2641-007; ER02-2567-007; ER05-728-004; ER01-1949-007; ER04-485-004.

Applicants: Baltimore Gas & Electric Company; Constellation Power Source Generation, Inc.; Calvert Cliffs Nuclear Power Plant, Inc.; Constellation Energy Commodities Group, Inc.; Handsome Lake Energy, LLC; University Park Energy; Holland Energy, LLC; Wolf Hills Energy, LLC; Big Sandy Peaker Plant, LLC; Nine Mile Point Nuclear Station, LLC; High Desert Power Project, LLC; Constellation NewEnergy, Inc.; Constellation Energy Commodities Group Maine, LLC; Power Provider LLC; R.E. Ginna Nuclear Power Plant, LLC.

Description: Constellation MBR Entities submit a Notice of Change in Status with respect to a recent transaction entered into with Constellation Energy Commodities Group, Inc and one of the Constellation MBR Entities.

Filed Date: 07/17/2006

Accession Number: 20060717-5062.

Comment Date: 5 p.m. Eastern Time on Monday, August 7, 2006.

Docket Numbers: ER06-20-004.

Applicants: E.ON U.S., LLC; Louisville Gas & Electric Company; Kentucky Utilities Company.

Description: E.ON U.S. LLC et al. submit a compliance filing pursuant to the Commission's Order issued July 7, 2006.

Filed Date: 07/19/2006.

Accession Number: 20060720-008.9

Comment Date: 5 p.m. Eastern Time on Wednesday, August 9, 2006.

Docket Numbers: ER06-881-003.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits a second errata to its supplemental information and amendment to its 7/10/06 filing.

Filed Date: 07/20/2006.

Accession Number: 20060724-0089.

Comment Date: 5 p.m. Eastern Time on Thursday, August 10, 2006.

Docket Numbers: ER06-1260-000.

Applicants: Northern Indiana Public Service Company; Whiting Clean Energy, Inc.

Description: Northern Indiana Public Service Company, et al. submit an

application for waivers of codes of conduct contained in their market-based rate tariff.

Filed Date: 07/19/2006.

Accession Number: 20060720-0084.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 09, 2006.

Docket Numbers: ER06-1261-000.

Applicants: FPL Energy Mower County, LLC.

Description: FPL Energy Mower County, LLC submits a request for authorization to sell energy and capacity at market-based rates.

Filed Date: 07/19/2006.

Accession Number: 20060720-0085.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 9, 2006.

Docket Numbers: ER06-1262-000.

Applicants: Maine Yankee Atomic Power Company.

Description: Maine Yankee Atomic Power Co. submits Second Revised Rate Schedule FERC 1 pursuant to FERC Order 614 and supporting documents for its proposed adjustment to its PBOP trust.

Filed Date: 07/19/2006.

Accession Number: 20060720-0086.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 9, 2006.

Docket Numbers: ER06-1263-000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits revisions to its OAT Tariff, its Amended and Restated Operating Agreement, its Reliability Assurance Agreement, and its West Reliability Assurance Agreement.

Filed Date: 07/19/2006

Accession Number: 20060720-0087.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 9, 2006.

Docket Numbers: ER06-1265-000.

Applicants: Orlando CoGen Limited, L.P.

Description: Orlando CoGen Limited, LP submits a petition for acceptance of its initial tariff and associated waivers and authorizations.

Filed Date: 07/20/2006.

Accession Number: 20060724-0043

Comment Date: 5 p.m. Eastern Time on Thursday, August 10, 2006.

Docket Numbers: ER06-1266-000.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Corp. submits an Amended and Restated Exit Agreement—Supplement No 11 to its Rate Schedule FERC 176.

Filed Date: 07/20/2006.

Accession Number: 20060724-0092.

Comment Date: 5 p.m. Eastern Time on Thursday, August 10, 2006.

Docket Numbers: ER06-1267-000.

Applicants: Fitchburg Gas and Electric Light Company.

Description: Fitchburg Gas and Electric Light Co. submits data and schedules used to calculate its annual transmission revenue requirement for Non-PTF Local Network Transmission Service etc.

Filed Date: 07/20/2006.

Accession Number: 20060724-0091.

Comment Date: 5 p.m. Eastern Time on Thursday, August 10, 2006.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH06-101-000.

Applicants: The Laclede Group, Inc.

Description: The Laclede Group, Inc. submits a petition for waiver of the Commission's accounting, record retention and reporting requirements pursuant to sections 366.21, 366.22, and 366.23 of the Commission's Regulations.

Filed Date: 07/14/2006.

Accession Number: 20060720-0080.

Comment Date: 5 p.m. Eastern Time on Friday, August 4, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed 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. E6-12261 Filed 7-28-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06-438-000]

MIGC, Inc.; Notice of Proposed Changes in Ferc Gas Tariff

July 21, 2006.

Take notice that on July 19, 2006, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective September 1, 2006:

Sixth Revised Sheet No. 48
First Revised Sheet No. 89A
Eighth Revised Sheet No. 90

MIGC asserts that the purpose of this filing is to update MIGC's tariff to be consistent with Order No. 2004.

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, D.C. 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E6-12233 Filed 7-28-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06-1218-000]

PJM Interconnection, LLC; Notice of Extension of Time

July 24, 2006.

On July 24, 2006, Long Island Power Authority and its operating subsidiary, LIPA (collectively "LIPA") filed a motion for an extension of time to file motions to intervene and comments in response to the Commission's Notice of Filing issued July 11, 2006, in the above-docketed proceeding. LIPA requests that an extension be granted to allow LIPA to review the Commission's Final Rule issued July 20, 2006, in Docket No. RM06-8-000¹ and to provide substantive comments in this proceeding based on its review of those new regulations.

Upon consideration, notice is hereby given that an extension of time to file motions to intervene and comments is granted to and including August 7, 2006.

Magalie R. Salas,
Secretary.

[FR Doc. E6-12245 Filed 7-28-06; 8:45 am]

BILLING CODE 6717-01-P

¹ Long-Term Firm Transmission Rights in Organized Electricity Markets, 116 FERC ¶61,077 (2006).

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. EL06-81-000]

Southern Company Services, Inc.; Notice of Institution of Proceeding and Refund Effective

July 21, 2006.

On July 20, 2006, the Commission issued an order that instituted a proceeding in Docket No. EL06-81-000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2005), to provide Southern Company Services, Inc. a forum in which to address issues raised in Southern's request for rehearing filed August 30, 2004, in Docket No. ER04-563-002. Southern Company Services, Inc., 116 FERC 61,050 (2006).

The refund effective date in Docket No. EL06-81-000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Magalie R. Salas,
Secretary.

[FR Doc. E6-12243 Filed 7-28-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP06-421-000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

July 24, 2006.

Take notice that on July 17, 2006, as supplemented on July 20, 2006, Transcontinental Gas Pipe Line Corporation (Transco) filed an application pursuant to sections 7(c) and 7(b) of the Natural Gas Act (NGA), for authorization to construct and operate the Potomac Expansion Project, an incremental expansion of Transco's existing pipeline system in its Mid-Atlantic market area. Transco states that the proposed project will involve the construction and operation of approximately 16.39 miles of new pipeline looping facilities in Pittsylvania and Campbell Counties, Virginia, and the replacement of 3.43 miles of existing pipeline in Fairfax County, Virginia. Transco states that the 3.43-mile replacement of the existing pipeline in Fairfax County, Virginia, will consist of the removal and replacement of 3.18 miles of 30-inch diameter Mainline B with 42-inch

diameter Mainline D within the same trench. In addition, 0.25 mile of existing Mainline B will be abandoned in place, principally under existing road crossings, and replaced in an adjacent trench with the new 42-inch diameter Mainline D. Transco requests authorization under section 7(b) of the NGA to abandon in place the 0.25 mile of existing Mainline B in Fairfax County, Virginia. Transco states that the proposed project will enable it to provide 165,000 dekatherms per day of incremental firm transportation capacity to serve increased demand in the Mid-Atlantic region of the United States. Transco estimates that the proposed project will cost approximately \$73.7 million, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

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 "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 call toll-free, (866) 208-3676 or for TTY, (202) 502-8659.

Any initial questions regarding this application should be directed to Marg Camardello, Manager, Tariffs and Certificates, Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251 at (713) 215-3380. In addition, parties with questions about the Project may call a Transco toll-free telephone number at (866) 455-9103, or access a public Web site at (<http://www.williams.com/potomac>) or an e-mail support address at (potomac@williams.com).

In Docket No. PF06-2-000, Transco participated in a pre-filing National Environmental Policy Act review of the proposed project to identify and resolve potential landowner and environmental problems before the applications were filed.

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 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.

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 commentors 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 commentors will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commentors 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.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

Comment Date: 5 p.m. Eastern Time on August 14, 2006.

Magalie R. Salas,
Secretary.

[FR Doc. E6-12246 Filed 7-28-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP06-102-001]

Trunkline LNG Company, LLC; Notice of Filing

July 24, 2006.

Take notice that on July 18, 2006, Trunkline LNG Company, LLC (Trunkline LNG), P.O. Box 4967, Houston, Texas 77210-4967, filed an application, pursuant to section 3(a) of

the Natural Gas Act (NGA) and part 157 of the Commission's Rules and Regulations, to amend its pending application filed on March 31, 2006. Trunkline LNG seeks to revise:

(1) The depreciation rate reflected on Exhibit O and the corresponding annual depreciation expense, (2) the estimated incremental revenues, expenses and income reflected on Exhibit N, and (3) the cost of service, rate derivation and Pro Forma Sheet No. 5 contained in Exhibit P. The application is on file with the Commission and open for public inspection. 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 "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.

Trunkline LNG states that the negotiated rate with its customer, BG LNG Services, LLC (BG LNG), is based on a 40 year depreciable life for the Infrastructure Enhancement Project. The facilities will be new construction and of a durable long-lived nature. Therefore, Trunkline LNG proposes to depreciate the life of the assets over a term of 40 years instead of 20 years as indicated in the March 31, 2006 application. The revision results in the recourse rate decreasing from \$1.2616 per Dt to \$1.1378 per Dt and the composite depreciation rate of 5.0% will be 2.5%.

Any questions regarding the application are to be directed to William W. Grygar, Vice President of Rates and Regulatory Affairs, 5444 Westheimer Road, Houston, Texas 77056-5306; phone number (713) 989-7000.

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.

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: 5 p.m. Eastern Time on August 14, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6-12247 Filed 7-28-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 21, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC06-139-000.

Applicants: Duquesne Light Holdings, Inc.; DUET Investment Holdings Limited; Industry Funds Management Limited.

Description: Duquesne Light Holdings, Inc., *et al.*, submits an application for approval under section 203 of the Federal Power Act and request for expedited consideration.

Filed Date: July 17, 2006.

Accession Number: 20060718-0158.

Comment Date: 5 p.m. Eastern Time on Monday, August 7, 2006.

Docket Numbers: EC06-140-000; EL06-86-000.

Applicants: Edison Electric Institute; Jurisdictional Signatories to the Spare Transformer Sharing Agreement.

Description: Jurisdictional Signatories submits a joint application for authorization for transfers of jurisdictional facilities and a petition for declaratory order, pursuant to section 203 of FPA and 207 of the Commission's rules of practice and procedure.

Filed Date: July 18, 2006.

Accession Number: 20060720-0114.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 8, 2006.

Docket Numbers: EC06-141-000.

Applicants: Cadillac Renewable Energy LLC; Deville Energy, LLC.

Description: Application for authorization for disposition of jurisdictional facilities under section 203 of the Federal Power Act.

Filed Date: July 14, 2006.

Accession Number: 20060720-0015.

Comment Date: 5 p.m. Eastern Time on Friday, August 4, 2006.

Docket Numbers: EC06-142-000.

Applicants: Atlantic Power Holdings LLC; Trans-Elect NTD Path 15, LLC; AP Sub.

Description: Trans-Elect NTD Path 15, LLC *et al* submits an application requesting that the Commission grant authorization for the indirect disposition of jurisdictional facilities.

Filed Date: July 18, 2006.

Accession Number: 20060720-0063.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 8, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99-2416-006.

Applicants: EL Paso Electric Company.

Description: El Paso Electric Co. submits a notice of change in status to inform FERC of four changes with regards to the characteristics relied upon in granting their market-based rate authority.

Filed Date: July 17, 2006.

Accession Number: 20060719-0150.

Comment Date: 5 p.m. Eastern Time on Monday, August 7, 2006.

Docket Numbers: ER05-1102-001.

Applicants: Goldendale Energy Center, LLC.

Description: Goldendale Energy Center, LLC submits a revised Reactive Supply and Voltage Control from Generation Sources Service Rate Schedule pursuant to the Commission May 19, 2006 Order.

Filed Date: July 17, 2006.

Accession Number: 20060718-0157.

Comment Date: 5 p.m. Eastern Time on Monday, August 7, 2006.

Docket Numbers: ER06-506-004.

Applicants: New York Independent System Operator, Inc.; New York Transmission Owners.

Description: New York Independent System Operator, Inc. and the New York Transmission Owners submits Second Revised Sheet 944C *et al.* to FERC Electric Tariff, Original Volume 1 in compliance with FERC's June 15, 2006 Order.

Filed Date: July 17, 2006.

Accession Number: 20060718-0159.

Comment Date: 5 p.m. Eastern Time on Monday, August 7, 2006.

Docket Numbers: ER06-744-002.

Applicants: Sabine Cogen, LP.

Description: Sabine Cogen, LP submits a notice of non-material change in status in compliance with the reporting requirements adopted by FERC in Order 652.

Filed Date: July 17, 2006.
Accession Number: 20060718-0156.
Comment Date: 5 p.m. Eastern Time on Monday, August 7, 2006.
Docket Numbers: ER06-847-001; ER05-1235-002.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Co. submits a compliance filing pursuant to FERC's directive in the June 15 Order.
Filed Date: July 17, 2006.
Accession Number: 20060719-0179.
Comment Date: 5 p.m. Eastern Time on Monday, August 7, 2006.
Docket Numbers: ER06-866-001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator Inc. submits a Large Generator Interconnection Agreement with Whistling Wind WI Energy Center, LLC *et al.*
Filed Date: July 13, 2006.
Accession Number: 20060720-0068.
Comment Date: 5 p.m. Eastern Time on Thursday, August 3, 2006.
Docket Numbers: ER06-1039-002.
Applicants: Freedom Partners, LLC.
Description: Freedom Partners, LLC dba Freedom Energy Partners submits a second amended application for order accepting market based rate tariff granting certain Waivers and Blanket Approvals.
Filed Date: July 17, 2006.
Accession Number: 20060718-0155.
Comment Date: 5 p.m. Eastern Time on Monday, August 7, 2006.
Docket Numbers: ER06-1202-001.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Co. submits a first amendment to its June 30, 2006 tariff filing Original Sheet 20 *et al.* to Original Service Agreement 261.
Filed Date: July 12, 2006.
Accession Number: 20060720-0066.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 2, 2006.
Docket Numbers: ER06-1246-000.
Applicants: Duke Energy Shared Services, Inc.
Description: Duke Energy Shared Services, Inc. on behalf of Brownsville Power I, LLC *et al.* submits amended market based rate tariffs.
Filed Date: July 12, 2006.
Accession Number: 20060720-0065.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 2, 2006.
Docket Numbers: ER06-1248-000.
Applicants: California Independent System Operator Corporation
Description: California Independent System Operator Corp. submits its petition for temporary waiver of

sanctions under Sections 37.4.1.2 and 37.4.3.2 of the CAISO Tariff.
Filed Date: July 12, 2006.
Accession Number: 20060720-0067.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 2, 2006.
Docket Numbers: ER06-1253-000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to Section 40 of its OAT&EM Tariff, Third Revised Volume No. 1.
Filed Date: July 17, 2006.
Accession Number: 20060718-0154.
Comment Date: 5 p.m. Eastern Time on Monday, August 7, 2006.
Docket Numbers: ER06-1254-000.
Applicants: Midwest Independent Transmission System Operator, Inc.; Midwest ISO Transmission Owners.
Description: Midwest ISO Transmission Owners, *et al.*, submit proposed revisions to Section 4.6.3 of the Agreement with Midwest ISO Balancing Authorities relating to implementation of TEMT, Rate Schedule No. 3.
Filed Date: July 17, 2006.
Accession Number: 20060718-0150.
Comment Date: 5 p.m. Eastern Time on Monday, August 7, 2006.
Docket Numbers: ER06-1255-000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits a notice of cancellation for its Interconnection Service Agreement with AC Landfill Energy, LLC and Atlantic City Electric Co.
Filed Date: July 17, 2006.
Accession Number: 20060718-0149.
Comment Date: 5 p.m. Eastern Time on Monday, August 7, 2006.
Docket Numbers: ER06-1256-000.
Applicants: GenWest, LLC.
Description: GenWest, LLC submits its notice of cancellation of FERC Electric Tariff, Original Volume 2, effective August 1, 2006.
Filed Date: July 17, 2006.
Accession Number: 20060718-0151.
Comment Date: 5 p.m. Eastern Time on Monday, August 7, 2006.
Docket Numbers: ER06-1257-000.
Applicants: Covanta Essex Company.
Description: Covanta Essex Co. submits First Revised Sheet 1 *et al.* to FERC Electric Tariff, Original Volume 2 pursuant to section 205 of the Federal Power Act.
Filed Date: July 17, 2006.
Accession Number: 20060718-0152.
Comment Date: 5 p.m. Eastern Time on Monday, August 7, 2006.
Docket Numbers: ER06-1258-000.

Applicants: Indiana Michigan Power Company.
Description: Indiana Michigan Power submits a Cost-Based Formula Rate Agreement for Full Requirements Electric Service dated June 13, 2006 with Wabash Valley Power Association, Rate Schedule 112.
Filed Date: July 18, 2006.
Accession Number: 20060719-0062.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 8, 2006.
Docket Numbers: ER06-1259-000.
Applicants: Southern Company Services, Inc.
Description: Southern Company Services, Inc., as agent for Alabama Power *et al.*, submits an unexecuted amendment to the Agreement for Network Integration Transmission Service for Alabama Municipal Electric Authority, under its OATT, Fourth Revised Volume No. 5.
Filed Date: July 17, 2006.
Accession Number: 20060721-0176.
Comment Date: 5 p.m. Eastern Time on Monday, August 7, 2006.
 Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.
 The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.
 Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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. E6-12249 Filed 7-28-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 25, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Number: EC06-129-000.

Applicants: Capital Research and Management Company.

Description: Capital Research and Management Co submits additional materials to their 6/1/06 application for authorization to acquire securities.

Filed Date: 07/21/2006.

Accession Number: 20060725-0108.

Comment Date: 5 p.m. Eastern Time on Friday, August 11, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Number: ER05-406-001; EL02-15-000.

Applicants: Williams Power Company, Inc.

Description: Williams Power Company, Inc. submits an Electric Refund Report in compliance with Offer of Settlement issued 3/21/06.

Filed Date: 07/20/2006.

Accession Number: 20060720-5050.

Comment Date: 5 p.m. Eastern Time on Thursday, August 10, 2006.

Docket Number: ER05-1129-001.

Applicants: Rockingham Power, LLC.

Description: Rockingham Power LLC submits its response in compliance with the Commission's Order issued 6/21/06.

Filed Date: 07/21/2006.

Accession Number: 20060725-0061.

Comment Date: 5 p.m. Eastern Time on Friday, August 11, 2006.

Docket Number: ER05-1396-002.

Applicants: Covanta Essex Company.

Description: Covanta Essex Co submits its triennial market power update report.

Filed Date: 04/18/2006.

Accession Number: 20060426-0248.

Comment Date: 5 p.m. Eastern Time on Friday, August 04, 2006.

Docket Number: ER06-1205-001.

Applicants: 330 Fund I, L.P.

Description: 330 Fund I, LP submits supplemental information to its initial rate application filed 6/30/06.

Filed Date: 07/21/2006.

Accession Number: 20060721-5065.

Comment Date: 5 p.m. Eastern Time on Friday, August 04, 2006.

Docket Number: ER06-1232-001.

Applicants: EPIC NJ/PA, L.P.

Description: EPIC NJ/PA, LP submits an amendment to its application for market based rate authority filed 7/6/06.

Filed Date: 07/21/2006.

Accession Number: 20060725-0065.

Comment Date: 5 p.m. Eastern Time on Friday, August 11, 2006.

Docket Numbers: ER06-1264-000; EL06-74-000.

Applicants: Generation Power, Inc.

Description: Generation Power, Inc. submits a Motion to Terminate Market-Based Rate Authority and To Terminate Proceedings.

Filed Date: 07/10/2006.

Accession Number: 20060709-5001.

Comment Date: 5 p.m. Eastern Time on Monday, July 31, 2006.

Docket Number: ER06-1271-000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits a report of the recommended allocations of cost responsibility for transmission upgrades and revised tariffs sheets to Schedule 12-appendix of the Tariff.

Filed Date: 07/21/2006.

Accession Number: 20060725-0066.

Comment Date: 5 p.m. Eastern Time on Friday, August 11, 2006.

Docket Number: ER06-1272-000.

Applicants: Reliant Energy Power Supply, LLC.

Description: Reliant Energy Power Supply, LLC submits its application for an order accepting rates, Electric Tariff, Original Volume 1, for filing and for certain waivers and blanket approvals.

Filed Date: 07/21/2006.

Accession Number: 20060725-0106.

Comment Date: 5 p.m. Eastern Time on Friday, August 11, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211

and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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. E6-12260 Filed 7-28-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. PF05-16-000]

Iroquois Pipeline Operating Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Brookhaven Lateral Project, Request for Comments on Environmental Issues and Notice of Scoping Meeting

July 21, 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 Iroquois Pipeline Operating Company's (Iroquois) planned Brookhaven Lateral, located on Long Island, in Suffolk County, New York. This notice announces the opening of the scoping process we¹ will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on August 25, 2006.

Comments may be submitted in written form or presented verbally at the public meeting listed below. Further details on how to submit written comments are provided in the public participation section of this notice. In lieu of sending written comments, you are invited to attend the public scoping meeting, scheduled as follows:

Thursday, August 10, 2006, 6:30 p.m. (EST): Islandia Marriott Long Island, 3635 Express Drive North, Islandia, New York 11749, 631-232-3000.

This notice is being sent to affected landowners; federal, state, and local government representatives and agencies; environmental and public interest groups; Indian tribes and Native American groups; other interested parties in this proceeding; 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.

Summary of the Proposed Project

Iroquois proposes to expand its natural gas transmission system to provide about 50 dekatherms per day of natural gas to the planned Caithness Energy Center (Caithness Project) by April 2008. The Long Island Power

Authority (LIPA) selected the Caithness Project, to be located in the Town of Brookhaven, to meet the growing electric power needs of its customers. The Caithness Project would consist of a new, approximate 350 megawatt combined cycle natural gas and oil-fired electric generation facility. The Caithness Project is not under the jurisdiction of the FERC, and is in the process of obtaining necessary federal, state, and local permits prior to construction and operation. LIPA asked Iroquois to provide natural gas to the Caithness Project. Therefore, Iroquois requested that the Commission review its proposal to construct and operate the following facilities:

- Approximately 21.1 miles of 24-inch-diameter underground steel natural gas pipeline, extending from the current terminus of Iroquois' existing system at the South Commack Meter Station in Smithtown to the site of the proposed Caithness Project near the hamlet of Yaphank, New York; and

- Six mainline block valves, a pig launcher at the South Commack Meter Station, and a pig receiver and new custody transfer meter station at the eastern end of the pipeline, at the Caithness Project site.

A map depicting the general location of Iroquois' proposed facilities and alternate pipeline routes is attached as Appendix 1.²

Currently Identified Environmental Issues

At this time no formal application has been filed by Iroquois with the FERC. For this project, the FERC staff has initiated its review to comply with the National Environmental Policy Act (NEPA) prior to receiving the application. The purpose of our NEPA Pre-Filing Environmental Review Process is to involve interested stakeholders early in project planning and to identify and resolve issues before an application is filed with the FERC.

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities, environmental information provided by Iroquois, and comments received from the public or governmental agencies. This preliminary list of issues may be changed based on your comments and our analysis.

²The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of the appendices are available at the Commission's Public Reference Room, 888 First Street NE., Washington DC 20426, or call (202) 502-8371. Copies of the appendices were sent to all those receiving this notice in the mail.

- Accommodation or permission needed from the New York Department of Parks and New York Department of Transportation to allow the pipeline to cross the control access line easement acquired with funds from the Federal Highway Administration along the Sunken Meadow Parkway (milepost [MP] 0.4), the Northern State Parkway (MP 1.5), and the Long Island Expressway (LIE, I-495, MP 13);

- Potential use of temporary extra work spaces outside of the existing easement for the LIPA power line, between about MP 3 and MP 12.5, and potential affects from construction of the proposed pipeline on residences and schools adjacent to the LIPA easement;

- Potential affects on residences and commercial businesses along Long Island Avenue between about MP 13.5 and MP 18.5;

- Feasibility of using horizontal directional drills to cross under the Northern State Parkway (MP 1.5), Simeon Woods and Wheeler Road (MP 4.8), Veterans Memorial Highway (MP 6.5), Hyatt Golf Club Access Road (MP 7.7), Patchogue Road (MP 11.7); and the LIE (MP 13); and

- Potential impacts on federal or state-listed rare, threatened, endangered, or protected species, and cultural resources.

The EA Process

The FERC will use the EA to consider the environmental impacts that could result if it issues Iroquois a Certificate of Public Convenience and Necessity. This notice formally announces our preparation of the EA and the beginning of the process referred to as "scoping." We are soliciting input from the public and interested agencies to help us focus the analysis in the EA on the potentially significant environmental issues related to the proposed action.

Our independent analysis of the issues will be included in an EA that will be prepared for the project. Our evaluation will also include possible alternatives to the proposed project or portions of the project, and we will make recommendations on how to lessen or avoid impacts on the various resource areas of concern.

The EA will be mailed to federal, state, and local government agencies; elected officials; environmental and public interest groups; Indian tribes and Native American groups; affected landowners; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 30-day comment period will be allotted for review of the EA. We will consider all comments submitted on the EA in our recommendations to

¹The terms "we," "us," or "our" refer to the environmental staff of the Office of Energy Projects at the FERC.

the Commission for an Order that is issued for the project.

We are currently involved in discussions with other governmental agencies to identify their issues and concerns. These agencies include the U.S. Army Corps of Engineers; U.S. Environmental Protection Agency (EPA); U.S. Fish and Wildlife Service (FWS); U.S. Department of Transportation; New York State Department of Environmental Conservation; New York State Department of Parks, Recreation and Historic Preservation; New York State Department of Transportation; Suffolk County; and the Town of Huntington. The EPA and FWS have agreed to be cooperating agencies in the production of the EA. By this notice, we are asking any other federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposals. Your comments should focus on the potential environmental effects, reasonable alternatives 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 mail your comments so that they will be received in Washington, DC on or before August 25, 2006 and carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of OEP/DG2E/Gas Branch 3, PJ-11.3; and
- Reference Docket No. PF05-16-000 on the original and both copies.

Please note that the Commission encourages electronic filing of comments. See 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at <http://www.ferc.gov> under the "eFiling" link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on "Login to File"

and then "New User Account." You will be asked to select the type of filing you are making. This filing is considered a "Comment on Filing."

When Iroquois submits its application for authorization to construct and operate the Brookhaven Lateral Project, the Commission will publish a Notice of Application in the **Federal Register** and will establish a deadline for interested persons to intervene in the proceeding. Because our Pre-filing Environmental Review Process occurs before an application to begin a proceeding is officially filed, you may not request intervenor status at this time. Petitions to intervene during the Pre-filing process are premature and will not be accepted by the Commission.

Environmental Mailing List

If you wish to remain on the environmental mailing list, and receive a copy of the EA, please return the Mailing List Retention Form included in Appendix 2. If you do not return this form, you will be taken off our 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, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" (i.e., PF05-16—you do not need the last three numbers [000] in the docket), and follow the instructions. Searches may also be done using the phrase "Brookhaven Lateral" in the "Text Search" field. For assistance with access to eLibrary, the helpline can be reached at 1-866-208-3676, TTY (202) 502-8659, or at FERCOnlineSupport@ferc.gov. 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, Iroquois has established a project-specific Internet Web site at

<http://www.iroquois.com/new-Internet/igts/Brookhaven/brookhaven.asp>.

Iroquois' Brookhaven Lateral Web site includes a project description, public participation, answers to frequently asked questions, and links. For additional data, call Ruth Parkins, Iroquois Public Relations Representative, at 203-925-7209, or e-mail: brookhaven_project@iroquois.com.

Magalie R. Salas,

Secretary.

[FR Doc. E6-12237 Filed 7-28-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2216-066]

New York Power Authority; Notice of Intent To Hold Public Meetings

July 21, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the Niagara Project No. 2216-066, located on the Niagara River, in Niagara County, New York, and issued a draft Environmental Impact Statement (EIS) for the project on July 14, 2006.

Copies of the draft EIS are available for review at the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426 or may be viewed on the Commission's Web site at <http://www.ferc.gov> under the e-Library link by entering the docket number, P-2216, in the e-Library docket number field. For assistance, e-mail FERC Online Support at FERCOnlineSupport@ferc.gov or call toll-free at 1-866-208-3676, or for TTY, (202) 502-8659.

You are invited to attend either one or both of two public meetings that will be held to receive comments on the draft EIS. The time and location of the meetings are as follows:

Date: August 17, 2006.

Time: 2 to 4 pm and 7 to 9 pm (EST).

Place: Niagara Falls High School Amphitheater.

Address: 4455 Porter Road, Niagara Falls, NY 14205.

At these meetings, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the draft EIS. The meetings will be recorded by a court reporter, and all statements (verbal and written) will become part of the Commission's public record for the project. These meetings are posted on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx> along with other related information.

Whether, or not you attend one of these meetings, you are invited to submit written comments on the draft EIS. Comments should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. All comments must be filed by September 19, 2006, and should reference Project No. 2216-066. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Library" link.

The Commission staff will consider comments made on the draft EIS in preparing a final EIS for the project. Before the Commission makes a licensing decision, it will take into account all concerns relevant to the public interest. The final EIS will be part of the record from which the Commission will make its decision.

For further information, contact Steve Kartalia at (202) 502-6131 or at Stephen.Kartalia@ferc.gov.

Magalie R. Salas,
Secretary.

[FR Doc. E6-12236 Filed 7-28-06; 8:45 am]
BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8204-3]

Science Advisory Board Staff Office

Notification of an Upcoming Closed Meeting of the Science Advisory Board's Scientific and Technological Achievement Awards Committee—Closed Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency's (EPA), Science Advisory Board (SAB) Staff Office announces a closed meeting of the SAB's Scientific and Technological Achievement Awards Committee to recommend to the Administrator the recipients of the Agency's 2006 Scientific and Technological Achievement Awards.

DATES: August 21-23, 2006.

ADDRESSES: This closed meeting will take place at the U.S. Environmental Protection Agency (EPA), Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Members of the public who wish to obtain further information regarding this announcement may contact Ms. Vivian Turner, Designated Federal Officer, by telephone: (202) 343-9697 or e-mail at: turner.vivian@epa.gov.

The SAB mailing address is: U.S. EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB as well as any updates concerning the meeting announced in this notice, may be found in the SAB Web site at: http://www.epa.gov/sab/panels/staa_rev_panel_fy2006-fy2009.htm.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), EPA has determined that the meeting will be closed to the public. The purpose of the meeting is for the SAB to recommend to the Administrator the recipients of the Agency's 2006 Scientific and Technological Achievement Awards. These awards are established to honor and recognize EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, as exhibited by publication of their results in peer reviewed journals. This meeting is closed to the public because it is concerned with selecting which employees are deserving of awards, a personnel matter with privacy concerns, which is exempt from public disclosure pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6). In accordance with the provisions of the Federal Advisory Committee Act, minutes of the meeting will be kept for Agency and Congressional review.

Dated: July 25, 2006.

Stephen L. Johnson,
Administrator.

[FR Doc. E6-12214 Filed 7-28-06; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2006-0597; FRL-8204-5]

Proposed Approval of the Advanced Mixed Waste Treatment Project's Transuranic Waste Characterization Program at Idaho National Laboratory

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency ("EPA" or "we") is announcing the availability of, and soliciting public comments for 45 days on, the proposed approval of the radioactive, transuranic ("TRU") waste characterization program implemented by the Advanced Mixed Waste Treatment Project ("AMWTP") at Idaho National Laboratory ("INL"). This waste is intended for disposal at the Waste Isolation Pilot Plant ("WIPP") in New Mexico. In accordance with the WIPP Compliance Criteria, EPA evaluated the AMWTP/INL's characterization of TRU debris and solid waste from AMWTP/INL during an inspection conducted March 27-March 31, 2006. Using the systems and processes developed as part of the Department of Energy's ("DOE's") Carlsbad Field Office ("CBFO"), EPA verified whether DOE could adequately characterize TRU waste consistent with the Compliance Criteria. The results of EPA's evaluation of the AMWTP/INL program and the proposed approval are described in EPA's inspection report, which is available for review in the public dockets listed in **ADDRESSES**. We will consider public comments received on or before the due date mentioned in **DATES**.

This notice summarizes the waste characterization processes evaluated by EPA and EPA's proposed approval. As required by 40 CFR 194.8, at the end of a 45-day comment period, EPA will evaluate public comments received, finalize the report responding to the relevant public comments, and issue the final report and an approval letter to DOE's CBFO. Based on previous EPA inspections and approvals, AMWTP/INL is currently approved to dispose of debris and solid waste at WIPP. AMWTP/INL is permitted to continue waste characterization and disposal in accordance with prior site approvals

while EPA establishes a baseline approval.

DATES: Comments must be received on or before September 14, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0597, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- E-mail: to a-and-r-docket@epa.gov
- Fax: 202-566-1741
- Mail: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Instructions: Direct your comments to Attn: Docket ID No. EPA-HQ-OAR-2006-0597. The Agency's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as

copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at www.regulations.gov or in hard copy at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202-566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742. These documents are also available for review in hard-copy form at the following three EPA WIPP informational docket locations in New Mexico: In Carlsbad at the Municipal Library, Hours: Monday-Thursday, 10 a.m.-9 p.m., Friday-Saturday, 10 a.m.-6 p.m., and Sunday, 1 p.m.-5 p.m., phone number: 505-885-0731; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: Vary by semester, phone number: 505-277-2003; and in Santa Fe at the New Mexico State Library, Hours: Monday-Friday, 9 a.m.-5 p.m., phone number: 505-476-9700. As provided in EPA's regulations at 40 CFR Part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Rajani Joglekar, Radiation Protection Division, Center for Federal Regulations, Mail Code 6608J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number: 202-343-9601; fax number: 202-343-2305; e-mail address: joglekar.rajani@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

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

1. **Submitting CBI.** Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the

public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. 102-579), as amended (Pub. L. 104-201), TRU waste consists of materials containing processes having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, Subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratories (LANL) until the EPA determines that the site has established and executed a quality

assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of Appendix A to 40 CFR part 194); and (2) (with the exception of specific, limited waste streams and equipment at LANL) prohibit shipment of TRU waste for disposal at WIPP (from LANL or any other site) until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of Appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8.

In July 2004, EPA promulgated changes to the "Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance with Disposal Regulations" (69 FR 42571–42583, July 16, 2004). These changes went into effect October 14, 2004, which modified the EPA approval of waste characterization ("WC") programs at DOE's TRU waste sites. These revisions provide equivalent or improved oversight and better prioritization of technical issues in EPA inspections to evaluate WC activities at DOE WIPP waste generator sites, and also offer more direct public input into the Agency's decisions about what waste can be disposed of at WIPP. They do not modify the technical approach that EPA has employed since the 1998 WIPP Certification Decision.

Condition 3 of the WIPP Certification Decision requires that EPA conduct independent inspections at DOE's waste generator/storage sites of their TRU waste characterization capabilities before approving their program and the waste for disposal at the WIPP. The revised inspection and approval process gives EPA greater (a) discretion in establishing technical priorities, (b) ability to accommodate variation in the site's waste characterization capabilities, and (c) flexibility in scheduling site WC inspections. The § 194.8 changes require that EPA conduct a baseline inspection at every previously approved TRU site (such as AMWTP/INL). EPA expects that within two years after the effective date of October 2004 most of the previously approved TRU sites (such as Hanford, Los Alamos CCP, and Savannah River Site CCP) will undergo EPA baseline inspections. Following these inspections, the Agency will issue a new baseline compliance decision for these sites.

As part of the baseline inspection, EPA must evaluate each WC process component (equipment, procedures, and personnel training/experience) for its adequacy and appropriateness in

characterizing TRU waste destined for the disposal at WIPP. During the inspection, the site demonstrates its capabilities to characterize TRU waste(s) and its ability to comply with the regulatory limits and tracking requirements under § 194.24. The baseline inspection can result in approval with limitations/conditions or may require follow-up inspection(s) before approval. The approval must specify what subsequent WC program changes or expansion should be reported to EPA. The Agency is required to assign Tier 1 ("T1") and Tier 2 ("T2") to the reportable changes depending on their potential impact on data quality. A T1 designation requires that the site must notify EPA of proposed changes to the approved components of an individual WC process (such as radioassay equipment or personnel), and EPA must also approve the change before it can be implemented. A WC element with a T2 designation allows the site to implement changes to the approved components of individual WC processes (such as visual examination procedures) but requires EPA notification. The Agency may choose to inspect the site to evaluate technical adequacy before approval. EPA inspections conducted to evaluate T1 or T2 changes are follow-up inspections under the authority of § 194.24(h). In addition to the follow-up inspections, if warranted, EPA may opt to conduct continued compliance inspections at TRU waste sites with a baseline approval under the authority of § 194.24(h).

The revisions to the site inspection and approval process outlined in § 194.8 require EPA to issue a **Federal Register** notice proposing the baseline compliance decision, docket the inspection report for public review, and seek public comment on the proposed decision for a period of 45 days. The report must describe the WC processes EPA inspected at the site, as well as their compliance with § 194.24 requirements.

III. Proposed Baseline Compliance Decision

From March 27—March 31, 2006, EPA performed a baseline inspection of TRU waste characterization activities of DOE's AMWTP at INL (EPA Inspection No. EPA-AMWTP-03.06-8).

The purpose of EPA's inspection was to verify that AMWTP is characterizing CH TRU retrievably-stored debris waste (S5000) and solid waste (S3000), as well as CH TRU newly-generated debris waste (S5000), from INL properly and in compliance with the regulatory requirements at 40 CFR 194.24. During

the inspection, EPA also evaluated AMWTP's use of the WIPP Waste Information System ("WWIS") for tracking the contents of CH TRU waste containers destined for disposal at WIPP. This tracking ensures that the volume emplaced in the WIPP repository and characteristics of the emplaced wastes conform to the requirements of the WIPP LWA and the specific conditions of the WIPP Certification Decision.

During the inspection, EPA evaluated the adequacy, implementation, and effectiveness of AMWTP/INL's waste characterization activities. The Agency's evaluation focused on the individual components—equipment, procedures, and personnel training/experience of the following waste characterization processes: acceptable knowledge ("AK"), nondestructive assay ("NDA"), visual examination techniques ("VET"), visual examination/real-time radiography ("VE/RTR"), load management, and the WWIS. The overall program adequacy and effectiveness of AMWTP/INL was based on DOE-provided upper-tier documents.

EPA evaluated the waste characterization processes at AMWTP/INL for specific CH TRU waste categories, as follows:

- Acceptable knowledge (AK) and load management for CH retrievably-stored and newly-generated TRU debris waste (S5000) and retrievably-stored solids (S3000)
 - Visual examination technique (VET) for CH newly-generated debris waste (S5000)
 - Visual examination (VE) as quality control (QC) check of real-time radiography (RTR) and VE in lieu of RTR for CH retrievably-stored TRU debris waste (S5000) and solids (S3000)
 - RTR for CH retrievably-stored TRU debris waste (S5000) and solids (S3000)
 - Nondestructive assay (NDA) and the WIPP Waste Information System (WWIS) for CH retrievably-stored and newly-generated TRU debris waste (S5000) and retrievably-stored solids (S3000) for Integrated Waste Assay System (IWAS) units Z-211-102 and -103, and CH retrievably-stored and newly-generated TRU debris waste (S5000) only for IWAS units Z-390-100 and -101
 - Debris waste that has been removed from standard waste boxes and damaged 55-gallon drums, repackaged in 55-gallon drums for supercompaction
- Four NDA IWAS units were evaluated. IWAS units Z-211-102 and -103 were evaluated for characterizing debris (S5000) and solid (S3000) wastes. IWAS units Z-390-100 and 101 were

evaluated for characterizing debris (S5000) only.

In addition to reviewing individual components (namely, procedures, and equipment) of each of the WC processes (AK, NDA, VET, VE/RTR, load management, and the WWIS), the Agency interviewed and reviewed training records of personnel responsible for compiling data, analyzing waste contents, operating equipment, and preparing data for WWIS tracking. EPA also required radioassay replicate analysis on selected containers from the population of previously analyzed waste containers on the same system or instrument for the two different waste categories. The purpose of this replicate testing is to provide EPA with an independent means to verify that the radioassay equipment being assessed for approval can provide consistent, reproducible results for the determination of the quantity of 10 WIPP-tracked radionuclides (241Am, 137Cs, 238Pu, 239Pu, 240Pu, 242Pu, 90Sr, 233U, 234U, and 238U) as well as TRU alpha concentration. The results of the replicate analysis help EPA to determine whether:

- The instrument produces results consistent with the reported total

measurement uncertainty (“TMU”) by comparing the sample standard deviation for a number of replicate measurements taken over several hours or days to the reported TMU.

- The instrument provides reproducible results over longer periods of time, such as weeks or months, by comparing the results of the replicate measurement(s) to the original reported values.

EPA’s inspection team did not identify any findings or concerns during the inspection, and determined that AMWTP/INL’s WC program activities were technically adequate. EPA is proposing to approve the AMWTP—INL WC program in the configuration observed during this inspection and described in this report and in the checklists in Attachment A. This proposed approval includes the following waste characterization activities:

- (1) The AK and load management process for CH retrievably-stored TRU debris and solids.
- (2) Two NDA systems (IWAS units Z-211-102 and Z-211-103) for assaying CH retrievably-stored or newly-generated debris and solid wastes in both 55- and 85-gallon containers.
- (3) Two NDA systems (IWAS units Z-390-100 and Z-390-101) for assaying

only CH retrievably-stored or newly-generated debris wastes in 55-gallon containers.

- (4) VE as a QC check of the RTR process for retrievably-stored debris and solid wastes, including VE performed in lieu of RTR.

- (5) The VET process for newly-generated debris wastes.

- (6) RTR for retrievably-stored S5000 debris and S4000 solid wastes.

- (7) The WWIS for the purpose of data transfer and tracking waste contents of debris and solid wastes including 100-gallon overpack containers.

As required by the new § 194.8 revisions, EPA has assigned specific requirements for reporting changes to an approved waste characterization program. As seen from the table below, Tier 1 changes require EPA approval prior to implementation of the change and may require EPA inspection to determine technical adequacy. Tier 2 changes may be implemented prior to EPA approval; however, this type of change must be reported to EPA quarterly. Any changes to WC activities from the date of the baseline inspection must be reported to and, if applicable, approved by EPA, according to the following table:

TABLE 1.—PROPOSED TIERING OF TRU WC PROCESSES IMPLEMENTED BY AMWTP

[Based on March 28–30, 2006, Baseline Inspection]

WC process elements	AMWTP WC process specific T1 changes	AMWTP WC process specific T2 changes*	AMWTP general T2 changes*
AK including Load Management.	Any new waste category Changes to WWIS algorithms specific to load management.	Waste Stream Profile Forms, including updates or additions to waste stream(s) within an approved waste category (see Section 8.1). Changes in load management status of approved waste stream(s).	Changes to site procedures requiring approvals by the Carlsbad Field Office (CBFO) and other changes as discussed in Section 8.1 of this report.
NDA	New equipment or physical modifications to approved equipment.** Changes to approved calibration range for approved equipment (see Section 8.2).	Changes to software for approved equipment (see Section 8.2). Changes to operating range(s) upon CBFO approval.	Changes to site procedures requiring CBFO approvals and other changes as discussed in Section 8.2 of this report.
RTR	N/A	New equipment or changes to approved equipment.	Changes to site procedures requiring CBFO approvals and other changes as discussed in Section 8.3 of this report.
VE and VET	Changes in vendor performing VE and/or VET.	Addition of new waste category Addition of new procedure or site equipment identifier.	Changes to site procedures requiring CBFO approvals and other changes as discussed in Section 8.4 of this report.
WWIS	N/A	N/A	Changes to site procedures requiring CBFO approvals and other changes as discussed in Section 8.5 of this report.

* Upon receiving EPA approval, AMWTP will report all T2 changes to EPA every three months.

** Modifications to approved equipment include all changes with the potential to affect NDA data relative to waste isolation, and exclude minor changes such as the addition of safety-related equipment.

EPA will notify the public of its evaluation results for proposed Tier 1

(T1) and Tier 2 (T2) changes on the EPA Web site and by sending e-mails to the

WIPP-NEWS list (see Section 2.0, below, for a brief discussion of tiering).

All T1 changes that are submitted for approval before their implementation will be evaluated by EPA and, upon approval, EPA will post the evaluation results on the EPA Web site and the WIPP-NEWS list, as described above. EPA will post T2 changes approximately every three months beginning with the date of EPA's approval of the TRU WC program implemented at AMWTP/INL. EPA expects the first report of T2 changes at AMWTP/INL approximately three months from the FR notice accompanying this report.

The scope of the AMWTP baseline is based on EPA's inspection of the WC system of controls. EPA will not approve any changes to the AMWTP program until after EPA issues the baseline approval. AMWTP is currently approved to dispose of retrievably-stored and newly-generated debris (S5000) and retrievably-stored solid (S3000) wastes at the WIPP, and AMWTP is permitted to continue WC and disposal in accordance with prior site approvals during the period before EPA approves the final baseline.

IV. Availability of the Baseline Inspection Report for Public Comment

EPA has placed the report discussing the results of EPA's inspection of AMWTP at INL in the public docket as described in **ADDRESSES**. In accordance with 40 CFR 194.8, EPA is providing the public 45 days to comment on these documents. The Agency requests comments on the tiering designations and the proposed approval decision. EPA will accept public comment on this notice and supplemental information as described in Section 1.B. above. The EPA will not make a determination of compliance before the 45-day comment period ends. At the end of the public comment period, EPA will evaluate all relevant public comment and revise the inspection report as necessary. The Agency will then issue an approval letter and the final inspection report, both of which will be posted on the WIPP Web site. The letter of approval will allow AMWTP to use the approved TRU waste characterization processes to characterize waste at INL.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A-93-02 and is available for review in Washington, DC, and at the three EPA WIPP informational docket locations in New Mexico (as listed in **ADDRESSES**). The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air

Docket since the October 1992 enactment of the WIPP LWA.

Dated: July 11, 2006.

Barnes Johnson,

Acting Director, Office of Radiation and Indoor Air.

[FR Doc. E6-12215 Filed 7-28-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8204-6; Docket ID No. EPA-HQ-ORD-2004-0018]

Draft Air Quality Criteria for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period on Revised Integrative Synthesis Chapter and Executive Summary.

SUMMARY: The EPA is announcing a public comment period for revised Integrative Synthesis and Executive Summary chapters from the draft document titled, "Air Quality Criteria for Lead; Second External Review Draft" (EPA/600/R-05/144aB-bB). The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development.

EPA is releasing these draft chapters solely for the purpose of seeking public comment and for review by the Clean Air Scientific Advisory Committee (CASAC) via a teleconference meeting to be held on August 15, 2006 (time and phone number to be specified in a separate **Federal Register** notice). It does not represent and should not be construed to represent any Agency policy, viewpoint, or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The public comment period begins on or about August 1, 2006, and ends August 15, 2006. Comments must be received on or before August 15, 2006.

ADDRESSES: The revised Integrative Synthesis and Executive Summary chapters from the draft "Air Quality Criteria for Lead; Second External Review Draft" will be available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at <http://www.epa.gov/ncea>. A limited number of CD-ROM or paper copies will be available. Contact Ms. Diane Ray by phone (919-541-3637), fax (919-541-1818), or e-mail (ray.diane@epa.gov) to request either of

these, and please provide your name, your mailing address, and the document title, "Air Quality Criteria for Lead; Second External Review Draft," (EPA/600/R-05/144aB-bB) to facilitate processing of your request.

Comments may be submitted electronically via www.regulations.gov, by mail, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202-566-1752; or e-mail: ORD.Docket@epa.gov.

For technical information, contact Lori White, PhD., NCEA; telephone: 919-541-3146; facsimile: 919-541-1818; or e-mail: white.lori@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Information about the Project/Document

Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants that "may reasonably be anticipated to endanger public health and welfare" and to issue air quality criteria for them. These air quality criteria are to (accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air* * *." Under section 109 of the Act, EPA is then to establish National Ambient Air Quality Standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109(d) of the Act requires subsequent periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised criteria.

Lead is one of six "criteria" pollutants for which EPA has established air quality criteria and NAAQS. On November 9, 2004 (69 FR 64926), EPA formally initiated its current review of the criteria and NAAQS for lead, requesting the submission of recent scientific information on specified topics. A draft of EPA's "Project Work Plan for Revised Air Quality Criteria for Lead" (NCEA-R-1465) was released on January 7, 2005, for public comment (70 FR 1439) and was discussed by the Clean Air Scientific Advisory Committee (CASAC) via a publicly accessible March 28, 2005, teleconference consultation (70 FR

11629). On July 15, 2005 (70 FR 41007), several workshops were announced to discuss, with invited recognized scientific experts, initial draft materials that dealt with various lead-related issues being addressed in the draft AQCD for lead. These workshops were held August 4–5, 16–18, and 17–19, 2005. The first external review draft of the Air Quality Criteria for Lead, EPA/600/R-05/144aA–bA, was announced in the **Federal Register** on December 2, 2005 (70 FR 72300). The CASAC Lead Review Panel reviewed the first external review draft at a public meeting on February 28 and March 1, 2006.

Release of the second external review draft of the Air Quality Criteria for Lead, EPA/600/R-05/144aB–bB, was announced in the **Federal Register** on May 19, 2006 (71 FR 29152). The CASAC Lead Review Panel reviewed the second external review draft at a public meeting on June 28–29, 2006. EPA is now releasing revised Integrative Synthesis and Executive Summary chapters for public and CASAC review. EPA has considered the comments of the CASAC review panel and of the public in preparing both the Second External Review Draft of the Air Quality Criteria for Lead and these revised Integrative Synthesis and Executive Summary chapters.

After the end of the comment period on the revised Integrative Synthesis and Executive Summary chapters for the Air Quality Criteria for Lead, Second External Review Draft, EPA will present the draft at a public meeting for review by CASAC. Public comments received will be provided to the CASAC review panel. There will be a **Federal Register** notice to inform the public of the exact date and time of that CASAC meeting.

II. How to Submit Technical Comments to the Docket at www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2004–0018, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- E-mail: ORD.Docket@epa.gov.
- Mail: Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center (Mail Code 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday,

excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752. Deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA’s **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at www.epa.gov/epahome/dockets.htm for current information on docket operations, locations and telephone numbers. The Docket Center’s mailing address for U.S. mail and the procedure for submitting comments to www.regulations.gov are not affected by the flooding and will remain the same.

If you provide information in writing, please submit one unbound original, with pages numbered consecutively, and three copies. For attachments, provide an index, number pages consecutively with the main text, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2004–0018. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the included information is claimed as Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may

not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the OEI Docket at the EPA Headquarters Docket Center.

Dated: July 25, 2006.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E6–12216 Filed 7–28–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank

holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 25, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Capitol Bancorp Ltd., and Capital Development Bancorp Limited V*, both of Lansing, Michigan; to acquire 51 percent of the voting shares of Ohio Commerce Bank, Beachwood, Ohio (in organization).

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. *Bank of Whitman Employee Stock Ownership Plan*, Colfax, Washington; to acquire 52 percent of the voting shares of Whitman Bancorporation, Colfax, Washington, and thereby indirectly acquire additional voting shares of Bank of Whitman, Colfax, Washington.

Board of Governors of the Federal Reserve System, July 26, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6-12187 Filed 7-28-06; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL TRADE COMMISSION

[File No. 051 0170]

In the Matter of Puerto Rico Association of Endodontists, Corp.; Analysis of Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 18, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to “Puerto Rico Association of Endodontists, Corp., File

No. 051 0170,” to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled “Confidential,” and must comply with Commission Rule 4.9(c), 16 CFR 4.9(c) (2006).¹ The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following e-mail box: consentagreement@ftc.gov. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

FOR FURTHER INFORMATION CONTACT:

Barbara Anthony, Director, and Leonard L. Gordon and Theodore Zang, Jr., Attorneys, FTC Northeast Region, New York (212) 607-2801, or (212) 607-2816.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been

¹ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 20, 2006), on the World Wide Web, at <http://www.ftc.gov/os/2006/07/index.htm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with Puerto Rico Association of Endodontists Corp. (“PRAE”). The agreement settles charges that PRAE violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating and implementing agreements among endodontist members of PRAE on price and other competitively significant terms; refusing or threatening to refuse to deal with payors except on collectively agreed-upon terms; and negotiating fees and other competitively significant terms with payors in contracts for PRAE’s member endodontists. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by PRAE that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint

The allegations of the complaint are summarized below.

PRAE is a nonprofit corporation, organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico ("Commonwealth" or "Puerto Rico"), with its office and principal place of business in San Juan, Puerto Rico.

PRAE has approximately 30 member endodontists, who are engaged in the business of providing professional services to patients throughout Puerto Rico. PRAE membership includes all or almost all of those professionals who are licensed practicing endodontists in the Commonwealth. Except to the extent that competition has been restrained, member endodontists of PRAE have been, and are now, in competition with each other for the provision of endodontic services.

In January 2003, PRAE formed a Pre-Payments Committee, which then began negotiating with payors on behalf of PRAE members in order to secure higher reimbursement rates for PRAE members. By March 2003, the PRAE Pre-Payments Committee had met with representatives of two payors and convinced those payors to increase the rates paid to PRAE members.

Also in March 2003, PRAE sent a letter to at least four insurance companies requesting a meeting "with the intention of revising the fees paid to Endodontists" that participate in the insurer's dental plan. Thereafter, the Pre-Payments Committee contacted these payors to urge them to raise their rates. In one such discussion, the payor representative informed the Committee member that the Committee's negotiation on behalf of PRAE members was illegal under the antitrust laws. In response, the PRAE representative informed the payor that other payors had been disinclined to accede to the rate increases proposed by the PRAE, and that those payors now were facing potential problems with their networks.

PRAE's efforts to negotiate higher rates from payors for its members succeeded. In response to the various efforts of PRAE's Pre-Payment Committee, in 2003 at least five payors raised the rates that they paid PRAE members.

In early 2004, PRAE's Pre-Payment Committee began a campaign to raise rates again, this time by seeking to end the payors' ban on balance billing.²

PRAE sought this change in contract terms to permit its members to raise the prices directly paid by patients and to avoid the cost-containment function of a ban on balance billing.

In furtherance of this plan, in early 2004, the PRAE Pre-Payments Committee contacted several payors to request that the payors waive their ban on balance billing. The Committee followed those discussions with a letter in June 2004, which the Committee sent to at least seven payors. The letter urges each payor to eliminate their ban on balance billing so that the payor did not have to absorb the price increase that the PRAE members desired. The letter states that waiver of the ban "could result in all Endodontists in Puerto Rico becoming dental participants of your Dental Plan since there would be no financial discrepancies. This could be of great usefulness in your marketing strategy." To emphasize the collective nature of the demand being made by the PRAE, and the potential risk to payors of failing to acquiesce to that demand, twenty-three members of PRAE co-signed the letter. The Pre-Payments Committee followed the letter with repeated phone calls to the payors urging an end to ban on balance billing. Thus far, the payors pressured by PRAE to end the ban on balance billing have resisted the coordinated action of PRAE.

PRAE engaged in no efficiency-enhancing integration sufficient to justify joint negotiation of fees or other terms. By the acts set forth in the Complaint, PRAE violated Section 5 of the FTC Act.

The Proposed Consent Order

The proposed order is designed to remedy the illegal conduct charged in the complaint and prevent its recurrence. The proposed order is similar to recent consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise fees they receive from health plans.

The proposed order's specific provisions are as follows:

Paragraph II.A prohibits PRAE from entering into or facilitating agreements among endodontists: (1) To negotiate on behalf of any endodontist with any payor; (2) to deal, refuse to deal, or threaten to refuse to deal with any payor; (3) regarding any term upon which any endodontist deals, or is willing to deal, with any payor; and (4) not to deal individually with any payor

or through any arrangement other than PRAE.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits PRAE from exchanging or facilitating the transfer of information among endodontists concerning any endodontist's willingness to deal with a payor, or the terms or conditions, including price terms, on which the endodontist is willing to deal. Paragraph II.C prohibits PRAE from attempting to engage in any action prohibited by Paragraphs II.A or II.B. Paragraph II.D prohibits PRAE from encouraging, pressuring or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A through II.C.

Paragraphs III.A and B require PRAE to distribute the complaint and order to its members, payors with which it has been in contact since the beginning of 2001, and specified others.

Paragraphs IV, V, and VI of the proposed order impose various obligations on PRAE to report or provide access to information to the Commission to facilitate monitoring PRAE's compliance with the order.

The proposed order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6-12253 Filed 7-28-06; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-06-0513]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-5960 or send an e-mail to omb@cdc.gov. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

Proposed Project

The second Injury Control and Risk Survey (ICARIS-2)—Phase 2—

² Endodontists entering into contracts with payors often agree to accept, as payment in full for services rendered, an agreed upon fee from the payor and co-payment from the subscriber. Where such a term is included in the payor-endodontist contract, the

endodontist agrees not to "balance bill" the patient for any balance or difference between the agreed upon payments and the endodontist's desired rate. Agreements not to balance bill reduce the cost of endodontic care to patients.

Reinstatement with change—The National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Injuries are a major cause of premature death and disability with associated economic costs of over 150 billion dollars in lifetime costs for persons injured each year. This project will use data from a telephone survey to measure injury-related risk factors and guide injury prevention and control priorities including those identified as priorities in *Healthy People 2010* objectives for the nation. This project will build on previous efforts.

The first Injury Control and Risk Survey (ICARIS), conducted in 1994, was a random digit dial telephone survey that collected injury risk factor and demographic data on 5,238 English- and Spanish-speaking adults (greater than or equal to 18 years old) in the

United States. Proxy data were collected on 3,541 children <15 years old. More than a dozen peer-reviewed scientific reports have been published from the ICARIS data on subjects including dog bites, bicycle helmet use, residential smoke detector usage and fire escape practices, attitudes toward violence, suicidal ideation and behavior, and compliance with pediatric injury prevention counseling.

The ICARIS survey was followed by the ICARIS–2 Phase-1 survey, which was initiated as a means for monitoring the injury risk factor status of the nation at the start of the millennium. ICARIS–2 Phase-1 was also conducted as a national telephone survey. Data collection on almost 10,000 respondents was completed in early 2003, and analyses are still ongoing.

The planned ICARIS–2 Phase-2 survey will be implemented to expand knowledge in areas that investigators

were previously unable to explore fully. Data will be collected on new aspects of topics covered in Phase-1 (such as firearm ownership and access, and suicide), and new questions will be introduced in areas that were not previously addressed, such as older adult mobility, the supervision of children, injury and disability, and the incidence of traumatic brain injury. The Phase-2 data will be analyzed in conjunction with ICARIS–2 Phase-1 data and the data from the original baseline ICARIS survey to measure changes in risk factors and to gauge the impact of injury prevention policies. The ICARIS–2 Phase-2 survey may also serve as the only readily available source of data to measure several of the *Healthy People 2010* injury prevention objectives. There are no costs to respondents other than their time. The total estimated annualized burden is 620 hours.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Ineligible	Screening	500	1	1/60
Unknown or unverified eligibility	Screening	900	1	0.5/60
Eligible but unable to reach	Screening	200	4	6/60
Eligible non-respondent	Screening	450	1	1.5/60
Partial interview	Screening and CATI	75	1	10/60
Completed interview	Screening and CATI	2,000	1	15/60

Dated: July 13, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–12218 Filed 7–28–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1530–N]

RIN 0938–AM46

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update—Notice

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice updates the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for

fiscal year (FY) 2007. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (the BBRA), the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (the BIPA), and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (the MMA), relating to Medicare payments and consolidated billing for SNFs.

DATES: *Effective Date:* This notice is effective on October 1, 2006.

FOR FURTHER INFORMATION CONTACT: Ellen Gay, (410) 786–4528 (for information related to the case-mix classification methodology).

Jeanette Kranacs, (410) 786–9385 (for information related to the development of the payment rates).

Bill Ullman, (410) 786–5667 (for information related to level of care determinations, consolidated billing, and general information).

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

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- ICD-9-CM International Classification of Diseases, Ninth Edition, Clinical Modification
- IFC Interim Final Rule with Comment Period
- MDS Minimum Data Set
- MEDPAR Medicare Provider Analysis and Review File
- MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173
- MSA Metropolitan Statistical Area
- NAICS North American Industrial Classification System
- OIG Office of the Inspector General
- OMB Office of Management and Budget
- OMRA Other Medicare Required Assessment
- PPI Producer Price Index
- PPS Prospective Payment System
- RAI Resident Assessment Instrument
- RAP Resident Assessment Protocol
- RAVEN Resident Assessment Validation Entry
- RFA Regulatory Flexibility Act, Pub. L. 96-354
- RHC Rural Health Clinic
- RIA Regulatory Impact Analysis
- RUG-III Resource Utilization Groups, Version III
- RUG-53 Refined 53-Group RUG-III Case-Mix Classification System
- SCHIP State Children's Health Insurance Program
- SIC Standard Industrial Classification System
- SNF Skilled Nursing Facility
- STM Staff Time Measurement
- UMRA Unfunded Mandates Reform Act, Pub. L. 104-4

implementation of a per diem PPS for SNFs, covering all costs (routine, ancillary, and capital-related) of covered SNF services furnished to beneficiaries under Part A of the Medicare program, effective for cost reporting periods beginning on or after July 1, 1998. In this notice, we are updating the per diem payment rates for SNFs for FY 2007. Major elements of the SNF PPS include:

- *Rates.* As discussed in section I.F.1 of this notice, we established per diem Federal rates for urban and rural areas using allowable costs from FY 1995 cost reports. These rates also included an estimate of the cost of services that, before July 1, 1998, had been paid under Part B but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. The rates are adjusted annually using a SNF market basket index, and also are adjusted by the hospital wage index to account for geographic variation in wages. We also apply a case-mix adjustment to account for the relative resource utilization of different patient types. This adjustment utilizes a refined, 53-group version of the Resource Utilization Groups, version III (RUG-III) case-mix classification system, based on information obtained from the required resident assessments using the Minimum Data Set (MDS) 2.0. Additionally, as noted in the August 4, 2005 final rule (70 FR 45028), the payment rates have also been affected at various times by specific legislative provisions, including section 101 of the BBRA, sections 311, 312, and 314 of the BIPA, and section 511 of the MMA.

- *Transition.* Under sections 1888(e)(1)(A) and (e)(11) of the Act, the SNF PPS included an initial, phased transition that blended a facility-specific rate (reflecting the individual facility's historical cost experience) with the Federal case-mix adjusted rate. The transition extended through the facility's first three cost reporting periods under the PPS, up to and including the one that began in FY 2001. Thus, the SNF PPS is no longer operating under the transition, as all facilities have been paid at the full Federal rate effective with cost reporting periods beginning in FY 2002. As we now base payments entirely on the adjusted Federal per diem rates, we no longer include adjustment factors related to facility-specific rates for the coming fiscal year.

- *Coverage.* The establishment of the SNF PPS did not change Medicare's fundamental requirements for SNF coverage. However, because the RUG-III classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted,

Abbreviations

In addition, because of the many terms to which we refer by abbreviation in this notice, we are listing these abbreviations and their corresponding terms in alphabetical order below

- ADL Activity of Daily Living
- ADS Acquired Immune Deficiency Syndrome
- ARD Assessment Reference Date
- BBA Balanced Budget Act of 1997, Pub. L. 105-33
- BBRA Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999, Pub. L. 106-113
- BIPA Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Pub. L. 106-554
- BLS Bureau of Labor Statistics
- CAH Critical Access Hospital
- CBSA Core-Based Statistical Area
- CFR Code of Federal Regulations
- CMS Centers for Medicare & Medicaid Services
- CPT (Physicians') Current Procedural Terminology
- DRA Deficit Reduction Act of 2005, Pub. L. 109-171
- DRG Diagnosis Related Group
- ECI Employment Cost Index
- FI Fiscal Intermediary
- FQHC Federally Qualified Health Center
- FR Federal Register
- FY Fiscal Year
- GAO Government Accountability Office
- HCPCS Healthcare Common Procedure Coding System
- HIT Health Information Technology

I. Background

Annual updates to the prospective payment system (PPS) rates for skilled nursing facilities (SNFs) are required by section 1888(e) of the Social Security Act (the Act), as added by section 4432 of the Balanced Budget Act of 1997 (BBA), and amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) relating to Medicare payments and consolidated billing for SNFs. Our most recent annual update occurred in a final rule (70 FR 45026, August 4, 2005) that set forth updates to the SNF PPS payment rates for fiscal year (FY) 2006. We subsequently published a correction notice (70 FR 57164, September 30, 2005) with respect to those payment rate updates.

A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

Section 4432 of the Balanced Budget Act of 1997 (BBA) amended section 1888 of the Act to provide for the

where possible, to coordinate claims review procedures with the output of beneficiary assessment and RUG—III classifying activities. This approach includes an administrative presumption that utilizes a beneficiary's initial classification in one of the upper 35 RUGs of the refined 53-group system to assist in making certain SNF level of care determinations, as discussed in greater detail in section II.E. of this notice.

- *Consolidated Billing.* The SNF PPS includes a consolidated billing provision that requires a SNF to submit consolidated Medicare bills to its fiscal intermediary for almost all of the services that its residents receive during the course of a covered Part A stay. In addition, this provision places with the SNF the Medicare billing responsibility for physical, occupational, and speech-language therapy that the resident receives during a noncovered stay. The statute excludes a small list of services from the consolidated billing provision (primarily those of physicians and certain other types of practitioners), which remain separately billable under Part B when furnished to a SNF's Part-A resident. A more detailed discussion of this provision appears in section IV. of this notice.

- *Application of the SNF PPS to SNF services furnished by swing-bed hospitals.* Section 1883 of the Act permits certain small, rural hospitals to enter into a Medicare swing-bed agreement, under which the hospital can use its beds to provide either acute or SNF care, as needed. For critical access hospitals (CAHs), Part A pays on a reasonable cost basis for SNF services furnished under a swing-bed agreement. However, in accordance with section 1888(e)(7) of the Act, these services furnished by non-CAH rural hospitals are paid under the SNF PPS, effective with cost reporting periods beginning on or after July 1, 2002. A more detailed discussion of this provision appears in section V. of this notice.

B. Requirements of the Balanced Budget Act of 1997 (BBA) for Updating the Prospective Payment System for Skilled Nursing Facilities

Section 1888(e)(4)(H) of the Act requires that we publish in the **Federal Register**:

1. The unadjusted Federal per diem rates to be applied to days of covered SNF services furnished during the FY.
2. The case-mix classification system to be applied with respect to these services during the FY.
3. The factors to be applied in making the area wage adjustment with respect to these services.

In the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to modifications in the RUG—III classification structure (see section II.E of this notice for a discussion of the relationship between the case-mix classification system and SNF level of care determinations).

This notice provides the annual updates to the Federal rates as mandated by the Act.

C. The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA)

There were several provisions in the BBRA that resulted in adjustments to the SNF PPS. We described these provisions in detail in the final rule that we published in the **Federal Register** on July 31, 2000 (65 FR 46770). In particular, section 101(a) of the BBRA provided for a temporary 20 percent increase in the per diem adjusted payment rates for 15 specified RUG—III groups. In accordance with section 101(c)(2) of the BBRA, this temporary payment adjustment expired on January 1, 2006, upon the implementation of case-mix refinements (see section I.F.1 of this notice). We included further information on BBRA provisions that affected the SNF PPS in Program Memorandums A-99-53 and A-99-61 (December 1999).

Also, section 103 of the BBRA designated certain additional services for exclusion from the consolidated billing requirement, as discussed in section IV. of this notice. Further, for swing-bed hospitals with more than 49 (but less than 100) beds, section 408 of the BBRA provided for the repeal of certain statutory restrictions on length of stay and aggregate payment for patient days, effective with the end of the SNF PPS transition period described in section 1888(e)(2)(E) of the Act. In the July 31, 2001 final rule (66 FR 39562), we made conforming changes to the regulations at § 413.114(d), effective for services furnished in cost reporting periods beginning on or after July 1, 2002, to reflect section 408 of the BBRA.

D. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA)

The BIPA also included several provisions that resulted in adjustments to the PPS for SNFs. We described these provisions in detail in the final rule that we published in the **Federal Register** on July 31, 2001 (66 FR 39562). In particular:

- Section 203 of the BIPA exempted critical access hospital (CAH) swing-

beds from the SNF PPS. We included further information on this provision in Program Memorandum A-01-09 (Change Request #1509), issued January 16, 2001, which is available online at www.cms.hhs.gov/transmittals/downloads/a0109.pdf.

- Section 311 revised the statutory update formula for the SNF market basket, and also directed us to conduct a study of alternative case-mix classification systems for the SNF PPS.
- Section 312 provided for a temporary 16.66 percent increase in the nursing component of the case-mix adjusted Federal rate for services furnished on or after April 1, 2001, and before October 1, 2002. The add-on is no longer in effect. This section also directed the General Accounting Office (GAO) to conduct an audit of SNF nursing staff ratios and submit a report to the Congress on whether the temporary increase in the nursing component should be continued. GAO issued this report (GAO-03-176) in November 2002.

- Section 313 repealed the consolidated billing requirement for services (other than physical, occupational, and speech-language therapy) furnished to SNF residents during noncovered stays, effective January 1, 2001. (A more detailed discussion of this provision appears in section IV. of this notice.)

- Section 314 corrected an anomaly involving three of the RUGs that the BBRA had designated to receive the temporary payment adjustment discussed above in section I.C. of this notice. (As noted previously, in accordance with section 101(c)(2) of the BBRA, this temporary payment adjustment expired upon the implementation of case-mix refinements on January 1, 2006.)

- Section 315 authorized us to establish a geographic reclassification procedure that is specific to SNFs, but only after collecting the data necessary to establish a SNF wage index that is based on wage data from nursing homes.

We included further information on several of the BIPA provisions in Program Memorandum A-01-08 (Change Request #1510), issued January 16, 2001, which is available online at www.cms.hhs.gov/transmittals/downloads/a0108.pdf.

E. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA)

The MMA included a provision that results in a further adjustment to the PPS for SNFs. Specifically, section 511 amended paragraph (12) of section 1888(e) of the Act to provide for a

temporary 128 percent increase in the PPS per diem payment for any SNF resident with Acquired Immune Deficiency Syndrome (AIDS), effective with services furnished on or after October 1, 2004. This special AIDS add-on was to remain in effect until “* * * such date as the Secretary certifies that there is an appropriate adjustment in the case mix * * *.” The AIDS add-on is also discussed in Program Transmittal #160 (Change Request #3291), issued on April 30, 2004, which is available online at www.cms.hhs.gov/transmittals/downloads/r160cp.pdf. As discussed in the SNF PPS final rule for FY 2006 (70 FR 45028, August 4, 2005), we did not address the certification of the AIDS add-on with the implementation of the case-mix refinements, thus allowing the temporary add-on payment created by section 511 of the MMA to continue in effect.

For the limited number of SNF residents that qualify for the AIDS add-on, implementation of this provision results in a significant increase in payment. For example, using 2004 data, we identified 909 SNF residents with a principal diagnosis code of 042 (“Human Immunodeficiency Virus (HIV) Infection”). The average payment per day for these residents was approximately \$385. For FY 2007, an urban facility with a resident with AIDS in the SSA RUG would have a case-mix adjusted payment of almost \$242.90 (see Table 4) before the application of the MMA adjustment. After an increase of 128 percent, this urban facility would receive a case-mix adjusted payment of approximately \$553.81.

In addition, section 410 of the MMA contained a provision that excluded from consolidated billing certain practitioner and other services furnished to SNF residents by rural health clinics (RHCs) and Federally Qualified Health Centers (FQHCs). (A more detailed discussion of this provision appears in section IV. of this notice.)

F. Skilled Nursing Facility Prospective Payment—General Overview

We implemented the Medicare SNF PPS effective with cost reporting periods beginning on or after July 1, 1998. The SNF PPS is one that pays SNFs through prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services. These payment rates cover all costs of furnishing covered skilled nursing services (routine, ancillary, and capital-related costs) other than costs associated with approved educational activities. Covered SNF services include post-

hospital services for which benefits are provided under Part A and all items and services that, before July 1, 1998, had been paid under Part B (other than physician and certain other services specifically excluded under the BBA) but furnished to Medicare beneficiaries in a SNF during a covered Part A stay. A complete discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252).

1. Payment Provisions—Federal Rate

The PPS uses per diem Federal payment rates based on mean SNF costs in a base year updated for inflation to the first effective period of the PPS. We developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the Federal rates also incorporated an estimate of the amounts that would be payable under Part B for covered SNF services furnished to individuals during the course of a covered Part A stay in a SNF.

In developing the rates for the initial period, we updated costs to the first effective year of the PPS (the 15-month period beginning July 1, 1998) using a SNF market basket index, and then standardized for the costs of facility differences in case-mix and for geographic variations in wages. Providers that received new provider exemptions from the routine cost limits were excluded from the database used to compute the Federal payment rates, as were costs related to payments for exceptions to the routine cost limits. In accordance with the formula prescribed in the BBA, we set the Federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We computed and applied separately the payment rates for facilities located in urban and rural areas. In addition, we adjusted the portion of the Federal rate attributable to wage-related costs by a wage index.

The Federal rate also incorporates adjustments to account for facility case-mix, using a classification system that accounts for the relative resource utilization of different patient types. This classification system, Resource Utilization Groups, version III (RUG-III), uses beneficiary assessment data from the Minimum Data Set (MDS) completed by SNFs to assign beneficiaries to one of 53 RUG-III groups. The original RUG-III case-mix classification system included 44 groups. However, under refinements

that became effective on January 1, 2006, we added nine new groups—comprising a new Rehabilitation plus Extensive Services category—at the top of the RUG hierarchy. The May 12, 1998 interim final rule (63 FR 26252) included a complete and detailed description of the original 44-group RUG-III case-mix classification system. A comprehensive description of the refined 53-group RUG-III case-mix classification system (RUG-53) appears in the proposed and final rules for FY 2006 (70 FR 29070, May 19, 2005, and 70 FR 45026, August 4, 2005).

Further, in accordance with section 1888(e)(4)(E)(ii)(IV) of the Act, the Federal rates in this notice reflect an update to the rates that we published in the August 4, 2005 final rule for FY 2006 (70 FR 45026) and the associated correction notice (70 FR 57164, September 30, 2005), equal to the full change in the SNF market basket index. A more detailed discussion of the SNF market basket index and related issues appears in sections I.F.2. and III. of this notice.

2. Rate Updates Using the Skilled Nursing Facility Market Basket Index

Section 1888(e)(5) of the Act requires us to establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered SNF services. We use the SNF market basket index to update the Federal rates on an annual basis. The final rule for FY 2002 (66 FR 39562, July 31, 2001) revised and rebased the market basket to reflect 1997 total cost data.

In addition, as explained in the final rule for FY 2004 (66 FR 46058, August 4, 2003) and in section III.B. of this notice, the annual update of the payment rates includes, as appropriate, an adjustment to account for market basket forecast error. This adjustment takes into account the forecast error from the most recently available fiscal year for which there is final data, and applies whenever the difference between the forecasted and actual change in the market basket exceeds a 0.25 percentage point threshold. For FY 2005 (the most recently available fiscal year for which there is final data), the estimated increase in the market basket index was 2.8 percentage points, while the actual increase was 2.9 percentage points, resulting in only a 0.1 percentage point difference. Accordingly, as the difference between the estimated and actual amount of change does not exceed the 0.25 percentage point threshold, the payment rates for FY 2007 do not include a forecast error adjustment. Table 1 below

shows the forecasted and actual market basket amounts for FY 2005.

TABLE 1.—FY 2005 FORECAST ERROR CORRECTION FOR CMS SNF MARKET BASKET

Index	Forecasted FY 2005 increase *	Actual FY 2005 increase **	FY 2005 forecast error correction ***
SNF	2.8	2.9	0.1

* Published in **Federal Register**; based on second quarter 2004 Global Insight Inc. forecast.

** Based on the second quarter 2006 Global Insight forecast.

*** The FY 2005 forecast error correction for the PPS Operating portion will be applied to the FY 2007 PPS update recommendations. Any forecast error less than 0.25 percentage points will not be reflected in the update recommendation.

II. Annual Update of Payment Rates Under the Prospective Payment System for Skilled Nursing Facilities

A. Federal Prospective Payment System

This notice sets forth a schedule of Federal prospective payment rates applicable to Medicare Part A SNF services beginning October 1, 2006. The schedule incorporates per diem Federal rates that provide Part A payment for all costs of services furnished to a beneficiary in a SNF during a Medicare-covered stay.

1. Costs and Services Covered by the Federal Rates

The Federal rates apply to all costs (routine, ancillary, and capital-related) of covered SNF services other than costs associated with approved educational activities as defined in § 413.85. Under section 1888(e)(2) of the Act, covered SNF services include post-hospital SNF services for which benefits are provided under Part A (the hospital insurance program), as well as all items and services (other than those services

excluded by statute) that, before July 1, 1998, were paid under Part B (the supplementary medical insurance program) but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. (These excluded service categories are discussed in greater detail in section V.B.2. of the May 12, 1998 interim final rule (63 FR 26295–97)).

2. Methodology Used for the Calculation of the Federal Rates

The FY 2007 rates reflect an update using the full amount of the latest market basket index. The FY 2007 market basket increase factor is 3.1 percent. A complete description of the multi-step process initially appeared in the May 12, 1998 interim final rule (63 FR 26252) and was further revised in subsequent rules. We note that in accordance with section 101(c)(2) of the BBRA, the previous, temporary increases in the per diem adjusted payment rates for certain designated RUGs, as specified in section 101(a) of the BBRA and section 314 of the BIPA, are no longer in effect due to the

implementation of case-mix refinements as of January 1, 2006. However, the temporary 128 percent increase in the per diem adjusted payment rates for SNF residents with AIDS, enacted by section 511 of the MMA, remains in effect.

We used the SNF market basket to adjust each per diem component of the Federal rates forward to reflect cost increases occurring between the midpoint of the Federal fiscal year beginning October 1 2005, and ending September 30, 2006, and the midpoint of the Federal fiscal year beginning October 1, 2006, and ending September 30, 2007, to which the payment rates apply. In accordance with section 1888(e)(4)(E)(ii)(IV) of the Act, we update the payment rates for FY 2007 by a factor equal to the full market basket index percentage increase. We further adjust the rates by a wage index budget neutrality factor, described later in this section. Tables 2 and 3 reflect the updated components of the unadjusted Federal rates for FY 2007.

TABLE 2.—FY 2007 UNADJUSTED FEDERAL RATE PER DIEM URBAN

Rate component	Nursing case-mix	Therapy case-mix	Therapy non-case-mix	Non-case-mix
Per Diem Amount	\$142.04	\$106.99	\$14.09	\$72.49

TABLE 3.—FY 2007 UNADJUSTED FEDERAL RATE PER DIEM RURAL

Rate component	Nursing case-mix	Therapy case-mix	Therapy non-case-mix	Non-case-mix
Per Diem Amount	\$135.70	\$123.37	\$15.05	\$73.83

B. Case-Mix Refinements

Under the BBA, each update of the SNF PPS payment rates must include the case-mix classification methodology applicable for the coming Federal fiscal year. As indicated in section I.F.1. of this notice, the payment rates set forth

in this notice reflect the use of the refined 53-group RUG-III case-mix classification system (RUG–53) that we discussed in detail in the proposed and final rules for FY 2006 (70 FR 29070, May 19, 2005, and 70 FR 45026, August 4, 2005). As noted in the FY 2006 final rule, we deferred RUG–53

implementation from the beginning of FY 2006 (October 1, 2005) until January 1, 2006, in order to allow for sufficient time to prepare for and ease the transition to the refinements (70 FR 45034).

We list the case-mix adjusted payment rates separately for urban and

rural SNFs in Tables 4 and 5, with the corresponding case-mix values. These tables do not reflect the AIDS add-on

enacted by section 511 of the MMA,

which we apply only after making all other adjustments (wage and case-mix).

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Table 4.
RUG-53
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES
URBAN

RUG III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Non-case Mix Therapy Comp	Non-case Mix Component	Total Rate
RUX	1.9	2.25	269.88	240.73		72.49	583.10
RUL	1.4	2.25	198.86	240.73		72.49	512.08
RVX	1.54	1.41	218.74	150.86		72.49	442.09
RVL	1.33	1.41	188.91	150.86		72.49	412.26
RHX	1.42	0.94	201.70	100.57		72.49	374.76
RHL	1.37	0.94	194.59	100.57		72.49	367.65
RMX	1.93	0.77	274.14	82.38		72.49	429.01
RML	1.68	0.77	238.63	82.38		72.49	393.50
RLX	1.31	0.43	186.07	46.01		72.49	304.57
RUC	1.28	2.25	181.81	240.73		72.49	495.03
RUB	0.99	2.25	140.62	240.73		72.49	453.84
RUA	0.84	2.25	119.31	240.73		72.49	432.53
RVC	1.23	1.41	174.71	150.86		72.49	398.06
RVB	1.09	1.41	154.82	150.86		72.49	378.17
RVA	0.82	1.41	116.47	150.86		72.49	339.82
RHC	1.22	0.94	173.29	100.57		72.49	346.35
RHB	1.11	0.94	157.66	100.57		72.49	330.72
RHA	0.94	0.94	133.52	100.57		72.49	306.58
RMC	1.15	0.77	163.35	82.38		72.49	318.22
RMB	1.09	0.77	154.82	82.38		72.49	309.69
RMA	1.04	0.77	147.72	82.38		72.49	302.59
RLB	1.14	0.43	161.93	46.01		72.49	280.43
RLA	0.85	0.43	120.73	46.01		72.49	239.23
SE3	1.86		264.19		14.09	72.49	350.77
SE2	1.49		211.64		14.09	72.49	298.22
SE1	1.26		178.97		14.09	72.49	265.55
SSC	1.23		174.71		14.09	72.49	261.29
SSB	1.13		160.51		14.09	72.49	247.09
SSA	1.1		156.24		14.09	72.49	242.82
CC2	1.22		173.29		14.09	72.49	259.87
CC1	1.06		150.56		14.09	72.49	237.14
CB2	0.98		139.20		14.09	72.49	225.78
CB1	0.91		129.26		14.09	72.49	215.84
CA2	0.9		127.84		14.09	72.49	214.42
CA1	0.8		113.63		14.09	72.49	200.21
IB2	0.74		105.11		14.09	72.49	191.69
IB1	0.72		102.27		14.09	72.49	188.85
IA2	0.61		86.64		14.09	72.49	173.22
IA1	0.56		79.54		14.09	72.49	166.12
BB2	0.73		103.69		14.09	72.49	190.27

BB1	0.69		98.01		14.09	72.49	184.59
BA2	0.6		85.22		14.09	72.49	171.80
BA1	0.52		73.86		14.09	72.49	160.44
PE2	0.85		120.73		14.09	72.49	207.31
PE1	0.82		116.47		14.09	72.49	203.05
PD2	0.78		110.79		14.09	72.49	197.37
PD1	0.76		107.95		14.09	72.49	194.53
PC2	0.71		100.85		14.09	72.49	187.43
PC1	0.69		98.01		14.09	72.49	184.59
PB2	0.55		78.12		14.09	72.49	164.70
PB1	0.54		76.70		14.09	72.49	163.28
PA2	0.53		75.28		14.09	72.49	161.86
PA1	0.5		71.02		14.09	72.49	157.60

Table 5.
RUG-53
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES
RURAL

RUG III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Non-case Mix Therapy Comp	Non-case Mix Component	Total Rate
RUX	1.9	2.25	257.83	277.58		73.83	609.24
RUL	1.4	2.25	189.98	277.58		73.83	541.39
RVX	1.54	1.41	208.98	173.95		73.83	456.76
RVL	1.33	1.41	180.48	173.95		73.83	428.26
RHX	1.42	0.94	192.69	115.97		73.83	382.49
RHL	1.37	0.94	185.91	115.97		73.83	375.71
RMX	1.93	0.77	261.90	94.99		73.83	430.72
RML	1.68	0.77	227.98	94.99		73.83	396.80
RLX	1.31	0.43	177.77	53.05		73.83	304.65
RUC	1.28	2.25	173.70	277.58		73.83	525.11
RUB	0.99	2.25	134.34	277.58		73.83	485.75
RUA	0.84	2.25	113.99	277.58		73.83	465.40
RVC	1.23	1.41	166.91	173.95		73.83	414.69
RVB	1.09	1.41	147.91	173.95		73.83	395.69
RVA	0.82	1.41	111.27	173.95		73.83	359.05
RHC	1.22	0.94	165.55	115.97		73.83	355.35
RHB	1.11	0.94	150.63	115.97		73.83	340.43
RHA	0.94	0.94	127.56	115.97		73.83	317.36
RMC	1.15	0.77	156.06	94.99		73.83	324.88
RMB	1.09	0.77	147.91	94.99		73.83	316.73
RMA	1.04	0.77	141.13	94.99		73.83	309.95
RLB	1.14	0.43	154.70	53.05		73.83	281.58
RLA	0.85	0.43	115.35	53.05		73.83	242.23
SE3	1.86		252.40		15.05	73.83	341.28

SE2	1.49		202.19		15.05	73.83	291.07
SE1	1.26		170.98		15.05	73.83	259.86
SSC	1.23		166.91		15.05	73.83	255.79
SSB	1.13		153.34		15.05	73.83	242.22
SSA	1.10		149.27		15.05	73.83	238.15
CC2	1.22		165.55		15.05	73.83	254.43
CC1	1.06		143.84		15.05	73.83	232.72
CB2	0.98		132.99		15.05	73.83	221.87
CB1	0.91		123.49		15.05	73.83	212.37
CA2	0.90		122.13		15.05	73.83	211.01
CA1	0.80		108.56		15.05	73.83	197.44
IB2	0.74		100.42		15.05	73.83	189.30
IB1	0.72		97.70		15.05	73.83	186.58
IA2	0.61		82.78		15.05	73.83	171.66
IA1	0.56		75.99		15.05	73.83	164.87
BB2	0.73		99.06		15.05	73.83	187.94
BB1	0.69		93.63		15.05	73.83	182.51
BA2	0.60		81.42		15.05	73.83	170.30
BA1	0.52		70.56		15.05	73.83	159.44
PE2	0.85		115.35		15.05	73.83	204.23
PE1	0.82		111.27		15.05	73.83	200.15
PD2	0.78		105.85		15.05	73.83	194.73
PD1	0.76		103.13		15.05	73.83	192.01
PC2	0.71		96.35		15.05	73.83	185.23
PC1	0.69		93.63		15.05	73.83	182.51
PB2	0.55		74.64		15.05	73.83	163.52
PB1	0.54		73.28		15.05	73.83	162.16
PA2	0.53		71.92		15.05	73.83	160.80
PA1	0.50		67.85		15.05	73.83	156.73

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C. Wage Index Adjustment to Federal Rates

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the Federal rates to account for differences in area wage levels, using a wage index that we find appropriate. Since the inception of a PPS for SNFs, we have used hospital wage data in developing a wage index to be applied to SNFs. We are continuing that practice for FY 2007.

We apply the wage index adjustment to the labor-related portion of the Federal rate, which is 75.839 percent of the total rate. This percentage reflects the labor-related relative importance for FY 2007. The labor-related relative importance for FY 2006 was 75.922, as

shown in Table 11. We calculate the labor-related relative importance from the SNF market basket, and it approximates the labor-related portion of the total costs after taking into account historical and projected price changes between the base year and FY 2007. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2007 than the base year weights from the SNF market basket.

We calculate the labor-related relative importance for FY 2007 in four steps. First, we compute the FY 2007 price index level for the total market basket

and each cost category of the market basket. Second, we calculate a ratio for each cost category by dividing the FY 2007 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2007 relative importance for each cost category by multiplying this ratio by the base year (FY 1997) weight. Finally, we sum the FY 2007 relative importance for each of the labor-related cost categories (wages and salaries, employee benefits, nonmedical professional fees, labor-intensive services, and a portion of capital-related expenses) to produce the FY 2007 labor-related relative importance. Tables 6 and 7 show the Federal rates by labor-related and non-labor-related components.

Table 6.
RUG-53
Case-Mix Adjusted Federal Rates for Urban SNFs
By Labor and Non-Labor Component

RUG III	Total	Labor	Non-Labor
Category	Rate	Portion	Portion
RUX	583.10	442.22	140.88
RUL	512.08	388.36	123.72
RVX	442.09	335.28	106.81
RVL	412.26	312.65	99.61
RHX	374.76	284.21	90.55
RHL	367.65	278.82	88.83
RMX	429.01	325.36	103.65
RML	393.50	298.43	95.07
RLX	304.57	230.98	73.59
RUC	495.03	375.43	119.60
RUB	453.84	344.19	109.65
RUA	432.53	328.03	104.50
RVC	398.06	301.88	96.18
RVB	378.17	286.80	91.37
RVA	339.82	257.72	82.10
RHC	346.35	262.67	83.68
RHB	330.72	250.81	79.91
RHA	306.58	232.51	74.07
RMC	318.22	241.33	76.89
RMB	309.69	234.87	74.82
RMA	302.59	229.48	73.11
RLB	280.43	212.68	67.75
RLA	239.23	181.43	57.80
SE3	350.77	266.02	84.75
SE2	298.22	226.17	72.05
SE1	265.55	201.39	64.16
SSC	261.29	198.16	63.13
SSB	247.09	187.39	59.70
SSA	242.82	184.15	58.67
CC2	259.87	197.08	62.79
CC1	237.14	179.84	57.30
CB2	225.78	171.23	54.55

CB1	215.84	163.69	52.15
CA2	214.42	162.61	51.81
CA1	200.21	151.84	48.37
IB2	191.69	145.38	46.31
IB1	188.85	143.22	45.63
IA2	173.22	131.37	41.85
IA1	166.12	125.98	40.14
BB2	190.27	144.30	45.97
BB1	184.59	139.99	44.60
BA2	171.80	130.29	41.51
BA1	160.44	121.68	38.76
PE2	207.31	157.22	50.09
PE1	203.05	153.99	49.06
PD2	197.37	149.68	47.69
PD1	194.53	147.53	47.00
PC2	187.43	142.15	45.28
PC1	184.59	139.99	44.60
PB2	164.70	124.91	39.79
PB1	163.28	123.83	39.45
PA2	161.86	122.75	39.11
PA1	157.60	119.52	38.08

Table 7.
RUG-53
Case-Mix Adjusted Federal Rates for Rural SNFs
by Labor and Non-Labor Component

RUG III Category	Total Rate	Labor Portion	Non-Labor Portion
RUX	609.24	462.04	147.20
RUL	541.39	410.58	130.81
RVX	456.76	346.40	110.36
RVL	428.26	324.79	103.47
RHX	382.49	290.08	92.41
RHL	375.71	284.93	90.78
RMX	430.72	326.65	104.07
RML	396.80	300.93	95.87
RLX	304.65	231.04	73.61
RUC	525.11	398.24	126.87
RUB	485.75	368.39	117.36
RUA	465.40	352.95	112.45
RVC	414.69	314.50	100.19
RVB	395.69	300.09	95.60
RVA	359.05	272.30	86.75
RHC	355.35	269.49	85.86
RHB	340.43	258.18	82.25

RHA	317.36	240.68	76.68
RMC	324.88	246.39	78.49
RMB	316.73	240.20	76.53
RMA	309.95	235.06	74.89
RLB	281.58	213.55	68.03
RLA	242.23	183.70	58.53
SE3	341.28	258.82	82.46
SE2	291.07	220.74	70.33
SE1	259.86	197.08	62.78
SSC	255.79	193.99	61.80
SSB	242.22	183.70	58.52
SSA	238.15	180.61	57.54
CC2	254.43	192.96	61.47
CC1	232.72	176.49	56.23
CB2	221.87	168.26	53.61
CB1	212.37	161.06	51.31
CA2	211.01	160.03	50.98
CA1	197.44	149.74	47.70
IB2	189.30	143.56	45.74
IB1	186.58	141.50	45.08
IA2	171.66	130.19	41.47
IA1	164.87	125.04	39.83
BB2	187.94	142.53	45.41
BB1	182.51	138.41	44.10
BA2	170.30	129.15	41.15
BA1	159.44	120.92	38.52
PE2	204.23	154.89	49.34
PE1	200.15	151.79	48.36
PD2	194.73	147.68	47.05
PD1	192.01	145.62	46.39
PC2	185.23	140.48	44.75
PC1	182.51	138.41	44.10
PB2	163.52	124.01	39.51
PB1	162.16	122.98	39.18
PA2	160.80	121.95	38.85
PA1	156.73	118.86	37.87

Section 1888(e)(4)(G)(ii) of the Act also requires that we apply this wage index in a manner that does not result in aggregate payments that are greater or less than would otherwise be made in the absence of the wage adjustment. For FY 2007 (Federal rates effective October 1, 2006), we are applying the most recent wage index using the hospital wage data, and applying an adjustment to fulfill the budget neutrality requirement. We meet this requirement by multiplying each of the components of the unadjusted Federal rates by a factor equal to the ratio of the volume weighted mean wage adjustment factor (using the wage index from the previous year) to the volume weighted mean

wage adjustment factor, using the wage index for the FY beginning October 1, 2006. We use the same volume weights in both the numerator and denominator, and derive them from the 1997 Medicare Provider Analysis and Review File (MEDPAR) data. We define the wage adjustment factor used in this calculation as the labor share of the rate component multiplied by the wage index plus the non-labor share. The budget neutrality factor for this year is 1.0013.

The wage index applicable to FY 2007 appears in Table 8 and Table 9 in the Addendum of this notice. As explained in the update notice for FY 2005 (69 FR 45786, July 30, 2004), the SNF PPS does

not use the hospital area wage index's occupational mix adjustment, as this adjustment serves specifically to define the occupational categories more clearly in a hospital setting; moreover, the collection of the occupational wage data also excludes any wage data related to SNFs. Therefore, we believe that using the updated wage data exclusive of the occupational mix adjustment continues to be appropriate for SNF payments.

In the SNF PPS final rule for FY 2006 (70 FR 45026), we adopted the changes discussed in the Office of Management and Budget (OMB) Bulletin No. 03-04 (June 6, 2003), which announced revised definitions for Metropolitan Statistical Areas (MSAs), and the

creation of Micropolitan Statistical Areas and Combined Statistical Areas. In adopting the OMB Core-Based Statistical Area (CBSA) geographic designations, we provided for a 1-year transition with a blended wage index for all providers. For FY 2006, the wage index for each provider consisted of a blend of 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index (both using FY 2002 hospital data). We referred to the blended wage index as the FY 2006 SNF PPS transition wage index. As discussed in the SNF PPS final rule for FY 2006 (70 FR 45041), in FY 2007 we will be using the full CBSA-based wage index values as presented in Tables 8 and 9.

Finally, we continue to use the same methodology discussed in the SNF PPS proposed rule for FY 2006 (70 FR 29095, May 19, 2005) and finalized in the SNF PPS final rule for FY 2006 (70 FR 45041, August 4, 2005) to address those geographic areas where there were no hospitals and, thus, no hospital wage index data on which to base the calculation of the FY 2007 SNF PPS wage index. For FY 2007, those areas consist of rural Massachusetts, rural Puerto Rico and urban CBSA (25980) Hinesville-Fort Stewart, GA.

D. Updates to the Federal Rates

In accordance with section 1888(e)(4)(E) of the Act as amended by section 311 of the BIPA, the payment rates listed here reflect an update equal

to the full SNF market basket, which equals 3.1 percentage points. We will continue to disseminate the rates, wage index, and case-mix classification methodology through the **Federal Register** before the August 1 that precedes the start of each succeeding fiscal year.

E. Relationship of RUG-III Classification System to Existing Skilled Nursing Facility Level-of-Care Criteria

As discussed in § 413.345, we include in each update of the Federal payment rates in the **Federal Register** the designation of those specific RUGs under the classification system that represent the required SNF level of care, as provided in § 409.30. This designation reflects an administrative presumption under the refined 53-group RUG-III case-mix classification system (RUG-53) that beneficiaries who are correctly assigned to one of the upper 35 of the RUG-53 groups on the initial 5-day, Medicare-required assessment are automatically classified as meeting the SNF level of care definition up to and including the assessment reference date on the 5-day Medicare required assessment.

A beneficiary assigned to any of the lower 18 groups is not automatically classified as either meeting or not meeting the definition, but instead receives an individual level of care determination using the existing administrative criteria. This presumption recognizes the strong

likelihood that beneficiaries assigned to one of the upper 35 groups during the immediate post-hospital period require a covered level of care, which would be significantly less likely for those beneficiaries assigned to one of the lower 18 groups.

In this notice, we are continuing the designation of the upper 35 groups for purposes of this administrative presumption, consisting of the following RUG-53 classifications: All groups within the Rehabilitation plus Extensive Services category; all groups within the Ultra High Rehabilitation category; all groups within the Very High Rehabilitation category; all groups within the High Rehabilitation category; all groups within the Medium Rehabilitation category; all groups within the Low Rehabilitation category; all groups within the Extensive Services category; all groups within the Special Care category; and, all groups within the Clinically Complex category.

F. Example of Computation of Adjusted PPS Rates and SNF Payment

Using the XYZ SNF described in Table 10, the following shows the adjustments made to the Federal per diem rate to compute the provider's actual per diem PPS payment. SNF XYZ's 12-month cost reporting period begins October 1, 2006. SNF XYZ's total PPS payment would equal \$28,709. The Labor and Non-labor columns are derived from Table 6.

**Table 10
RUG-53
SNF XYZ: Located in Cedar Rapids, IA (Urban CBSA 16300)
Wage Index: 0.8888**

RUG Group	Labor	Wage index	Adj. Labor	Non-Labor	Adj. Rate	Percent Adj	Medicare Days	Payment
RVX	\$335.28	0.8888	\$298.00	\$106.81	\$404.81	\$404.81	14	\$5,667.00
RLX	\$230.98	0.8888	\$205.30	\$73.59	\$278.89	\$278.89	30	\$8,367.00
RHA	\$232.51	0.8888	\$206.65	\$74.07	\$280.72	\$280.72	16	\$4,492.00
CC2	\$197.08	0.8888	\$175.16	\$62.79	\$237.95	\$542.54	10	\$5,425.00
IA2	\$131.37	0.8888	\$116.76	\$41.85	\$158.61	\$158.61	30	\$4,758.00
							100	\$28,709.00

*Reflects a 128 percent adjustment from section 511 of the MMA.

III. The Skilled Nursing Facility Market Basket Index

Section 1888(e)(5)(A) of the Act requires us to establish a SNF market basket index (input price index) that

reflects changes over time in the prices of an appropriate mix of goods and services included in the SNF PPS. This notice incorporates the latest available projections of the SNF market basket

index. Accordingly, we have developed a SNF market basket index that encompasses the most commonly used cost categories for SNF routine services,

ancillary services, and capital-related expenses.

In constructing the SNF market basket, we used the methodology set forth in the SNF PPS final rule for FY 2002 (66 FR 39584, July 31, 2001), when we last revised and rebased the SNF market basket. In that final rule, we included a complete discussion on the rebasing of the SNF market basket to FY 1997. There are 21 separate cost categories and respective price proxies. These cost categories appeared in Tables 10.A, 10.B, and Appendix A, along with other relevant information, in the FY 2002 final rule. As discussed in that final rule, the SNF market basket primarily uses the Bureau of Labor

Statistics" (BLS) data as price proxies, which are grouped in one of the three BLS categories: Producer Price Indexes (PPI), Consumer Price Indexes (CPI), and Employment Cost Indexes (ECI).

Beginning in April 2006, with the publication of March 2006 data, the BLS' ECI is using a different classification system, the North American Industrial Classification System (NAICS), instead of the Standard Industrial Classification System (SIC), which no longer exists. We have consistently used the ECI as the data source for wages and salaries and other price proxies in the SNF market basket and are not making any changes to the usage at this time. However, we

welcome input on our continued use of the BLS ECI data in light of the BLS change to the NAICS-based ECI. Interested parties who would like to provide input on this issue are invited to do so by contacting Jeanette Kranacs or Bill Ullman (please refer to the section entitled **FOR FURTHER INFORMATION CONTACT** at the beginning of this document).

Each year, we calculate a revised labor-related share based on the relative importance of labor-related cost categories in the input price index. Table 11 summarizes the updated labor-related share for FY-2007.

Table 11 - Labor-related Relative Importance, FY 2006 and FY 2007

	Relative importance, labor-related, FY 2006 (97 index) 05:2 forecast	Relative importance, labor-related, FY 2007 (97 index) 06:2 forecast
Wages and salaries	54.391	54.231
Employee benefits	11.648	11.903
Nonmedical professional fees	2.739	2.721
Labor-intensive services	4.128	4.035
Capital-related (.391)	3.016	2.949
Total	75.922	75.839

Source: Global Insights, Inc., formerly DRI-WEFA, 2nd Quarter, 2006.

A. Use of the Skilled Nursing Facility Market Basket Percentage

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index, as described in the previous section, from the average of the prior fiscal year to the average of the current fiscal year. For the Federal rates established in this notice, we use the percentage increase in the SNF market basket index to compute the update factor for FY-2007. We use the Global Insight, Inc. (formerly DRI-WEFA), 2nd quarter 2006 forecasted percentage increase in the FY 1997-based SNF market basket index for routine, ancillary, and capital-related expenses, described in the previous section, to compute the update factor in this notice. Finally, as discussed in section I.A. of this notice, we no longer compute update factors to adjust a facility-specific portion of the SNF PPS rates, because the initial transition period from facility-specific to full Federal rates that started with cost

reporting periods beginning in July 1998 has expired.

B. Market Basket Forecast Error Adjustment

As discussed in the June 10, 2003, supplemental proposed rule (68 FR 34768) and finalized in the August 4, 2003, final rule (68 FR 46067), the regulations at 42 CFR 413.337(d)(2) provide for an adjustment to account for market basket forecast error. The initial adjustment applied to the update of the FY 2003 rate for FY 2004, and took into account the cumulative forecast error for the period from FY 2000 through FY 2002. Subsequent adjustments in succeeding FYs take into account the forecast error from the most recently available fiscal year for which there is final data, and apply whenever the difference between the forecasted and actual change in the market basket exceeds a 0.25 percentage point threshold. As discussed previously in section I.F.2. of this notice, as the difference between the estimated and actual amounts of increase in the market basket index for FY 2005 (the most

recently available fiscal year for which there is final data) do not exceed the 0.25 percentage point threshold, the payment rates for FY-2007 do not include a forecast error adjustment.

C. Federal Rate Update Factor

Section 1888(e)(4)(E)(ii)(IV) of the Act requires that the update factor used to establish the FY 2007 Federal rates be at a level equal to the full market basket percentage change. Accordingly, to establish the update factor, we determined the total growth from the average market basket level for the period of October 1, 2005 through September 30, 2006 to the average market basket level for the period of October 1, 2006 through September 30, 2007. Using this process, the market basket update factor for FY 2007 SNF Federal rates is 3.1 percent. We used this revised update factor to compute the Federal portion of the SNF PPS rate shown in Tables 2 and 3.

IV. Consolidated Billing

Section 4432(b) of the BBA established a consolidated billing

requirement that places with the SNF the Medicare billing responsibility for virtually all of the services that the SNF's residents receive, except for a small number of services that the statute specifically identifies as being excluded from this provision. As noted previously in section I. of this notice, subsequent legislation enacted a number of modifications in the consolidated billing provision. Specifically, section 103 of the BBRA amended this provision by further excluding a number of individual "high-cost, low-probability" services, identified by the Healthcare Common Procedure Coding System (HCPCS) codes, within several broader categories (chemotherapy and its administration, radioisotope services, and customized prosthetic devices) that otherwise remained subject to the provision. We discuss this BBRA amendment in greater detail in the proposed and final rules for FY 2001 (65 FR 19231–19232, April 10, 2000, and 65 FR 46790–46795, July 31, 2000), as well as in Program Memorandum AB–00–18 (Change Request #1070), issued March 2000, which is available online at www.cms.hhs.gov/transmittals/downloads/ab001860.pdf. Section 313 of the BIPA further amended this provision by repealing its Part B aspect; that is, its applicability to services furnished to a resident during a SNF stay that Medicare does not cover. (However, physical, occupational, and speech-language therapy remain subject to consolidated billing, regardless of whether the resident who receives these services is in a covered Part A stay.) We discuss this BIPA amendment in greater detail in the proposed and final rules for FY 2002 (66 FR 24020–24021, May 10, 2001, and 66 FR 39587–39588, July 31, 2001). In addition, section 410 of the MMA amended this provision by excluding certain practitioner and other services furnished to SNF residents by RHCs and FQHCs. We discuss this MMA amendment in greater detail in the update notice for FY 2005 (69 FR 45818–45819, July 30, 2004), as well as in Program Transmittal #390 (Change Request #3575), issued December 10, 2004, which is available online at www.cms.hhs.gov/transmittals/downloads/r390cp.pdf. To date, the Congress has enacted no further legislation affecting the consolidated billing provision.

V. Application of the SNF PPS to SNF Services Furnished by Swing-Bed Hospitals

In accordance with section 1888(e)(7) of the Act as amended by section 203 of the BIPA, Part A pays CAHs on a reasonable cost basis for SNF services

furnished under a swing-bed agreement, as previously indicated in sections I.A. and I.D. of this notice. However, effective with cost reporting periods beginning on or after July 1, 2002, the swing-bed services of non-CAH rural hospitals are paid under the SNF PPS. As explained in the final rule for FY 2002 (66 FR–39562, July 31, 2001), we selected this effective date consistent with the statutory provision to integrate swing-bed rural hospitals into the SNF PPS by the end of the SNF transition period, June 30, 2002.

Accordingly, all swing-bed rural hospitals have come under the SNF PPS as of June 30, 2003. Therefore, all rates and wage indexes outlined in earlier sections of this notice for the SNF PPS also apply to all swing-bed rural hospitals. A complete discussion of assessment schedules, the MDS and the transmission software (Raven-SB for Swing Beds) appears in the final rule for FY 2002 (66 FR–39562, July 31, 2001). The latest changes in the MDS for swing-bed rural hospitals appear on our SNF PPS Web site, www.cms.hhs.gov/snfpps.

VI. Other Issues

Both Medicare's payment structures and the actual delivery of post acute care have evolved significantly over the past decade. Before the BBA, SNFs and other post-acute settings such as inpatient rehabilitation facilities (IRFs) were paid on the basis of cost. Since that time, we have implemented various legislative mandates that established prospective payment systems in these settings. The PPS methodologies used in these settings rely on patient-level clinical information to provide pricing, support the provision of high quality services, and encourage the efficient delivery of care.

CMS is exploring refinements to the existing provider-oriented "silos" to create a more seamless system for payment and delivery of post-acute care (PAC) under Medicare. This new model could feature more consistent payments for the same type of care across different sites of service, Value Based Purchasing incentives, and collection of uniform clinical assessment information to support quality and discharge planning functions.

Section 5008 of the Deficit Reduction Act of 2005 (DRA) provides a pathway to achieve the goals of the new model by providing for a demonstration on uniform assessment and data collection across different sites of service. This 3-year demonstration project is to be established by January 1, 2008. We are in the early stages of developing a standard, comprehensive assessment

instrument to be completed at hospital discharge and ultimately integrated with PAC assessments. The demonstration will enable us to test the usefulness of this instrument, and analyze cost and outcomes across different PAC sites. The lessons learned from this demonstration will inform efforts to improve the post-acute payment systems. We intend for the instrument to cover the population admitted to all institutional PAC settings (SNFs, IRFs, and long-term care hospitals) as well as residential-based PAC (home health agencies, outpatient programs).

We have evaluated the existing assessment instruments that managed care and other insurers use. These instruments will form the basis of our efforts to create a discharge assessment tool that can serve to: facilitate post-hospital placement decision making; enhance the safety and quality of care during patient transfers through transmission of core information to a receiving provider; and provide baseline information for longitudinal follow-up of health and function.

In addition, we are developing the Nursing Home Value Based Purchasing Demonstration as part of a broad effort at CMS to eliminate wasteful Medicare spending and improve quality of care through Value Based Purchasing initiatives. We plan to invite State agencies to participate in a demonstration project where nursing homes would be eligible for additional payment based upon review of certain quality measures.

In the April 25, 2006 Inpatient Prospective Payment Systems (IPPS) proposed rule (71 FR 23996), we discussed in detail the Health Care Information Transparency Initiative and our efforts to promote effective use of health information technology (HIT) as a means of improving health care quality and efficiency. Specifically, we discussed several potential options under the transparency initiative for making pricing and quality information more readily available to the public (71 FR 24120 through 24121), with the expectation that this will assist the patient—as the ultimate consumer of health care—in making cost-effective purchasing decisions. We solicited comments on ways the Department can encourage transparency in health care quality and pricing, whether through its leadership on voluntary initiatives or through regulatory requirements. We also sought comments on the Department's statutory authority to impose such requirements. In addition, we discussed the potential for HIT to facilitate improvements in the quality and efficiency of health care services (71

FR 24100 through 24101). We solicited comments on our statutory authority to encourage the adoption and use of HIT. The President's 2007 Budget for Health and Human Services states that "the Administration supports the adoption of health information technology (HIT) as a normal cost of doing business to ensure patients receive high quality care." We also sought comments on the appropriate role of HIT in potential value-based purchasing programs, beyond the intrinsic incentives of a PPS to provide efficient care, encourage the avoidance of unnecessary costs, and increase quality of care. In addition, we sought comments on promotion of the use of effective HIT through Medicare conditions of participation.

Further, the Nursing Home Quality Initiative was launched in 2002 with the cooperation of the major nursing home professional associations and the CMS Quality Improvement Organization (QIO) program. While this initiative has already achieved significant progress nationally in reducing the use of physical restraints and in reducing the number of residents in moderate or severe pain, more can be done.

Accordingly, we plan to initiate a new Nursing Home Quality Campaign this fall, which will be conducted over the next two years (through 2008). The purpose of this new Quality Campaign will be to build upon the past successes of the Nursing Home Quality Initiative, and spread the knowledge of quality improvement in the nursing home setting more widely across the country. The ultimate objective of this new Nursing Home Quality Campaign is to make a real difference in the quality of life and efficiency of care delivery in nursing homes, by accelerating progress in identifying and treating pain and pressure ulcers, by virtually eliminating the use of physical restraints, and by transforming the nursing home work environment to attract and retain nursing and other staff. More information about the campaign, and free evidence-based improvement materials, can be found at: www.medqic.org.

At this time, we do not offer specific proposals related to the preceding discussion. However, we believe that it is useful to encourage discussion of a broad range of ideas in order to assess the relative advantages and disadvantages of the various policies affecting PAC sites. We note that we are in the process of seeking input on these initiatives in various proposed Medicare payment rules being issued this year. In particular, we intend to consider both the health care information transparency initiative and the use of

HIT as we refine and update all Medicare payment systems.

VII. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VIII. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA, Pub. L. 96-354, September 16, 1980), section 1102(b) of the Social Security Act (the Act), the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). This notice is a major rule, as defined in Title 5, United States Code, section 804(2), because we estimate the impact of the standard update will be to increase payments to SNFs by approximately \$560 million.

The update set forth in this notice applies to payments in FY 2007. Accordingly, the analysis that follows describes the impact of this one year only. In accordance with the requirements of the Act, we will publish a notice for each subsequent FY that will provide for an update to the payment rates and include an associated impact analysis.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most SNFs and most other providers and suppliers are small entities, either by their nonprofit status or by having revenues of \$11.5 million or less in any 1 year. For purposes of the RFA, approximately 53

percent of SNFs are considered small businesses according to the Small Business Administration's latest size standards, with total revenues of \$11.5 million or less in any 1 year (for further information, see 65 FR 69432, November 17, 2000). Individuals and States are not included in the definition of a small entity. In addition, approximately 29 percent of SNFs are nonprofit organizations.

This notice updates the SNF PPS rates published in the final rule for FY 2006 (70 FR 45026, August 4, 2005) and the associated correction notice (70 FR 57164, September 30, 2005), thereby increasing aggregate payments by an estimated \$560 million. As indicated in Table 12, the effect on facilities will be an aggregate positive impact of 3.1 percent. We note that some individual providers may experience larger increases in payments than others due to the distributional impact of the FY 2007 wage indexes and the degree of Medicare utilization. While this notice is considered major, its overall impact is extremely small; that is, less than 3 percent of total SNF revenues from all payor sources. As the overall impact is positive on the industry as a whole, and on small entities specifically, it is not necessary to consider regulatory alternatives.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Because the increase in SNF payment rates set forth in this notice also applies to rural hospital swing-bed services, we believe that this notice will have a positive fiscal impact on swing-bed rural hospitals.

Section 202 of the UMRA also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million or more. This notice will not have a substantial effect on the governments mentioned, or on private sector costs.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates regulations that impose substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism

implications. As stated above, this notice will have no substantial effect on State and local governments.

B. Anticipated Effects

This notice sets forth updates of the SNF PPS rates contained in the final rule for FY 2006 (70 FR 45026, August 4, 2005) and the associated correction notice (70 FR 57164, September 30, 2005). Based on the above, we estimate the FY 2007 impact will be a net increase of \$560 million in payments to SNF providers. The impact analysis of this notice represents the projected effects of the changes in the SNF PPS from FY 2006 to FY 2007. We estimate the effects by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as days or case-mix.

We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, very susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly-legislated general Medicare program funding changes by the Congress, or changes specifically related to SNFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the BIPA, the MMA, or new statutory provisions. Although these changes may not be specific to the SNF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon SNFs.

In accordance with section 1888(e)(4)(E) of the Act, we update the payment rates for FY 2007 by a factor equal to the full market basket index percentage increase to determine the payment rates for FY 2007. The special AIDS add-on established by section 511 of the MMA remains in effect until “* * * such date as the Secretary certifies that there is an appropriate adjustment in the case mix * * *.” We have not provided a separate impact analysis for the MMA provision. Our latest estimates indicate that there are less than 2,000 beneficiaries who qualify for the AIDS add-on payment. The impact to Medicare is included in the “total” column of Table 12. In updating the rates for FY 2007, we made a number of standard annual revisions and clarifications mentioned elsewhere in this notice (for example, the update to the wage and market basket indexes used for adjusting the Federal rates). These revisions will increase payments to SNFs by approximately \$560 million.

The impacts are shown in Table 12. The breakdown of the various categories of data in the table follows.

The first column shows the breakdown of all SNFs by urban or rural status, hospital-based or freestanding status, and census region.

The first row of figures in the first column describes the estimated effects of the various changes on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban, and rural categories. The urban and rural designations are based on the location of the facility under the CBSA designation. The next twenty-two rows show the effects on urban versus rural status by census region.

The second column in the table shows the number of facilities in the impact database.

The third column of the table shows the effect of the annual update to the wage index. This represents the effect of using the most recent wage data available. The total impact of this change is zero percent; however, there are distributional effects of the change. The impact of updating the wage data for the rural Outlying region increased by 3.2 percent (reflecting the wage index increase for only one provider).

The fourth column of the table shows the effect of moving from the FY 2006 transition-based wage index to using the new OMB geographic designations based on CBSAs. During the FY 2006 transition to CBSAs, SNFs received a transition-based wage index value consisting of a blend of 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index. For FY 2007, SNFs will receive the FY 2007 CBSA-based wage index values.

The fifth column shows the effect of all of the changes on the FY 2007 payments. The market basket increase of 3.1 percentage points is constant for all providers and, though not shown individually, is included in the total column. It is projected that aggregate payments will increase by 3.1 percent in total, assuming facilities do not change their care delivery and billing practices in response.

As can be seen from this table, the combined effects of all of the changes vary by specific types of providers and by location. For example, though facilities in the rural Mountain region experience only a slight payment increase of 1.2, some providers (such as those in the urban Mountain region) show a greater increase of 4.2 percent. Payment increases for facilities in the urban Mountain area of the country are the highest for any provider category.

Table 12
Projected Impact to the SNF PPS for FY 2007

	Number of facilities	Update wage data	Transition to full CBSA	Total FY 2007 change
Total	15,645	0.0%	0.0%	3.1%
Urban	10,629	0.0%	0.1%	3.2%
Rural	5,016	0.1%	-0.5%	2.7%
Hospital based urban	1,432	0.1%	0.0%	3.2%
Freestanding urban	9,197	0.0%	0.1%	3.2%
Hospital based rural	1,252	0.1%	-0.4%	2.8%
Freestanding rural	3,764	0.1%	-0.5%	2.7%
Urban by region				
New England	902	-0.3%	-0.3%	2.5%
Middle Atlantic	1,504	0.1%	0.1%	3.3%
South Atlantic	1,741	-0.4%	0.1%	2.8%
East North Central	2,010	0.3%	0.1%	3.5%
East South Central	529	-0.3%	0.3%	3.1%
West North Central	854	0.1%	0.2%	3.4%
West South Central	1,144	-0.4%	0.2%	2.9%
Mountain	462	0.8%	0.3%	4.2%
Pacific	1,477	0.3%	0.0%	3.4%
Outlying	6	0.4%	0.0%	3.5%
Rural by region				
New England	136	-1.0%	0.0%	2.1%
Middle Atlantic	256	0.7%	-0.6%	3.2%
South Atlantic	617	-0.1%	-0.8%	2.2%
East North Central	943	-0.1%	-0.5%	2.5%
East South Central	572	0.3%	-0.3%	3.1%
West North Central	1,214	0.5%	-0.1%	3.5%
West South Central	813	0.1%	-0.4%	2.8%
Mountain	296	-0.3%	-1.5%	1.2%
Pacific	167	0.2%	0.0%	3.3%
Outlying	2	3.2%	-2.9%	3.3%
Ownership				
Government	718	0.0%	0.1%	3.2%
Proprietary	11,324	0.0%	0.0%	3.1%
Voluntary	3,603	0.1%	-0.1%	3.1%

C. Accounting Statement

As required by OMB Circular A-4 (available at <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>), in Table 13 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final rule. This table provides our best estimate of the change in Medicare payments under the SNF PPS as a result of the policies in this update notice based on the data for 15,645 SNFs in our database. All expenditures are classified as transfers to Medicare providers (that is, SNFs).

TABLE 13.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2006 SNF PPS RATE YEAR TO THE 2007 SNF PPS RATE YEAR (IN MILLIONS)

Category	Transfers
Annualized Monetized Transfers. From Whom To Whom?	\$560 million. Federal Government to SNF Medicare Providers.

D. Alternatives Considered

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for cost reporting

periods beginning on or after July 11, 1998. This section of the statute prescribes a detailed formula for calculating payment rates under the SNF PPS, and does not provide for the use of any alternative methodology. It specifies that the base year cost data to be used for computing the SNF PPS payment rates must be from FY 1995 (October 1, 1994, through September 30, 1995.) In accordance with the statute, we also incorporated a number of elements into the SNF PPS, such as case-mix classification methodology, the MDS assessment schedule, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the

Federal rates. Further, section 1888(e)(4)(H) of the Act specifically requires us to disseminate the payment rates for each new fiscal year through the **Federal Register**, and to do so before the August 1 that precedes the start of the new fiscal year. Accordingly, we are not pursuing alternatives with respect to the payment methodology.

E. Conclusion

This notice does not initiate any policy changes with regard to the SNF PPS; rather, it simply provides an update to the rates for FY 2007. Therefore, for the reasons set forth in the preceding discussion, we are not preparing analyses for either the RFA or section 1102(b) of the Act, because we have determined that this notice will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Finally, in accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

IX. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice such as this take effect. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued.

We believe it is unnecessary to undertake notice and comment rulemaking in this instance, as the statute requires annual updates to the SNF PPS rates, the methodologies used to update the rates have been previously subject to public comment, and this

notice initiates no policy changes with regard to the SNF PPS but simply reflects the application of previously established methodologies. Therefore, we find good cause to waive notice and comment procedures.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: June 22, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Dated: July 10, 2006.

Michael O. Leavitt,

Secretary.

Addendum—FY 2007 CBSA Wage Index Tables

In this addendum, we provide Tables 8 and 9 which indicate the CBSA-based wage index values for urban and rural providers.

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS

CBSA code	Urban area (constituent counties)	Wage index
10180	Abilene, TX Callahan County, TX. Jones County, TX. Taylor County, TX.	0.8001
10380	Aguadilla-Isabela-San Sebastián, PR Aguada Municipio, PR. Aguadilla Municipio, PR. Añasco Municipio, PR. Isabela Municipio, PR. Lares Municipio, PR. Moca Municipio, PR. Rincón Municipio, PR. San Sebastián Municipio, PR.	0.3915
10420	Akron, OH Portage County, OH. Summit County, OH.	0.8654
10500	Albany, GA Baker County, GA. Dougherty County, GA. Lee County, GA. Terrell County, GA. Worth County, GA.	0.8991
10580	Albany-Schenectady-Troy, NY Albany County, NY. Rensselaer County, NY. Saratoga County, NY. Schenectady County, NY. Schoharie County, NY.	0.8720
10740	Albuquerque, NM Bernalillo County, NM. Sandoval County, NM. Torrance County, NM. Valencia County, NM.	0.9458
10780	Alexandria, LA Grant Parish, LA. Rapides Parish, LA.	0.8006
10900	Allentown-Bethlehem-Easton, PA-NJ Warren County, NJ. Carbon County, PA. Lehigh County, PA. Northampton County, PA.	0.9947
11020	Altoona, PA	0.8812

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
11100	Blair County, PA. Amarillo, TX Armstrong County, TX. Carson County, TX. Potter County, TX. Randall County, TX.	0.9161
11180	Ames, IA Story County, IA.	0.9760
11260	Anchorage, AK Anchorage Municipality, AK. Matanuska-Susitna Borough, AK.	1.2024
11300	Anderson, IN Madison County, IN.	0.8681
11340	Anderson, SC Anderson County, SC.	0.9017
11460	Ann Arbor, MI Washtenaw County, MI.	1.0826
11500	Anniston-Oxford, AL Calhoun County, AL.	0.7770
11540	Appleton, WI Calumet County, WI. Outagamie County, WI.	0.9455
11700	Asheville, NC Buncombe County, NC. Haywood County, NC. Henderson County, NC. Madison County, NC.	0.9077
12020	Athens-Clarke County, GA Clarke County, GA. Madison County, GA. Oconee County, GA. Oglethorpe County, GA.	0.9856
12060	Atlanta-Sandy Springs-Marietta, GA Barrow County, GA. Bartow County, GA. Butts County, GA. Carroll County, GA. Cherokee County, GA. Clayton County, GA. Cobb County, GA. Coweta County, GA. Dawson County, GA. DeKalb County, GA. Douglas County, GA. Fayette County, GA. Forsyth County, GA. Fulton County, GA. Gwinnett County, GA. Haralson County, GA. Heard County, GA. Henry County, GA. Jasper County, GA. Lamar County, GA. Meriwether County, GA. Newton County, GA. Paulding County, GA. Pickens County, GA. Pike County, GA. Rockdale County, GA. Spalding County, GA. Walton County, GA.	0.9762
12100	Atlantic City, NJ Atlantic County, NJ.	1.1831
12220	Auburn-Opelika, AL Lee County, AL.	0.8096
12260	Augusta-Richmond County, GA-SC Burke County, GA. Columbia County, GA. McDuffie County, GA. Richmond County, GA. Aiken County, SC.	0.9667

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
12420	Edgefield County, SC. Austin-Round Rock, TX Bastrop County, TX. Caldwell County, TX. Hays County, TX. Travis County, TX. Williamson County, TX.	0.9344
12540	Bakersfield, CA Kern County, CA.	1.0726
12580	Baltimore-Towson, MD Anne Arundel County, MD. Baltimore County, MD. Carroll County, MD. Harford County, MD. Howard County, MD. Queen Anne's County, MD. Baltimore City, MD.	1.0088
12620	Bangor, ME Penobscot County, ME.	0.9712
12700	Barnstable Town, MA Barnstable County, MA.	1.2540
12940	Baton Rouge, LA Ascension Parish, LA. East Baton Rouge Parish, LA. East Feliciana Parish, LA. Iberville Parish, LA. Livingston Parish, LA. Pointe Coupee Parish, LA. St. Helena Parish, LA. West Baton Rouge Parish, LA. West Feliciana Parish, LA.	0.8085
12980	Battle Creek, MI Calhoun County, MI.	0.9763
13020	Bay City, MI Bay County, MI.	0.9252
13140	Beaumont-Port Arthur, TX Hardin County, TX. Jefferson County, TX. Orange County, TX.	0.8595
13380	Bellingham, WA Whatcom County, WA.	1.1105
13460	Bend, OR Deschutes County, OR.	1.0743
13644	Bethesda-Frederick-Gaithersburg, MD Frederick County, MD. Montgomery County, MD.	1.0904
13740	Billings, MT Carbon County, MT. Yellowstone County, MT.	0.8713
13780	Binghamton, NY Broome County, NY. Tioga County, NY.	0.8786
13820	Birmingham-Hoover, AL Bibb County, AL. Blount County, AL. Chilton County, AL. Jefferson County, AL. St. Clair County, AL. Shelby County, AL. Walker County, AL.	0.8894
13900	Bismarck, ND Burleigh County, ND. Morton County, ND.	0.7240
13980	Blacksburg-Christiansburg-Radford, VA Giles County, VA. Montgomery County, VA. Pulaski County, VA. Radford City, VA.	0.8213
14020	Bloomington, IN Greene County, IN. Monroe County, IN.	0.8533

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
14060	Owen County, IN. Bloomington-Normal, IL McLean County, IL	0.8945
14260	Boise City-Nampa, ID Ada County, ID. Boise County, ID. Canyon County, ID. Gem County, ID. Owyhee County, ID.	0.9401
14484	Boston-Quincy, MA Norfolk County, MA. Plymouth County, MA. Suffolk County, MA.	1.1679
14500	Boulder, CO Boulder County, CO.	1.0350
14540	Bowling Green, KY Edmonson County, KY. Warren County, KY.	0.8148
14740	Bremerton-Silverdale, WA Kitsap County, WA.	1.0914
14860	Bridgeport-Stamford-Norwalk, CT Fairfield County, CT.	1.2659
15180	Brownsville-Harlingen, TX Cameron County, TX.	0.9430
15260	Brunswick, GA Brantley County, GA. Glynn County, GA. McIntosh County, GA.	1.0165
15380	Buffalo-Niagara Falls, NY Erie County, NY. Niagara County, NY.	0.9424
15500	Burlington, NC Alamance County, NC.	0.8674
15540	Burlington-South Burlington, VT Chittenden County, VT. Franklin County, VT. Grand Isle County, VT.	0.9475
15764	Cambridge-Newton-Framingham, MA Middlesex County, MA.	1.0970
15804	Camden, NJ Burlington County, NJ. Camden County, NJ. Gloucester County, NJ.	1.0393
15940	Canton-Massillon, OH Carroll County, OH. Stark County, OH.	0.9032
15980	Cape Coral-Fort Myers, FL Lee County, FL.	0.9343
16180	Carson City, NV Carson City, NV.	1.0026
16220	Casper, WY Natrona County, WY.	0.9145
16300	Cedar Rapids, IA Benton County, IA. Jones County, IA. Linn County, IA.	0.8888
16580	Champaign-Urbana, IL Champaign County, IL. Ford County, IL. Piatt County, IL.	0.9645
16620	Charleston, WV Boone County, WV. Clay County, WV. Kanawha County, WV. Lincoln County, WV. Putnam County, WV.	0.8543
16700	Charleston-North Charleston, SC Berkeley County, SC. Charleston County, SC. Dorchester County, SC.	0.9145
16740	Charlotte-Gastonia-Concord, NC SC	0.9555

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
16820	Anson County, NC. Cabarrus County, NC. Gaston County, NC. Mecklenburg County, NC. Union County, NC. York County, SC. Charlottesville, VA	1.0125
16860	Albemarle County, VA. Fluvanna County, VA. Greene County, VA. Nelson County, VA. Charlottesville City, VA. Chattanooga, TN-GA	0.8948
16940	Catoosa County, GA. Dade County, GA. Walker County, GA. Hamilton County, TN. Marion County, TN. Sequatchie County, TN. Cheyenne, WY	0.9060
16974	Laramie County, WY. Chicago-Naperville-Joliet, IL	1.0752
17020	Cook County, IL. DeKalb County, IL. DuPage County, IL. Grundy County, IL. Kane County, IL. Kendall County, IL. McHenry County, IL. Will County, IL. Chico, CA	1.1054
17140	Butte County, CA. Cincinnati-Middletown, OH-KY-IN Dearborn County, IN. Franklin County, IN. Ohio County, IN. Boone County, KY. Bracken County, KY. Campbell County, KY. Gallatin County, KY. Grant County, KY. Kenton County, KY. Pendleton County, KY. Brown County, OH. Butler County, OH. Clermont County, OH. Hamilton County, OH. Warren County, OH.	0.9601
17300	Clarksville, TN-KY Christian County, KY. Trigg County, KY. Montgomery County, TN. Stewart County, TN.	0.8436
17420	Cleveland, TN Bradley County, TN. Polk County, TN.	0.8110
17460	Cleveland-Elyria-Mentor, OH Cuyahoga County, OH. Geauga County, OH. Lake County, OH. Lorain County, OH. Medina County, OH.	0.9400
17660	Coeur d'Alene, ID Kootenai County, ID.	0.9344
17780	College Station-Bryan, TX Brazos County, TX. Burleson County, TX. Robertson County, TX.	0.9046
17820	Colorado Springs, CO El Paso County, CO. Teller County, CO.	0.9701

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
17860	Columbia, MO Boone County, MO. Howard County, MO.	0.8543
17900	Columbia, SC Calhoun County, SC. Fairfield County, SC. Kershaw County, SC. Lexington County, SC. Richland County, SC. Saluda County, SC.	0.8934
17980	Columbus, GA-AL Russell County, AL. Chattahoochee County, GA. Harris County, GA. Marion County, GA. Muscogee County, GA.	0.8239
18020	Columbus, IN Bartholomew County, IN.	0.9318
18140	Columbus, OH Delaware County, OH. Fairfield County, OH. Franklin County, OH. Licking County, OH. Madison County, OH. Morrow County, OH. Pickaway County, OH. Union County, OH.	1.0107
18580	Corpus Christi, TX Aransas County, TX. Nueces County, TX. San Patricio County, TX.	0.8564
18700	Corvallis, OR Benton County, OR.	1.1546
19060	Cumberland, MD-WV Allegany County, MD. Mineral County, WV.	0.8447
19124	Dallas-Plano-Irving, TX Collin County, TX. Dallas County, TX. Delta County, TX. Denton County, TX. Ellis County, TX. Hunt County, TX. Kaufman County, TX. Rockwall County, TX.	1.0076
19140	Dalton, GA Murray County, GA. Whitfield County, GA.	0.9093
19180	Danville, IL Vermilion County, IL.	0.9267
19260	Danville, VA Pittsylvania County, VA. Danville City, VA.	0.8451
19340	Davenport-Moline-Rock Island, IA-IL Henry County, IL. Mercer County, IL. Rock Island County, IL. Scott County, IA.	0.8847
19380	Dayton, OH Greene County, OH. Miami County, OH. Montgomery County, OH. Preble County, OH.	0.9037
19460	Decatur, AL Lawrence County, AL. Morgan County, AL.	0.8160
19500	Decatur, IL Macon County, IL.	0.8173
19660	Deltona-Daytona Beach-Ormond Beach, FL Volusia County, FL.	0.9264
19740	Denver-Aurora, CO	1.0931

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Adams County, CO. Arapahoe County, CO. Broomfield County, CO. Clear Creek County, CO. Denver County, CO. Douglas County, CO. Elbert County, CO. Gilpin County, CO. Jefferson County, CO. Park County, CO.	
19780	Des Moines-West Des Moines, IA	0.9214
	Dallas County, IA. Guthrie County, IA. Madison County, IA. Polk County, IA. Warren County, IA.	
19804	Detroit-Livonia-Dearborn, MI	1.0282
	Wayne County, MI.	
20020	Dothan, AL	0.7381
	Geneva County, AL. Henry County, AL. Houston County, AL.	
20100	Dover, DE	0.9848
	Kent County, DE.	
20220	Dubuque, IA	0.9134
	Dubuque County, IA.	
20260	Duluth, MN-WI	1.0042
	Carlton County, MN. St. Louis County, MN. Douglas County, WI.	
20500	Durham, NC	0.9826
	Chatham County, NC. Durham County, NC. Orange County, NC. Person County, NC.	
20740	Eau Claire, WI	0.9630
	Chippewa County, WI. Eau Claire County, WI.	
20764	Edison, NJ	1.1190
	Middlesex County, NJ. Monmouth County, NJ. Ocean County, NJ. Somerset County, NJ.	
20940	El Centro, CA	0.9076
	Imperial County, CA.	
21060	Elizabethtown, KY	0.8698
	Hardin County, KY. Larue County, KY.	
21140	Elkhart-Goshen, IN	0.9426
	Elkhart County, IN.	
21300	Elmira, NY	0.8240
	Chemung County, NY.	
21340	El Paso, TX	0.9053
	El Paso County, TX.	
21500	Erie, PA	0.8828
	Erie County, PA.	
21604	Essex County, MA	1.0419
	Essex County, MA.	
21660	Eugene-Springfield, OR	1.0877
	Lane County, OR.	
21780	Evansville, IN-KY	0.9071
	Gibson County, IN. Posey County, IN. Vanderburgh County, IN. Warrick County, IN. Henderson County, KY. Webster County, KY.	
21820	Fairbanks, AK	1.1060
	Fairbanks North Star Borough, AK.	
21940	Fajardo, PR	0.4037
	Ceiba Municipio, PR.	

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
22020	Fajardo Municipio, PR. Luquillo Municipio, PR. Fargo, ND-MN Cass County, ND. Clay County, MN.	0.8251
22140	Farmington, NM San Juan County, NM.	0.8589
22180	Fayetteville, NC Cumberland County, NC. Hoke County, NC.	0.8946
22220	Fayetteville-Springdale-Rogers, AR-MO Benton County, AR. Madison County, AR. Washington County, AR. McDonald County, MO.	0.8865
22380	Flagstaff, AZ Coconino County, AZ.	1.1601
22420	Flint, MI Genesee County, MI.	1.0969
22500	Florence, SC Darlington County, SC. Florence County, SC.	0.8388
22520	Florence-Muscle Shoals, AL Colbert County, AL. Lauderdale County, AL.	0.7844
22540	Fond du Lac, WI Fond du Lac County, WI.	1.0064
22660	Fort Collins-Loveland, CO Larimer County, CO.	0.9545
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Broward County, FL.	1.0134
22900	Fort Smith, AR-OK Crawford County, AR. Franklin County, AR. Sebastian County, AR. Le Flore County, OK. Sequoyah County, OK.	0.7732
23020	Fort Walton Beach-Crestview-Destin, FL Okaloosa County, FL.	0.8643
23060	Fort Wayne, IN Allen County, IN. Wells County, IN. Whitley County, IN.	0.9517
23104	Fort Worth-Arlington, TX Johnson County, TX. Parker County, TX. Tarrant County, TX. Wise County, TX.	0.9570
23420	Fresno, CA Fresno County, CA.	1.0943
23460	Gadsden, AL Etowah County, AL.	0.8066
23540	Gainesville, FL Alachua County, FL. Gilchrist County, FL.	0.9277
23580	Gainesville, GA Hall County, GA.	0.8959
23844	Gary, IN Jasper County, IN. Lake County, IN. Newton County, IN. Porter County, IN.	0.9334
24020	Glens Falls, NY Warren County, NY. Washington County, NY.	0.8325
24140	Goldsboro, NC Wayne County, NC.	0.9171
24220	Grand Forks, ND-MN Polk County, MN. Grand Forks County, ND.	0.7949
24300	Grand Junction, CO	0.9669

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
24340	Mesa County, CO. Grand Rapids-Wyoming, MI Barry County, MI. Ionia County, MI. Kent County, MI. Newaygo County, MI.	0.9455
24500	Great Falls, MT Cascade County, MT.	0.8598
24540	Greeley, CO Weld County, CO.	0.9602
24580	Green Bay, WI Brown County, WI. Kewaunee County, WI. Oconto County, WI.	0.9787
24660	Greensboro-High Point, NC Guilford County, NC. Randolph County, NC. Rockingham County, NC.	0.8866
24780	Greenville, NC Greene County, NC. Pitt County, NC.	0.9432
24860	Greenville, SC Greenville County, SC. Laurens County, SC. Pickens County, SC.	0.9804
25020	Guayama, PR Arroyo Municipio, PR. Guayama Municipio, PR. Patillas Municipio, PR.	0.3235
25060	Gulfport-Biloxi, MS Hancock County, MS. Harrison County, MS. Stone County, MS.	0.8915
25180	Hagerstown-Martinsburg, MD-WV Washington County, MD. Berkeley County, WV. Morgan County, WV.	0.9039
25260	Hanford-Corcoran, CA Kings County, CA.	1.0282
25420	Harrisburg-Carlisle, PA Cumberland County, PA. Dauphin County, PA. Perry County, PA.	0.9402
25500	Harrisonburg, VA Rockingham County, VA. Harrisonburg City, VA.	0.9074
25540	Hartford-West Hartford-East Hartford, CT Hartford County, CT. Litchfield County, CT. Middlesex County, CT. Tolland County, CT.	1.0894
25620	Hattiesburg, MS Forrest County, MS. Lamar County, MS. Perry County, MS.	0.7430
25860	Hickory-Lenoir-Morganton, NC Alexander County, NC. Burke County, NC. Caldwell County, NC. Catawba County, NC.	0.9010
25980	Hinesville-Fort Stewart, GA ¹ Liberty County, GA. Long County, GA.	0.9178
26100	Holland-Grand Haven, MI Ottawa County, MI.	0.9163
26180	Honolulu, HI Honolulu County, HI.	1.1096
26300	Hot Springs, AR Garland County, AR.	0.8782
26380	Houma-Bayou Cane-Thibodaux, LA Lafourche Parish, LA.	0.8082

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
26420	Terrebonne Parish, LA. Houston-Sugar Land-Baytown, TX Austin County, TX. Brazoria County, TX. Chambers County, TX. Fort Bend County, TX. Galveston County, TX. Harris County, TX. Liberty County, TX. Montgomery County, TX. San Jacinto County, TX. Waller County, TX.	1.0009
26580	Huntington-Ashland, WV-KY-OH Boyd County, KY. Greenup County, KY. Lawrence County, OH. Cabell County, WV. Wayne County, WV.	0.8998
26620	Huntsville, AL Limestone County, AL. Madison County, AL.	0.9007
26820	Idaho Falls, ID Bonneville County, ID. Jefferson County, ID.	0.9088
26900	Indianapolis-Carmel, IN Boone County, IN. Brown County, IN. Hamilton County, IN. Hancock County, IN. Hendricks County, IN. Johnson County, IN. Marion County, IN. Morgan County, IN. Putnam County, IN. Shelby County, IN.	0.9896
26980	Iowa City, IA Johnson County, IA. Washington County, IA.	0.9714
27060	Ithaca, NY Tompkins County, NY.	0.9928
27100	Jackson, MI Jackson County, MI.	0.9560
27140	Jackson, MS Copiah County, MS. Hinds County, MS. Madison County, MS. Rankin County, MS. Simpson County, MS.	0.8271
27180	Jackson, TN Chester County, TN. Madison County, TN.	0.8853
27260	Jacksonville, FL Baker County, FL. Clay County, FL. Duval County, FL. Nassau County, FL. St. Johns County, FL.	0.9166
27340	Jacksonville, NC Onslow County, NC.	0.8231
27500	Janesville, WI Rock County, WI.	0.9655
27620	Jefferson City, MO Callaway County, MO. Cole County, MO. Moniteau County, MO. Osage County, MO.	0.8333
27740	Johnson City, TN Carter County, TN. Unicoi County, TN. Washington County, TN.	0.8043
27780	Johnstown, PA	0.8620

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
27860	Cambria County, PA. Jonesboro, AR Craighead County, AR. Poinsett County, AR.	0.7662
27900	Joplin, MO Jasper County, MO. Newton County, MO.	0.8606
28020	Kalamazoo-Portage, MI Kalamazoo County, MI. Van Buren County, MI.	1.0705
28100	Kankakee-Bradley, IL Kankakee County, IL.	1.0083
28140	Kansas City, MO-KS Franklin County, KS. Johnson County, KS. Leavenworth County, KS. Linn County, KS. Miami County, KS. Wyandotte County, KS. Bates County, MO. Caldwell County, MO. Cass County, MO. Clay County, MO. Clinton County, MO. Jackson County, MO. Lafayette County, MO. Platte County, MO. Ray County, MO.	0.9495
28420	Kennewick-Richland-Pasco, WA Benton County, WA. Franklin County, WA.	1.0343
28660	Killeen-Temple-Fort Hood, TX Bell County, TX. Coryell County, TX. Lampasas County, TX.	0.8902
28700	Kingsport-Bristol-Bristol, TN-VA Hawkins County, TN. Sullivan County, TN. Bristol City, VA. Scott County, VA. Washington County, VA.	0.7985
28740	Kingston, NY Ulster County, NY.	0.9367
28940	Knoxville, TN Anderson County, TN. Blount County, TN. Knox County, TN. Loudon County, TN. Union County, TN.	0.8249
29020	Kokomo, IN Howard County, IN. Tipton County, IN.	0.9669
29100	La Crosse, WI-MN Houston County, MN. La Crosse County, WI.	0.9426
29140	Lafayette, IN Benton County, IN. Carroll County, IN. Tippecanoe County, IN.	0.8932
29180	Lafayette, LA Lafayette Parish, LA. St. Martin Parish, LA.	0.8289
29340	Lake Charles, LA Calcasieu Parish, LA. Cameron Parish, LA.	0.7914
29404	Lake County-Kenosha County, IL-WI Lake County, IL. Kenosha County, WI.	1.0571
29460	Lakeland, FL Polk County, FL.	0.8879
29540	Lancaster, PA	0.9589

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
29620	Lancaster County, PA. Lansing-East Lansing, MI Clinton County, MI. Eaton County, MI. Ingham County, MI.	1.0088
29700	Laredo, TX Webb County, TX.	0.7812
29740	Las Cruces, NM Dona Ana County, NM.	0.9273
29820	Las Vegas-Paradise, NV Clark County, NV.	1.1430
29940	Lawrence, KS Douglas County, KS.	0.8366
30020	Lawton, OK Comanche County, OK.	0.8066
30140	Lebanon, PA Lebanon County, PA.	0.8680
30300	Lewiston, ID-WA Nez Perce County, ID. Asotin County, WA.	0.9854
30340	Lewiston-Auburn, ME Androscoggin County, ME.	0.9126
30460	Lexington-Fayette, KY Bourbon County, KY. Clark County, KY. Fayette County, KY. Jessamine County, KY. Scott County, KY. Woodford County, KY.	0.9181
30620	Lima, OH Allen County, OH.	0.9042
30700	Lincoln, NE Lancaster County, NE. Seward County, NE.	1.0092
30780	Little Rock-North Little Rock, AR Faulkner County, AR. Grant County, AR. Lonoke County, AR. Perry County, AR. Pulaski County, AR. Saline County, AR.	0.8890
30860	Logan, UT-ID Franklin County, ID. Cache County, UT.	0.9022
30980	Longview, TX Gregg County, TX. Rusk County, TX. Upshur County, TX.	0.8788
31020	Longview, WA Cowlitz County, WA.	1.0011
31084	Los Angeles-Long Beach-Glendale, CA Los Angeles County, CA.	1.1760
31140	Louisville, KY-IN Clark County, IN. Floyd County, IN. Harrison County, IN. Washington County, IN. Bullitt County, KY. Henry County, KY. Jefferson County, KY. Meade County, KY. Nelson County, KY. Oldham County, KY. Shelby County, KY. Spencer County, KY. Trimble County, KY.	0.9119
31180	Lubbock, TX Crosby County, TX. Lubbock County, TX.	0.8613
31340	Lynchburg, VA Amherst County, VA.	0.8694

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
31420	Appomattox County, VA. Bedford County, VA. Campbell County, VA. Bedford City, VA. Lynchburg City, VA. Macon, GA Bibb County, GA. Crawford County, GA. Jones County, GA. Monroe County, GA. Twiggs County, GA.	0.9520
31460	Madera, CA Madera County, CA.	0.8155
31540	Madison, WI Columbia County, WI. Dane County, WI. Iowa County, WI.	1.0840
31700	Manchester-Nashua, NH Hillsborough County, NH. Merrimack County, NH.	1.0243
31900	Mansfield, OH1 Richland County, OH.	0.9271
32420	Mayagüez, PR Hormigueros Municipio, PR. Mayagüez Municipio, PR.	0.3848
32580	McAllen-Edinburg-Pharr, TX Hidalgo County, TX.	0.8773
32780	Medford, OR Jackson County, OR.	1.0818
32820	Memphis, TN-MS-AR Crittenden County, AR. DeSoto County, MS. Marshall County, MS. Tate County, MS. Tunica County, MS. Fayette County, TN. Shelby County, TN. Tipton County, TN.	0.9373
32900	Merced, CA Merced County, CA.	1.1471
33124	Miami-Miami Beach-Kendall, FL Miami-Dade County, FL.	0.9813
33140	Michigan City-La Porte, IN LaPorte County, IN.	0.9118
33260	Midland, TX Midland County, TX.	0.9786
33340	Milwaukee-Waukesha-West Allis, WI Milwaukee County, WI. Ozaukee County, WI. Washington County, WI. Waukesha County, WI.	1.0218
33460	Minneapolis-St. Paul-Bloomington, MN-WI Anoka County, MN. Carver County, MN. Chisago County, MN. Dakota County, MN. Hennepin County, MN. Isanti County, MN. Ramsey County, MN. Scott County, MN. Sherburne County, MN. Washington County, MN. Wright County, MN. Pierce County, WI. St. Croix County, WI.	1.0946
33540	Missoula, MT Missoula County, MT.	0.8929
33660	Mobile, AL Mobile County, AL.	0.7914
33700	Modesto, CA Stanislaus County, CA.	1.1730

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
33740	Monroe, LA Ouachita Parish, LA. Union Parish, LA.	0.7997
33780	Monroe, MI Monroe County, MI.	0.9708
33860	Montgomery, AL Autauga County, AL. Elmore County, AL. Lowndes County, AL. Montgomery County, AL.	0.8009
34060	Morgantown, WV Monongalia County, WV. Preston County, WV.	0.8423
34100	Morristown, TN Grainger County, TN. Hamblen County, TN. Jefferson County, TN.	0.7933
34580	Mount Vernon-Anacortes, WA Skagit County, WA.	1.0518
34620	Muncie, IN Delaware County, IN.	0.8562
34740	Muskegon-Norton Shores, MI Muskegon County, MI.	0.9941
34820	Myrtle Beach-Conway-North Myrtle Beach, SC Horry County, SC.	0.8811
34900	Napa, CA Napa County, CA.	1.3375
34940	Naples-Marco Island, FL Collier County, FL.	0.9941
34980	Nashville-Davidson—Murfreesboro, TN Cannon County, TN. Cheatham County, TN. Davidson County, TN. Dickson County, TN. Hickman County, TN. Macon County, TN. Robertson County, TN. Rutherford County, TN. Smith County, TN. Sumner County, TN. Trousdale County, TN. Williamson County, TN. Wilson County, TN.	0.9847
35004	Nassau-Suffolk, NY Nassau County, NY. Suffolk County, NY.	1.2663
35084	Newark-Union, NJ-PA Essex County, NJ. Hunterdon County, NJ. Morris County, NJ. Sussex County, NJ. Union County, NJ. Pike County, PA.	1.1892
35300	New Haven-Milford, CT New Haven County, CT.	1.1953
35380	New Orleans-Metairie-Kenner, LA Jefferson Parish, LA. Orleans Parish, LA. Plaquemines Parish, LA. St. Bernard Parish, LA. St. Charles Parish, LA. St. John the Baptist Parish, LA. St. Tammany Parish, LA.	0.8832
35644	New York-Wayne-White Plains, NY-NJ Bergen County, NJ. Hudson County, NJ. Passaic County, NJ. Bronx County, NY. Kings County, NY. New York County, NY. Putnam County, NY.	1.3177

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
35660	Queens County, NY. Richmond County, NY. Rockland County, NY. Westchester County, NY. Niles-Benton Harbor, MI	0.8915
35980	Berrien County, MI. Norwich-New London, CT	1.1932
36084	New London County, CT. Oakland-Fremont-Hayward, CA	1.5819
36100	Alameda County, CA. Contra Costa County, CA. Ocala, FL	0.8867
36140	Marion County, FL. Ocean City, NJ	1.0472
36220	Cape May County, NJ. Odessa, TX	1.0102
36260	Ector County, TX. Ogden-Clearfield, UT	0.8995
36420	Davis County, UT. Morgan County, UT. Weber County, UT. Oklahoma City, OK	0.8843
36500	Canadian County, OK. Cleveland County, OK. Grady County, OK. Lincoln County, OK. Logan County, OK. McClain County, OK. Oklahoma County, OK. Olympia, WA	1.1081
36540	Thurston County, WA. Omaha-Council Bluffs, NE-IA	0.9450
36740	Harrison County, IA. Mills County, IA. Pottawattamie County, IA. Cass County, NE. Douglas County, NE. Sarpy County, NE. Saunders County, NE. Washington County, NE. Orlando, FL	0.9452
36780	Lake County, FL. Orange County, FL. Osceola County, FL. Seminole County, FL. Oshkosh-Neenah, WI	0.9315
36980	Winnebago County, WI. Owensboro, KY	0.8748
37100	Daviess County, KY. Hancock County, KY. McLean County, KY. Oxnard-Thousand Oaks-Ventura, CA	1.1546
37340	Ventura County, CA. Palm Bay-Melbourne-Titusville, FL	0.9443
37460	Brevard County, FL. Panama City-Lynn Haven, FL	0.8027
37620	Bay County, FL. Parkersburg-Marietta, WV-OH	0.7978
37700	Washington County, OH. Pleasants County, WV. Wirt County, WV. Wood County, WV. Pascagoula, MS	0.8215
37860	George County, MS. Jackson County, MS. Pensacola-Ferry Pass-Brent, FL	0.8000
37900	Escambia County, FL. Santa Rosa County, FL. Peoria, IL	0.8982
	Marshall County, IL. Peoria County, IL.	

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
37964	Stark County, IL. Tazewell County, IL. Woodford County, IL. Philadelphia, PA Bucks County, PA. Chester County, PA. Delaware County, PA. Montgomery County, PA. Philadelphia County, PA.	1.0997
38060	Phoenix-Mesa-Scottsdale, AZ Maricopa County, AZ. Pinal County, AZ.	1.0288
38220	Pine Bluff, AR Cleveland County, AR. Jefferson County, AR. Lincoln County, AR.	0.8383
38300	Pittsburgh, PA Allegheny County, PA. Armstrong County, PA. Beaver County, PA. Butler County, PA. Fayette County, PA. Washington County, PA. Westmoreland County, PA.	0.8674
38340	Pittsfield, MA Berkshire County, MA.	1.0266
38540	Pocatello, ID Bannock County, ID. Power County, ID.	0.9401
38660	Ponce, PR Juana Díaz Municipio, PR. Ponce Municipio, PR. Villalba Municipio, PR.	0.4843
38860	Portland-South Portland-Biddeford, ME Cumberland County, ME. Sagadahoc County, ME. York County, ME.	0.9909
38900	Portland-Vancouver-Beaverton, OR-WA Clackamas County, OR. Columbia County, OR. Multnomah County, OR. Washington County, OR. Yamhill County, OR. Clark County, WA. Skamania County, WA.	1.1416
38940	Port St. Lucie-Fort Pierce, FL Martin County, FL. St. Lucie County, FL.	0.9834
39100	Poughkeepsie-Newburgh-Middletown, NY Dutchess County, NY. Orange County, NY.	1.0911
39140	Prescott, AZ Yavapai County, AZ.	0.9836
39300	Providence-New Bedford-Fall River, RI-MA Bristol County, MA. Bristol County, RI. Kent County, RI. Newport County, RI. Providence County, RI. Washington County, RI.	1.0783
39340	Provo-Orem, UT Juab County, UT. Utah County, UT.	0.9538
39380	Pueblo, CO Pueblo County, CO.	0.8754
39460	Punta Gorda, FL Charlotte County, FL.	0.9405
39540	Racine, WI Racine County, WI.	0.9356
39580	Raleigh-Cary, NC Franklin County, NC.	0.9864

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
39660	Johnston County, NC. Wake County, NC. Rapid City, SD Meade County, SD. Pennington County, SD.	0.8833
39740	Reading, PA Berks County, PA.	0.9623
39820	Redding, CA Shasta County, CA.	1.3198
39900	Reno-Sparks, NV Storey County, NV. Washoe County, NV.	1.1964
40060	Richmond, VA Amelia County, VA. Caroline County, VA. Charles City County, VA. Chesterfield County, VA. Cumberland County, VA. Dinwiddie County, VA. Goochland County, VA. Hanover County, VA. Henrico County, VA. King and Queen County, VA. King William County, VA. Louisa County, VA. New Kent County, VA. Powhatan County, VA. Prince George County, VA. Sussex County, VA. Colonial Heights City, VA. Hopewell City, VA. Petersburg City, VA. Richmond City, VA.	0.9177
40140	Riverside-San Bernardino-Ontario, CA Riverside County, CA. San Bernardino County, CA.	1.0904
40220	Roanoke, VA Botetourt County, VA. Craig County, VA. Franklin County, VA. Roanoke County, VA. Roanoke City, VA. Salem City, VA.	0.8647
40340	Rochester, MN Dodge County, MN. Olmsted County, MN. Wabasha County, MN.	1.1408
40380	Rochester, NY Livingston County, NY. Monroe County, NY. Ontario County, NY. Orleans County, NY. Wayne County, NY.	0.8994
40420	Rockford, IL Boone County, IL. Winnebago County, IL.	0.9990
40484	Rockingham County—Strafford County, NH Rockingham County, NH. Strafford County, NH.	1.0159
40580	Rocky Mount, NC Edgecombe County, NC. Nash County, NC.	0.8854
40660	Rome, GA Floyd County, GA.	0.9194
40900	Sacramento—Arden-Arcade—Roseville, CA El Dorado County, CA. Placer County, CA. Sacramento County, CA. Yolo County, CA.	1.3373
40980	Saginaw-Saginaw Township North, MI Saginaw County, MI.	0.8874

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
41060	St. Cloud, MN Benton County, MN. Stearns County, MN.	1.0362
41100	St. George, UT Washington County, UT.	0.9265
41140	St. Joseph, MO-KS Doniphan County, KS. Andrew County, MO. Buchanan County, MO. DeKalb County, MO.	1.0118
41180	St. Louis, MO-IL Bond County, IL. Calhoun County, IL. Clinton County, IL. Jersey County, IL. Macoupin County, IL. Madison County, IL. Monroe County, IL. St. Clair County, IL. Crawford County, MO. Franklin County, MO. Jefferson County, MO. Lincoln County, MO. St. Charles County, MO. St. Louis County, MO. Warren County, MO. Washington County, MO. St. Louis City, MO.	0.9006
41420	Salem, OR Marion County, OR. Polk County, OR.	1.0439
41500	Salinas, CA Monterey County, CA.	1.4338
41540	Salisbury, MD Somerset County, MD. Wicomico County, MD.	0.8953
41620	Salt Lake City, UT Salt Lake County, UT. Summit County, UT. Tooele County, UT.	0.9402
41660	San Angelo, TX Irion County, TX. Tom Green County, TX.	0.8362
41700	San Antonio, TX Atascosa County, TX. Bandera County, TX. Bexar County, TX. Comal County, TX. Guadalupe County, TX. Kendall County, TX. Medina County, TX. Wilson County, TX.	0.8845
41740	San Diego-Carlsbad-San Marcos, CA San Diego County, CA.	1.1354
41780	Sandusky, OH Erie County, OH.	0.9302
41884	San Francisco-San Mateo-Redwood City, CA Marin County, CA. San Francisco County, CA. San Mateo County, CA.	1.5166
41900	San Germán-Cabo Rojo, PR Cabo Rojo Municipio, PR. Lajas Municipio, PR. Sabana Grande Municipio, PR. San Germán Municipio, PR.	0.4885
41940	San Jose-Sunnyvale-Santa Clara, CA San Benito County, CA. Santa Clara County, CA.	1.5543
41980	San Juan-Caguas-Guaynabo, PR Aguas Buenas Municipio, PR. Aibonito Municipio, PR.	0.4452

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Arecibo Municipio, PR. Barceloneta Municipio, PR. Barranquitas Municipio, PR. Bayamón Municipio, PR. Caguas Municipio, PR. Camuy Municipio, PR. Canóvanas Municipio, PR. Carolina Municipio, PR. Cataño Municipio, PR. Cayey Municipio, PR. Ciales Municipio, PR. Cidra Municipio, PR. Comerío Municipio, PR. Corozal Municipio, PR. Dorado Municipio, PR. Florida Municipio, PR. Guaynabo Municipio, PR. Gurabo Municipio, PR. Hatillo Municipio, PR. Humacao Municipio, PR. Juncos Municipio, PR. Las Piedras Municipio, PR. Loíza Municipio, PR. Manatí Municipio, PR. Maunabo Municipio, PR. Morovis Municipio, PR. Naguabo Municipio, PR. Naranjito Municipio, PR. Orocovis Municipio, PR. Quebradillas Municipio, PR. Río Grande Municipio, PR. San Juan Municipio, PR. San Lorenzo Municipio, PR. Toa Alta Municipio, PR. Toa Baja Municipio, PR. Trujillo Alto Municipio, PR. Vega Alta Municipio, PR. Vega Baja Municipio, PR. Yabucoa Municipio, PR.	
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA.	1.1599
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA.	1.1473
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara County, CA.	1.1092
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA.	1.5458
42140	Santa Fe, NM Santa Fe County, NM.	1.0825
42220	Santa Rosa-Petaluma, CA Sonoma County, CA.	1.4464
42260	Sarasota-Bradenton-Venice, FL Manatee County, FL. Sarasota County, FL.	0.9868
42340	Savannah, GA Bryan County, GA. Chatham County, GA. Effingham County, GA.	0.9351
42540	Scranton—Wilkes-Barre, PA Lackawanna County, PA. Luzerne County, PA. Wyoming County, PA.	0.8348
42644	Seattle-Bellevue-Everett, WA King County, WA. Snohomish County, WA.	1.1434
42680	Sebastian-Vero Beach, FL Indian River County, FL.	0.9573
43100	Sheboygan, WI Sheboygan County, WI.	0.9027
43300	Sherman-Denison, TX Grayson County, TX.	0.8503

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
43340	Shreveport-Bossier City, LA Bossier Parish, LA. Caddo Parish, LA. De Soto Parish, LA.	0.8865
43580	Sioux City, IA-NE-SD Woodbury County, IA. Dakota County, NE. Dixon County, NE. Union County, SD.	0.9201
43620	Sioux Falls, SD Lincoln County, SD. McCook County, SD. Minnehaha County, SD. Turner County, SD.	0.9559
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN. Cass County, MI.	0.9842
43900	Spartanburg, SC Spartanburg County, SC.	0.9174
44060	Spokane, WA Spokane County, WA.	1.0447
44100	Springfield, IL Menard County, IL. Sangamon County, IL.	0.8890
44140	Springfield, MA Franklin County, MA. Hampden County, MA. Hampshire County, MA.	1.0079
44180	Springfield, MO Christian County, MO. Dallas County, MO. Greene County, MO. Polk County, MO. Webster County, MO.	0.8469
44220	Springfield, OH Clark County, OH.	0.8593
44300	State College, PA Centre County, PA.	0.8784
44700	Stockton, CA San Joaquin County, CA.	1.1443
44940	Sumter, SC Sumter County, SC.	0.8084
45060	Syracuse, NY Madison County, NY. Onondaga County, NY. Oswego County, NY.	0.9692
45104	Tacoma, WA Pierce County, WA.	1.0789
45220	Tallahassee, FL Gadsden County, FL. Jefferson County, FL. Leon County, FL. Wakulla County, FL.	0.8942
45300	Tampa-St. Petersburg-Clearwater, FL Hernando County, FL. Hillsborough County, FL. Pasco County, FL. Pinellas County, FL.	0.9144
45460	Terre Haute, IN Clay County, IN. Sullivan County, IN. Vermillion County, IN. Vigo County, IN.	0.8765
45500	Texarkana, TX-Texarkana, AR Miller County, AR. Bowie County, TX.	0.8104
45780	Toledo, OH Fulton County, OH. Lucas County, OH. Ottawa County, OH. Wood County, OH.	0.9586

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
45820	Topeka, KS Jackson County, KS. Jefferson County, KS. Osage County, KS. Shawnee County, KS. Wabaunsee County, KS.	0.8730
45940	Trenton-Ewing, NJ Mercer County, NJ.	1.0836
46060	Tucson, AZ Pima County, AZ.	0.9203
46140	Tulsa, OK Creek County, OK. Okmulgee County, OK. Osage County, OK. Pawnee County, OK. Rogers County, OK. Tulsa County, OK. Wagoner County, OK.	0.8103
46220	Tuscaloosa, AL Greene County, AL. Hale County, AL. Tuscaloosa County, AL.	0.8542
46340	Tyler, TX Smith County, TX.	0.8812
46540	Utica-Rome, NY Herkimer County, NY. Oneida County, NY.	0.8397
46660	Valdosta, GA Brooks County, GA. Echols County, GA. Lanier County, GA. Lowndes County, GA.	0.8369
46700	Vallejo-Fairfield, CA Solano County, CA.	1.5138
47020	Victoria, TX Calhoun County, TX. Goliad County, TX. Victoria County, TX.	0.8560
47220	Vineland-Millville-Bridgeton, NJ Cumberland County, NJ.	0.9832
47260	Virginia Beach-Norfolk-Newport News, VA-NC Currituck County, NC. Gloucester County, VA. Isle of Wight County, VA. James City County, VA. Mathews County, VA. Surry County, VA. York County, VA. Chesapeake City, VA. Hampton City, VA. Newport News City, VA. Norfolk City, VA. Poquoson City, VA. Portsmouth City, VA. Suffolk City, VA. Virginia Beach City, VA. Williamsburg City, VA.	0.8790
47300	Visalia-Porterville, CA Tulare County, CA.	0.9968
47380	Waco, TX McLennan County, TX.	0.8633
47580	Warner Robins, GA Houston County, GA.	0.8380
47644	Warren-Troy-Farmington Hills, MI Lapeer County, MI. Livingston County, MI. Macomb County, MI. Oakland County, MI. St. Clair County, MI.	1.0054
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV District of Columbia, DC.	1.1054

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Calvert County, MD. Charles County, MD. Prince George's County, MD. Arlington County, VA. Clarke County, VA. Fairfax County, VA. Fauquier County, VA. Loudoun County, VA. Prince William County, VA. Spotsylvania County, VA. Stafford County, VA. Warren County, VA. Alexandria City, VA. Fairfax City, VA. Falls Church City, VA. Fredericksburg City, VA. Manassas City, VA. Manassas Park City, VA. Jefferson County, WV.	
47940	Waterloo-Cedar Falls, IA Black Hawk County, IA. Bremer County, IA. Grundy County, IA.	0.8408
48140	Wausau, WI	0.9723
48260	Weirton-Steubenville, WV-OH Jefferson County, OH. Brooke County, WV. Hancock County, WV.	0.8064
48300	Wenatchee, WA Chelan County, WA. Douglas County, WA.	1.0347
48424	West Palm Beach-Boca Raton-Boynton Beach, FL Palm Beach County, FL.	0.9649
48540	Wheeling, WV-OH Belmont County, OH. Marshall County, WV. Ohio County, WV.	0.7010
48620	Wichita, KS Butler County, KS. Harvey County, KS. Sedgwick County, KS. Sumner County, KS.	0.9063
48660	Wichita Falls, TX Archer County, TX. Clay County, TX. Wichita County, TX.	0.8311
48700	Williamsport, PA Lycoming County, PA.	0.8139
48864	Wilmington, DE-MD-NJ New Castle County, DE. Cecil County, MD. Salem County, NJ.	1.0684
48900	Wilmington, NC Brunswick County, NC. New Hanover County, NC. Pender County, NC.	0.9836
49020	Winchester, VA-WV Frederick County, VA. Winchester City, VA. Hampshire County, WV.	1.0091
49180	Winston-Salem, NC Davie County, NC. Forsyth County, NC. Stokes County, NC. Yadkin County, NC.	0.9276
49340	Worcester, MA Worcester County, MA.	1.0690
49420	Yakima, WA Yakima County, WA.	0.9848
49500	Yauco, PR	0.3854

TABLE 8.—FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
49620	Guánica Municipio, PR. Guayanilla Municipio, PR. Peñuelas Municipio, PR. Yauco Municipio, PR. York-Hanover, PA York County, PA	0.9398
49660	Youngstown-Warren-Boardman, OH-PA Mahoning County, OH. Trumbull County, OH.	0.8802
49700	Mercer County, PA. Yuba City, CA Sutter County, CA. Yuba County, CA.	1.0731
49740	Yuma, AZ Yuma County, AZ.	0.9109

¹ At this time, there are no hospitals located in this urban area on which to base a wage index.

TABLE 9.—FY 2007 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS

CBSA code	Nonurban area	Wage index
1	Alabama	0.7592
2	Alaska	1.0661
3	Arizona	0.8909
4	Arkansas	0.7307
5	California	1.1454
6	Colorado	0.9325
7	Connecticut	1.1709
8	Delaware	0.9706
10	Florida	0.8594
11	Georgia	0.7593
12	Hawaii	1.0449
13	Idaho	0.8120
14	Illinois	0.8320
15	Indiana	0.8539
16	Iowa	0.8682
17	Kansas	0.7999
18	Kentucky	0.7769
19	Louisiana	0.7438
20	Maine	0.8443
21	Maryland	0.8927
22	Massachusetts ¹	1.0216
23	Michigan	0.9063
24	Minnesota	0.9153
25	Mississippi	0.7738
26	Missouri	0.7927
27	Montana	0.8590
28	Nebraska	0.8678
29	Nevada	0.8944
30	New Hampshire	1.0853
31	New Jersey ¹	.....
32	New Mexico	0.8333
33	New York	0.8232
34	North Carolina	0.8589
35	North Dakota	0.7216
36	Ohio	0.8659
37	Oklahoma	0.7629
38	Oregon	0.9753
39	Pennsylvania	0.8321
40	Puerto Rico ¹	0.4047
41	Rhode Island ¹	.....
42	South Carolina	0.8566
43	South Dakota	0.8480
44	Tennessee	0.7827
45	Texas	0.7965
46	Utah	0.8141
47	Vermont	0.9744

TABLE 9.—FY 2007 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS—Continued

CBSA code	Nonurban area	Wage index
48	Virgin Islands	0.8467
49	Virginia	0.7941
50	Washington	1.0263
51	West Virginia	0.7607
52	Wisconsin	0.9553
53	Wyoming	0.9295
65	Guam	0.9611

¹ All counties within the State are classified as urban, with the exception of Massachusetts and Puerto Rico. Massachusetts and Puerto Rico have areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2007. Because more recent data are not available for those areas, we are using last year's wage index value.

[FR Doc. 06-6615 Filed 7-27-06; 4:00 pm]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2001D-0489] (formerly Docket No. 01D-0489)

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Clinical Trial Sponsors; Establishment and Operation of Clinical Trial Data Monitoring Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Clinical Trial Sponsors:

Establishment and Operation of Clinical Trial Data Monitoring Committees" 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 December 30, 2005 (70 FR 77403), 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 0910-0581. The approval expires on March 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: July 21, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6-12157 Filed 7-28-06; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. 2000D-0084]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Special Protocol Assessment**AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection in the guidance for industry on special protocol assessment.

DATES: Submit written or electronic comments on the collection of information by September 29, 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:

Elizabeth Berbakos, 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 on Special Protocol Assessment (OMB Control Number 0910-0470)—Extension

The "Guidance for Industry on Special Protocol Assessment" describes agency procedures to evaluate issues related to the adequacy (e.g., design, conduct, analysis) of certain proposed studies. The guidance describes procedures for sponsors to request special protocol assessment and for the agency to act on such requests. The guidance provides information on how the agency interprets and applies provisions of the Food and Drug Administration Modernization Act of 1987 and the specific Prescription Drug User Fee Act of 1992 (PDUFA) goals for special protocol assessment associated with the development and review of PDUFA products. The guidance describes two collections of information: (1) The submission of a notice of intent to request special protocol assessment of a carcinogenicity protocol, and (2) the submission of a request for special protocol assessment.

Notification for a Carcinogenicity Protocol

As described in the guidance, a sponsor interested in agency assessment of a carcinogenicity protocol should notify the appropriate division in FDA's Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER) of an intent to request special protocol

assessment at least 30 days prior to submitting the request. With such notification, the sponsor should submit relevant background information so that the agency may review reference material related to carcinogenicity protocol design prior to receiving the carcinogenicity protocol.

Request for Special Protocol Assessment

The guidance asks that a request for special protocol assessment be submitted as an amendment to the investigational new drug application (IND) for the underlying product and that it be submitted to the agency in triplicate with Form FDA 1571 attached. The guidance also suggests that the sponsor submit the cover letter to a request for special protocol assessment via facsimile to the appropriate division in CDER or CBER. Agency regulations (21 CFR 312.23(d)) state that information provided to the agency as part of an IND is to be submitted in triplicate and with the appropriate cover form, Form FDA 1571. An IND is submitted to FDA under existing regulations in part 312 (21 CFR part 312), which specifies the information that manufacturers must submit so that FDA may properly evaluate the safety and effectiveness of investigational drugs and biological products. The information collection requirements resulting from the preparation and submission of an IND under part 312 have been estimated by FDA and the reporting and recordkeeping burden has been approved by OMB until May 31, 2009, under OMB control number 0910-0014.

FDA suggests that the cover letter to the request for special protocol assessment be submitted via facsimile to the appropriate division in CDER or CBER to enable agency staff to prepare for the arrival of the protocol for assessment. The agency recommends that a request for special protocol assessment be submitted as an amendment to an IND for two reasons: (1) To ensure that each request is kept in the administrative file with the entire IND, and (2) to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in the agency's tracking databases enables the appropriate agency official to monitor progress on the evaluation of the protocol and to ensure that appropriate steps will be taken in a timely manner.

The guidance recommends that the following information should be submitted to the appropriate Center with each request for special protocol assessment so that the Center may

quickly and efficiently respond to the request:

- Questions to the agency concerning specific issues regarding the protocol; and

- All data, assumptions, and information needed to permit an adequate evaluation of the protocol, including: (1) The role of the study in the overall development of the drug; (2) information supporting the proposed trial, including power calculations, the choice of study endpoints, and other critical design features; (3) regulatory outcomes that could be supported by the results of the study; (4) final labeling that could be supported by the results of the study; and (5) for a stability protocol, product characterization and relevant manufacturing data.

Description of Respondents: A sponsor, applicant, or manufacturer of a drug or biologic product regulated by the agency under the act or section 351 of the Public Health Service Act (42 U.S.C. 262) who requests special protocol assessment.

Burden Estimate: Table 1 of this document provides an estimate of the

annual reporting burden for requests for special protocol assessment.

Notification for a Carcinogenicity Protocol. Based on data collected from the review divisions and offices within CDER and CBER, including the number of notifications for carcinogenicity protocols and the number of carcinogenicity protocols submitted in fiscal years (FY) 2004 and 2005, CDER estimates that it will receive approximately 45 notifications of an intent to request special protocol assessment of a carcinogenicity protocol per year from approximately 20 sponsors. CBER estimates that it will receive approximately one notification of an intent to request special protocol assessment of a carcinogenicity protocol per year from approximately one sponsor. The hours per response, which is the estimated number of hours that a sponsor would spend preparing the notification and background information to be submitted in accordance with the guidance, is estimated to be approximately 8 hours.

Requests for Special Protocol Assessment. Based on data collected

from the review divisions and offices within CDER and CBER, including the number of requests for special protocol assessment submitted in FY 2004 and FY 2005, CDER estimates that it will receive approximately 364 requests for special protocol assessment per year from approximately 143 sponsors. CBER estimates that it will receive approximately 10 requests from approximately 8 sponsors. The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted with a request for special protocol assessment, including the time it takes to gather and copy questions to be posed to the agency regarding the protocol and data, assumptions, and information needed to permit an adequate evaluation of the protocol. Based on the agency's experience with these submissions, FDA estimates approximately 15 hours on average would be needed per response.

FDA estimates the burden of this collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Notification for Carcinogenicity Protocols	21	2.19	46	8	368
Requests for Special Protocol Assessment	151	2.48	374	15	5,610
Total					5,978

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 21, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6-12158 Filed 7-28-06; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N-0283]

Agency Information Collection Activities; Proposed Collection; Comment Request; FDA Survey of Physicians' Perceptions of the Impact of Early Risk Communication About Medical Products

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 a notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a proposed survey of physicians' perceptions of the impact of early risk communication about medical products. The purpose of the proposed survey is to improve FDA's understanding of how and when physicians get, and would like to get, information about the risk of medical products, and what factors might influence the likelihood of reporting their patients' adverse experiences. Together with other information, the data from this survey will be used to assess FDA's

communication efforts concerning early risk communication about medical products, and inform any potential communication-related changes.

DATES: Submit written or electronic comments on the collection of information by *September 29, 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 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.

FDA Survey of Physicians’ Perceptions of the Impact of Early Risk Communication About Medical Products

The authority for FDA to collect the information derives from the FDA Commissioner’s authority, as specified in section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)).

FDA engages in a number of communication activities to inform health care providers about new risks of

regulated medical products, including prescription drugs, biologics, and medical devices (for example, pacemakers, implantable cardiac defibrillators, contact lenses, infusion pumps). More recently, FDA’s communication activities have also included the general public. Activities include, but are not limited to, communications in medical journals, through the press (press releases, public health advisories), letters to health care providers sent out in cooperation with product manufacturers, and notifications and information sheets about recalls, withdrawals, and new product safety information on FDA’s Internet site.

Extensive publicity regarding serious side effects from certain commonly used prescription drugs, as well as certain implantable medical devices, has spurred public pressure to make risk information available sooner. In opposition to such public pressures, however, at least some prescribers and medical societies have suggested that early disclosure of potential side effects (emerging risks) may have unintended negative effects on patient care. For FDA to plan informed programmatic communication activities we need better empirical data about the impact of disseminating emerging risk information on providers and patient care. In addition, only limited research addresses specific barriers to physicians reporting patient adverse events either to FDA or product manufacturers. Further, we have no data evaluating FDA’s efforts to improve reporting.

Given differing perspectives on the value and timing of providing risk information to medical experts and the public at large, FDA believes it is important to assess how well it is communicating with physicians — the health care provider group with primary responsibility for deciding whether to use medical products to address patient problems. This information is critical both to plan programmatic communication activities and to improve the effectiveness of our reporting systems. Therefore, FDA plans to conduct a survey of a nationally

representative group of physicians about these issues.

The survey will collect information from respondents through computer-assisted telephone interviews conducted by experienced interviewers. FDA expects to have a final sample of 895 physicians, broken down approximately half and half between primary care practitioners (general practice, family practice, general internal medicine, and pediatricians) and specialists. We expect to identify physician specialty groups that are most likely to have been affected by recent publicity over risks of prescription drugs or medical devices. Such groups may include neurologists, psychiatrists, cardiologists, gastroenterologists, dermatologists, allergists, urologists, obstetricians/gynecologists, and geriatricians. Procedures will be used to ensure production of a sample of physicians that is reasonably representative of the population within the United States. The design of the interview questions will be guided by the results of a series of physician focus groups that have recently been completed. The interview will take approximately 15 minutes to administer.

Key information to be collected includes the following topics:

- The impact on physicians, their patients, and their practices of the disclosure of still uncertain, emerging risks associated with medical products.
- How physicians currently receive and ideally would like to receive new risk and benefit information about medical products (for example, at what level of certainty regarding causality and through what communication channels).

- How physicians perceive the credibility of FDA and other potential sources of risk and benefit information, including product sponsors, medical societies, and the media.

- What FDA might do to increase the likelihood that respondents will report to FDA or to manufacturers serious patient reactions that might be side effects of using medical products.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
27 (Pretests)	1	27	.25	6.75
995 (Screener)	1	995	.025	24.88
895 (Survey)	1	895	.25	223.75

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹—Continued

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Total				255.38

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on FDA's and the contractor's experience with previous surveys. The respondents are divided into two groups: Primary care physicians and specialist physicians. We are basing this estimate on 90 percent of the screened physicians being eligible to participate in the survey.

Prior to administering the survey with the entire sample, FDA plans to conduct pretests with up to 27 physicians; these are meant to evaluate the clarity and consistency of the survey questionnaire and interview protocol.

Dated: July 21, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6-12159 Filed 7-28-06; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N-0274]

Agency Information Collection Activities; Proposed Collection; Comment Request; Establishing and Maintaining a List of United States Dairy Product Manufacturers/Processors With Interest in Exporting to Chile

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions associated with the guidance document entitled "Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors With Interest in Exporting to Chile."

DATES: Submit written or electronic comments on the collection of information by September 29, 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.

Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors With Interest in Exporting to Chile (OMB Control Number 0910-0509)—Extension

As a direct result of discussions that have been adjunct to the U.S./Chile Free Trade Agreement, Chile has recognized FDA as the competent U.S. food safety authority and has accepted the U.S. regulatory system for dairy inspections. Chile has concluded that it will not require individual inspections of U.S. firms by Chile as a prerequisite for trade, but will accept firms identified by FDA as eligible to export to Chile. Therefore, in the **Federal Register** of June 22, 2005 (70 FR 36190), FDA announced the availability of a revised guidance document entitled "Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors With Interest in Exporting to Chile." The guidance can be found at <http://www.cfsan.fda.gov/guidance.html>. The guidance document explains that FDA has established a list that is provided to the government of Chile and posted on FDA's Internet site, which identifies U.S. dairy product manufacturers/processors that have expressed interest to FDA in exporting dairy products to Chile, are subject to FDA jurisdiction, and are not the subject of a pending judicial enforcement action (i.e., an injunction or seizure) or a pending warning letter. The term "dairy products," for purposes of this list, is not intended to cover the raw agricultural commodity raw milk. Application for inclusion on the list is voluntary. However, Chile has advised that dairy products from firms not on this list could be delayed or prevented by Chilean authorities from entering commerce in Chile. The revised guidance explains what information firms should submit to FDA in order to be considered for inclusion on the list and what criteria FDA intends to use to determine eligibility for placement on the list. The document also explains how FDA intends to update the list and how FDA intends to communicate any

new information to Chile. Finally, the revised guidance notes that FDA considers the information on this list, which is provided voluntarily with the understanding that it will be posted on FDA's Internet site and communicated to, and possibly further disseminated by, Chile, to be information that is not protected from disclosure under 5 U.S.C. 552(b)(4). Under this guidance,

FDA recommends that U.S. firms that want to be placed on the list send the following information to FDA: Name and address of the firm and the manufacturing plant; name, telephone number, and e-mail address (if available) of the contact person; a list of products presently shipped and expected to be shipped in the next 3 years; identities of agencies that inspect

the plant and the date of last inspection; plant number and copy of last inspection notice; and, if other than an FDA inspection, copy of last inspection report. FDA requests that this information be updated every 2 years.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
New written requests to be placed on the list	15	1	15	1.5	22.5
Biannual update	55	1	55	1.0	55.0
Occasional updates	25	1	25	0.5	12.5
Total					90

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the number of firms that will submit new written requests to be placed on the list, biannual updates and occasional updates is based on the FDA's experience maintaining the list over the past 3 years. The estimate of the number of hours that it will take a firm to gather the information needed to be placed on the list or update its information is based on FDA's experience with firms submitting similar requests. FDA believes that the information to be submitted will be readily available to the firms.

To date, over 110 producers have sought to be included on the list. FDA estimates that, each year, approximately 15 new firms will apply to be added to the list. We estimate that a firm will require 1.5 hours to read the guidance, gather the information needed, and to prepare a communication to FDA that contains the information and requests that the firm be placed on the list. Under the revised guidance, every 2 years each producer on the list must provide updated information in order to remain on the list. FDA estimates that each year approximately half of the firms on the list, 55 firms, will resubmit the information to remain on the list. We estimate that a firm already on the list will require 1.0 hours to biannually update and resubmit the information to FDA, including time reviewing the information and corresponding with FDA. In addition, FDA expects that, each year, approximately 25 firms will need to submit an occasional update and each firm will require 0.5 hours to prepare a communication to FDA reporting the change.

Dated: July 21, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6-12160 Filed 7-28-06; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D-0246]

Draft Manufactured Food Regulatory Program Standards; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of July 20, 2006. The document announced the availability of a draft document entitled "Manufactured Food Regulatory Program Standards." The document was published with an incorrect Internet address. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Beverly Kent, Division of Federal-State Relations, Food and Drug Administration, 300 Pearl St., suite 100, Buffalo, NY 14202, 716-541-0331.

SUPPLEMENTARY INFORMATION: In FR Doc. E6-11539, appearing on page 41221 in the **Federal Register** of Thursday, July 20, 2006, the following correction is made:

1. On page 41222, in the first column, under the "Electronic Access" caption,

the Internet address

"<http://www.fda.gov/ohrms/dockets/default.htm>" is corrected to read "<http://www.fda.gov/ohrms/dockets/98fr/06d-0246-gdl0001.pdf>".

Dated: July 25, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6-12179 Filed 7-28-06; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Cooperative Agreement for Poison Prevention Education

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of Single Source Award.

SUMMARY: HRSA will be forming a partnership with the Home Safety Council (HSC) to collaborate on reaching America's low literacy population. Through this project, easy to read and comprehend poison prevention material will be developed and distributed to the public, poison centers, safety and injury prevention professionals, health educators, and first responders.

FOR FURTHER INFORMATION CONTACT: Shkeda Johnson, Senior Public Health Analyst, Healthcare Systems Bureau, Division of Healthcare Preparedness, Room 13-103, 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301-443-1210 Email: sjohnson@hrsa.gov.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award:
Home Safety Council.

Amount of the Award: \$100,000.

Authority: Section 1271 et seq. of the Public Health Service Act, 42 U.S.C. Section 300d-71 et seq. as amended by the Poison Center Stabilization and Enhancement Grant Program.

Project Period: The period of the award will begin on September 1, 2006, through August 31, 2007.

Justification for the Exception to Competition

This project will be implemented through a single source cooperative agreement because the HSC is uniquely positioned to immediately undertake and complete the activities within one year. The HSC has existing organizational knowledge and experience in developing materials for the low literacy population through its Home Safety Literacy Project, which this project will be a component; the HSC has an existing relationship with key stakeholders in place for reaching this vulnerable population; and the HSC project director has extensive expertise in poison prevention education.

Dated: July 3, 2006.

Elizabeth M. Duke,
Administrator.

[FR Doc. E6-12178 Filed 7-28-06; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Request for Information (RFI): Change in Grant Appendix Materials**

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) and the Agency for Healthcare Research and Quality (AHRQ) are evaluating guidelines for grant application appendixes in an effort to streamline the application and review processes. This RFI requests input from interested applicants, reviewers and other members of the research community regarding the way appendix materials should be used in the grant submission, review and management process. Comments will be considered in the development of new policies on appendix materials for various grant programs.

DATES: Responses must be received by September 14, 2006 in order to ensure that NIH and AHRQ will be able to consider the comments in developing

new policies on appendix materials for various grant programs.

FOR FURTHER INFORMATION CONTACT: E-mail inquiries will be accepted at appendix_comments@od.nih.gov.

SUPPLEMENTARY INFORMATION:**Background**

The goal of changing the guidelines for grant application appendix materials is to encourage applications to be as concise as possible while containing the information needed for expert scientific review. These changes should make application preparation and handling easier for both applicants and reviewers.

Current NIH and AHRQ policy indicates that the Appendix may not be used to circumvent the page limitations of the Research Plan. Appended publications may not be used to provide further details of methodologies or preliminary data described in the Research Plan. All applications and proposals for NIH and AHRQ funding must be self-contained. NIH application guide instructions note that the Appendix is sent only to those members of the Scientific Review Group (SRG) assigned as primary reviewers of the application. Currently, unless otherwise stated in the solicitation, the following materials may be included in a grant application Appendix:

- Up to 10 publications or manuscripts accepted for publication, using URL links to publicly accessible journal articles.
- Surveys, questionnaires, data collection instruments, clinical protocols, and informed consent documents.
- Photographs or color images of gels, micrographs, etc., provided that a photocopy (may be reduced in size) is also included within the 25-page limit of Items a-d of the research plan. No photographs or color images may be included in the Appendix that are not also represented within the Research Plan.

Investigators spend much time and energy developing applications to Federal Agencies. It is unclear whether appendix material which may or may not be read by members of the SRG improves current applications. Submission of unnecessary materials with grant applications wastes the time, energy and resources of investigators, applicant institutions, reviewers, and the NIH and AHRQ.

Proposed Changes

The following changes are being considered for implementation concurrent with NIH/AHRQ's transition to the electronic grant application process and the SF-424 (R&R):

- Submission of photographs or color images of gels, micrographs, etc., will not be allowed in the Appendix. Use of the SF-424 (R&R) electronic grant application will permit insertion into the body of the Research Plan high resolution images of the same quality found in scientific publications.

- Materials currently submitted in the Appendix which are essential to the review of the application will be submitted as part of the grant application itself. For example, documents such as clinical protocols, informed consent forms, key questionnaires, surveys, and similar items which are needed by the SRG to adequately assess human subjects issues will be submitted as part of the 'Protection of Human Subjects' section of the grant application.

- Reprints or preprints of publications or their PDFs will no longer be allowed as part of the Appendix. Links (URLs) to PubMed Central or publicly available on-line journals will be permitted in the Biographical Sketches, Bibliography & References Cited, and the Research Plan sections of the grant application. Critical information and detail should be included within the Research Plan and cited in the Bibliography & References Cited section and/or figure or table legend(s) to indicate publication status.

- Materials specifically designated in the Funding Opportunity Announcement may be included in the Appendix, within identified page limits. It is anticipated that most FOAs will not permit materials to be included in the Appendix.

- All members of the SRG will receive copies of the full application including any permitted Appendix materials thereby increasing the equity of the review.

Information Requested

Information in the following areas will assist the NIH and AHRQ in developing new policies regarding submission of appendix materials. Respondents will be asked to indicate what perspective(s) they represent, i.e. reviewer and/or applicant, institutional official, etc.

1. Is there a need to reduce the material submitted in the Appendix? If yes, please provide specific types of material that could be eliminated.

2. Is there information essential to the application's review that cannot be included in the body of a grant application as proposed? If yes, please describe the material and identify applicable grant program(s).

3. Is it necessary to include reprint and preprint PDFs as appendix material? If yes, please explain.

4. Do you have concerns about discontinuing the submission of photographs or color images in the Appendix of electronic grant applications? If yes, please explain.

5. Will the proposed changes favor or disfavor any specific group of investigators? If yes, please explain.

Responses

Responses must be submitted electronically at http://grants.nih.gov/grants/guide/rfi_files/rfi_appendix_add.htm. The responses for each item should be limited to 500 words. Acknowledgement of receipt of responses will not be made, nor will respondents be notified of the Government's assessment of the information received. No basis for claims against the Government shall arise as a result of a response to this request for information or the Government's use of such information as either part of our evaluation process or in developing specifications for any subsequent announcement. Individual responses will be confidential. Any proprietary information should be so marked.

Dated: July 24, 2006.

Norka Ruiz Bravo,

*Deputy Director for Extramural Research,
National Institutes of Health.*

[FR Doc. E6-12230 Filed 7-28-06; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5039-N-03]

Notice of Proposed Information Collection: Comment Request; Affirmative Fair Housing Marketing (AFHM) Plan

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, 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 of 1995. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 29, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed information collection

requirement. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Surrell Silverman, Reports Liaison Officer, Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Room 5216, Washington, DC 20410-2000.

FOR FURTHER INFORMATION CONTACT: Shaye Hardy, Program Standards and Compliance Division, Office of Programs, Department of Housing and Urban Development, 451 7th Street, SW., Room 5222, Washington, DC 20410-2000; telephone: (202) 708-2288 (this is not a toll-free number) for copies of the proposed forms and other available documents. Hearing- or speech-impaired individuals may access this number TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995.

The notice solicits comments from members of the public and affected agencies concerning the proposed information collection in order to:

- (1) Evaluate whether the proposed information collection is necessary for the proper performance of the Department's program functions;
- (2) Evaluate the accuracy of the Department's assessment of the paperwork burden that may result from the proposed information collection;
- (3) Enhance the quality, utility, and clarity of the information which must be collected; and
- (4) Minimize the burden of the information collection on responders, including the use of appropriate automated collection techniques or other forms of information technology (e.g., electronic transmission of data).

Title of Regulation: Affirmative Fair Housing Marketing Regulations and Affirmative Fair Housing Marketing Compliance Regulations.

OMB Control Number, if applicable: 2529-0013.

Description of the need for the information and proposed use: HUD uses this information to assess the adequacy of the applicant's proposed actions to carry out the Affirmative Fair Housing Marketing requirements of 24 CFR 200.600 and review compliance with these requirements under 24 CFR part 108, the AFHM Compliance Regulations.

Agency form numbers, if applicable: HUD-935.2A Affirmative Fair Housing Marketing Plan (Multifamily) and HUD-

935.2B Affirmative Fair Housing Marketing Plan (Single-Family).

Members of affected public:

Applicants for mortgage insurance under the Department's insured single-family and multifamily subsidized and unsubsidized programs.

Estimation of the total numbers of hours needed to prepare the information, collection including number of respondents, frequency of response, and hours of response: On an annual basis, there are approximately 6,530 respondents, 1 response per respondent, which equals 6,530 total responses for both forms. Each new respondent (300 multifamily + 30 single-family = 330 new respondents annually) should take approximately 3 hours to complete, which equals approximately 990 hours for new respondents annually. HUD has approximately 31,000 multifamily housing insured and subsidized projects in its inventory. Since multifamily housing projects' Affirmative Fair Housing Marketing Plans (Multifamily) (HUD 935.2A) should be reviewed and updated every 5 years, it is estimated that 20 percent of the multifamily housing project inventory (6,200) will review their plans each year. This review will take approximately 1 hour to complete, which equals 6,200 hours for the review of these plans annually. It is also estimated that slightly less than 20 percent of the reviewed plans (approximately 1,200) will need to be updated. The updating of these plans will take approximately 1 hour to complete, which equals approximately 1,200 hours for the updating of these plans annually. The total estimated number of hours needed to prepare this information collection is 8,390 hours.

Status of the proposed information collection: HUD revised Form HUD-935.2 Affirmative Fair Housing Plan. This revision consists of creating a form to be used by Multifamily Housing (MFH) and a second form to be used by Single-Family Housing (SFH). This action was taken to make the completion of the form clearer for the MFH and SFH user. The current form has several instances where there are alternative directions. The major difference in the proposed form is that the Office of Fair Housing and Equal Opportunity will have approval authority for the Form HUD-935.2A to be completed by MFH users and the Office of Housing-Single-Family Housing will have approval authority for the Form HUD-935.2B to be completed by SFH users.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 24, 2006.

Kim Kendrick,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 06-6562 Filed 7-28-06; 8:45 am]

BILLING CODE 4210-67-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5041-N-28]

Notice of Proposed Information Collection: Comment Request; Manufactured Home Construction and Safety Standards Program

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: *Comment Due Date:* September 29, 2007.

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, 4451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410, or Wayne_Eddins@hud.gov.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-6401 (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 25 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: The Manufactured Home Construction and Safety Standards Program.

OMB Control Number: 2502-0233.

Description of the need for the information and proposed use: The Department of Housing and Urban Development uses these information collections to calculate and collect monitoring fees for manufactured housing units and to track the request, approval, and application of authorized certification labels.

Agency form numbers, if applicable: HUD-101, HUD-102, HUD-203B, HUD-301, HUD-302, HUD-303, HUD-304.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 5,208; the total number of respondents is 256 generating 7,536 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the responses is from one half hour to one hour.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 24, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 06-6563 Filed 7-28-06; 8:45 am]

BILLING CODE 4210-67-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5041-N-29]

Notice of Proposed Information Collection: Comment Request Federally Assisted Low-Income Housing Drug Elimination Grant Program

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 29, 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 Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: For copies of the proposed forms and other available information contact Carissa Janis, Office of Housing Assistance and Grants Administration, by telephone at 202-708-3000 extension 2487. (This is not a toll-free number.)

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).

The 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: Federally Assisted Low-Income Housing Drug Elimination Grant Program.

OMB Control Number: 2502-0476.

Description of the need for the information and proposed use: The Department will use program-end Performance Reports to determine how well grant funds were used in meeting stated program goals and in fighting drug-related crime and drug abuse.

Grantees will also be able to evaluate their efforts through the completion of this report and will have data and evidence of program effectiveness available for both their future use and that of the public. HUD will use the Financial Status report and the Payment Voucher to monitor use of grant funds for eligible activities over the term of the grant. The Grantee may similarly use these forms to track and record their requests for payment reimbursement for grant-funded activities.

Agency Form Numbers, if applicable: Standard Form 269-A, Financial Status Report, HUD-50080-DF2B, Line of Credit Control System (LOCCS)/ Voice Response System (VRS) Drug Elimination Payment Voucher.

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 estimated number of respondents is 37, the total annual responses are 259, the total annual hours of response are estimated at 481, and the response time varies from fifteen minutes to eight hours.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 24, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 06-6564 Filed 7-28-06; 8:45 am]

BILLING CODE 4120-67-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by August 30, 2006.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written

request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358-2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358-2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: George W. Adrian, New Milton, WV, PRT-127075.

The applicant requests a permit to import the sport-hunted trophy of one male scimitar-horned oryx (*Oryx dammah*) culled from a captive herd in the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Roger Hosfelt, Shippensburg, PA, PRT-126555.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Jerry E. Bateman, Howe, IN, PRT-125918-0.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Stacey L. Frost, Anchorage, AK, PRT-126629.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Dennis C. Miller, Lowell, IN, PRT-126547.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Levi J. Britton, Molt, MT, PRT-127012.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Date: July 14, 2006.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6-12170 Filed 7-28-06; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before August 30, 2006.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232-4181 (telephone: 503-231-2063; fax: 503-231-6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Linda Belluomini, Fish and Wildlife Biologist, at the above Portland address.

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct

certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (we) solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

Permit No. TE-129577

Applicant: Bureau of Land Management, Arcata, California.

The applicant requests a permit to remove/reduce to possession *Layia carnosa* (beach layia) in conjunction with ecological research in Humboldt County, California, for the purpose of enhancing its survival.

Permit No. TE-816204

Applicant: University of California, Davis, California

The permittee requests an amendment to take (capture, mark, collect tissue samples and voucher specimens, and release) the Buena Vista lake shrew (*Sorex ornatus relictus*), the giant kangaroo rat (*Dipodomys ingens*), the Fresno kangaroo rat (*Dipodomys nitratoides exilis*), the Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), and the Riparian woodrat (*Neotoma fuscipes riparia*) in conjunction with scientific research in San Joaquin, Merced, Stanislaus, Tulare, and Kern Counties, California, for the purpose of enhancing their survival.

Permit No. TE-046262

Applicant: Blake A. Claypool, Encinitas, California.

The permittee request an amendment to take (capture, and collect and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardii*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE-128256

Applicant: Steven Kramer, Arcata, California.

The applicant requests a permit to take (harass by survey, capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with surveys throughout the species range in California for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications. Our practice is to

make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that we may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: July 18, 2006.

Ken McDermond,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. E6-12221 Filed 7-28-06; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement for the City of Santee Multiple Species Conservation Program Subarea Plan, San Diego County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the Fish and Wildlife Service (Service), advise the public that we intend to gather information necessary to prepare, in coordination with the City of Santee (Applicant), a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the City of Santee's Subarea Plan (Subarea Plan) under the Multiple Species Conservation Program (MSCP) in accordance with section 10(a)(1)(B) of the Federal Endangered Species Act (ESA) and the State of California's

Natural Community Conservation Planning Act.

The Service provides this notice to: Describe the proposed actions and possible alternatives; (2) advise other Federal and State agencies, affected tribes, and the public of our intent to prepare an EIS/EIR; (3) announce the initiation of a public scoping period; and (4) obtain suggestions and information on the scope of issues and alternatives to be included in the EIS/EIR.

DATES: One public meeting will be held on: Thursday, August 10, 2006, 6 p.m. to 7:30 p.m., Santee, CA. Written comments should be received on or before August 30, 2006.

ADDRESSES: The public meeting will be held at the City of Santee City Hall, Building 7 Meeting Room, 10601 Magnolia Avenue, Santee, California, 92071.

Information, written comments, or questions related to the preparation of the EIS/EIR and NEPA process should be submitted to Kathleen Brubaker, Division Chief, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92011 (facsimile 760-431-5902).

FOR FURTHER INFORMATION CONTACT: Kathleen Brubaker, Division Chief, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92011, (760) 431-9440.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Kathleen Brubaker as soon as possible (see **FOR FURTHER INFORMATION CONTACT**). In order to allow sufficient time to process requests, please call no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Background

Section 9 of the Federal ESA (16 U.S.C. 1538) and Federal regulations prohibit the "take" of a fish or wildlife species listed as endangered or threatened. Under the ESA, the following activities are defined as take: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or to attempt to engage in such conduct (16 U.S.C. 1532). However, under section 10(a) of the ESA, we may issue permits to authorize "incidental take" of listed species. "Incidental take" is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an

otherwise lawful activity. Regulations governing permits for threatened species and endangered species are at 50 CFR 17.32 and 50 CFR 17.22, respectively.

Take of listed plant species is not prohibited under the ESA and cannot be authorized under a section 10 permit.

We propose to include plant species on the permit in recognition of the conservation benefits provided for them under the Subarea Plan. In 1997, the Service approved the San Diego MSCP, a conservation program that contemplated the development of subarea plans by local jurisdictions located in San Diego County to effectuate the conservation outlined in the MSCP. The 1997 EIS/EIR, prepared for our decision to permit the San Diego MSCP, evaluated the City of Santee's draft Subarea Plan at the project level. We expect to tier off of the 1997 San Diego MSCP EIS, as appropriate, as we prepare this EIS/EIR on the City of Santee's revised draft Subarea Plan. The proposed Subarea Plan would comprehensively address how the City of Santee will manage its lands to conserve natural habitats and species while continuing to provide for development within the Subarea Plan.

The proposed Subarea Plan consists of several key components including an implementation process and structure, habitat preserve management guidelines, and a covered species list. In total, 48 species (15 plants, 33 animals) are proposed for coverage under the Subarea Plan. The proposed Subarea Plan addresses the effects on biological resources of all covered activities over the next 75 years. The proposed covered activities include public and private, as well as planned and conceptual projects.

The proposed Subarea Plan covers the corporate boundaries of the City of Santee (with the exception of the area covered by the Padre Dam Municipal Water District Plan) and includes approximately 10,300 acres. The Subarea Plan planning area is presently 55 percent developed and 45 percent undeveloped. Of the 10,300 acres in the planning area, roughly 9,020 acres are privately owned and are currently zoned or used for residential, commercial, industrial, or public/semi-public use. These privately owned lands represent the majority of the remaining natural habitats in the City of Santee and include the 2,589-acre Fanita Ranch. Another 510 acres are owned by the County of San Diego, mostly in the City of Santee's Town Center, which includes a segment of the San Diego River habitat corridor.

The Service and the Applicant are now considering components of the

proposed conservation program. These components include take avoidance and minimization measures, monitoring, adaptive management, and take mitigation measures consisting of preservation, restoration, and enhancement of habitat.

Environmental Impact Statement/ Environmental Impact Report

The Service, the Applicant, and the California Department of Fish and Game (CDFG) have selected P&D Consultants to prepare the Draft EIS/EIR. The joint document will be prepared in compliance with NEPA and the California Environmental Quality Act (CEQA). Although P&D Consultants will prepare the EIS/EIR, we will supervise the scope and content of the document for NEPA purposes, and the City of Santee will be responsible for the scope and content of the EIR for CEQA purposes.

The EIS/EIR will consider the proposed action and a reasonable range of alternatives. A detailed description of the proposed action and alternatives will be included in the EIS/EIR. It is anticipated that several alternatives will be developed, which may vary by level of conservation, impacts caused by the proposed activities, permit area, covered species, or a combination of these factors. These alternatives will address alternative actions that can achieve some or all of the proposed action's purposes and needs. Additionally, we will evaluate a No-Action alternative. Under the No-Action alternative, we would not issue a section 10(a)(1)(B) permit.

The EIS/EIR will also evaluate potentially significant impacts on biological resources, land use, and socioeconomic and other environmental issues that could occur directly or indirectly with implementation of the proposed action and alternatives. For all potential impacts, the EIS/EIR will identify mitigation measures, where feasible, to reduce these impacts to a level below significance.

We will conduct an environmental review of the EIS/EIR in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR 1500–1508), other applicable regulations, and our procedures for compliance with those regulations. We are furnishing this notice in accordance with 40 CFR 1501.7 of the NEPA implementing regulations, to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS/EIR. The primary purpose of the scoping process is to identify important issues

raised by the public that are related to the proposed action. We invite written comments from interested parties to help us identify the full range of issues related to the proposed action. You may submit written comments by mail or facsimile transmission (see **ADDRESSES**). We will also accept written comments at the public meeting. All comments received, including names and addresses, will become part of the official administrative record, and may be made available to the public.

Dated: July 25, 2006.

Ken McDermond,

*Deputy Manager, California/Nevada
Operations Office, Sacramento, California.*
[FR Doc. 06–6585 Filed 7–28–06; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–571]

In the Matter of Certain L-Lysine Feed Products, Their Methods of Production and Genetic Constructs for Production; Notice of Commission Determination Not To Review an Initial Determination Amending the Complaint and Notice of Investigation To Add a Complainant

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) in the above-captioned investigation. The ALJ granted the motion of complainant to add its parent company, as an additional complainant in the investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3104. Copies of the public version of the Commission's opinion and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public

record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: On May 31, 2006, the Commission instituted an investigation based on a complaint filed by Ajinomoto Heartland LLC ("Heartland") of Chicago, Illinois under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (71 FR 30958, May 31, 2006). The complaint, as amended and supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain L-lysine feed products and genetic constructs for production thereof by reason of infringement of claims 13, 15-19, and 21-22 of U.S. Patent No. 5,827,698 and claims 1, 2, 15, and 22 of U.S. Patent No. 6,040,160. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. Global Bio-Chem Technology Group Company Ltd.; Changchun Dacheng Bio-Chem Engineering Development Co., Limited; Changchun Baochen Bio-Chem Development Co., Ltd; Changchun Dahe Bio Technology Development Co. Ltd., all of China, and Bio-Chem Technology (HK) Limited of Hong Kong (collectively "Bio-Chem") were named respondents in the investigation. Id.

On June 29, 2006, complainant Heartland filed a motion to amend the complaint to add its parent company, Ajinomoto, Inc. ("Ajinomoto") as a complainant. The motion was supported by the Commission investigative attorney and Bio-chem. On July 11, 2006, the ALJ granted complainant's motion, finding that complainant had demonstrated good cause for adding Ajinomoto as a complainant at this time. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

Issued: July 25, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6-12144 Filed 7-28-06; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-560]

In the Matter of Certain Nor and Nand Flash Memory Devices and Products Containing Same; Notice of Correction

AGENCY: U.S. International Trade Commission.

ACTION: Correction of the notice of investigation for the above-captioned investigation.

SUMMARY: On February 13, 2006, the Commission published the notice of investigation for the above-captioned investigation under Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337). 71 FR 77576. The Commission hereby gives notice of the following corrections to that notice: (1) In the section labeled **SUMMARY**, "flash memory devices" should read "flash memory devices and products containing same," and (2) in the section labeled Scope of Investigation, "flash memory devices" should read "flash memory devices or products containing same." The Commission expects that the administrative law judge will extend the target date for completion of the investigation to the extent necessary to avoid any prejudice to any of the parties.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., telephone 202-708-2310, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: July 24, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6-12143 Filed 7-28-06; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Project Management Institute

Notice is hereby given that, on June 14, 2006, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Project Management Institute ("PMI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization, and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Project Management Institute, Newtown Square, PA. The nature and scope of PMI's standards development activities are to develop standards for the project management profession that are valued by PMI members, the marketplace and other stakeholders. More details regarding PMI's standards development activities can be found at <http://www.pmi.org>.

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 06-6569 Filed 7-28-06; 8:45 am]

BILLING CODE 4410-11-M

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) 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 May 25, 2006, Aptuit, 10245 Hickman Mills Drive, Kansas City, Missouri 64137, made application by letter to the Drug

Enforcement Administration (DEA) for registration as an importer of Marihuana (7360), a basic class of controlled substance in Schedule I.

The company plans to import a finished pharmaceutical product containing cannabis extracts in dosage form for packaging for a clinical trial study.

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 should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/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 August 30, 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: July 25, 2006.

Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6-12171 Filed 7-28-06; 8:45 am]

BILLING CODE 4410-09-P

(CFR), this is notice that on October 28, 2005, MGI Pharma, 6611 Tributary Street, Baltimore, Maryland 21224, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Cocaine (9041), a basic class of controlled substance listed in Schedules II.

The company plans to manufacture a cocaine derivative to be used in domestic and foreign clinical research studies.

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 should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/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 September 29, 2006.

Dated: July 25, 2006.

Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6-12172 Filed 7-28-06; 8:45 am]

BILLING CODE 4410-09-P

Drug	Schedule
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II

The company plans to manufacture the listed controlled substances as bulk controlled substance intermediates for distribution to its customers for further manufacture or to manufacture pharmaceutical dosage forms.

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 should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/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 September 29, 2006.

Dated: July 25, 2006.

Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6-12173 Filed 7-28-06; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 26, 2006, Roche Diagnostics Operations Inc., Attn: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, 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
Lysergic Acid Diethylamide (7315)	I
Tetrahydrocannabinol (7370)	I
Alphamethadol (9605)	I
Phencyclidine (7471)	II
Ecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 22, 2006, Penick Corporation, 33 Industrial Park Road, Pennsville, New Jersey 08070, 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 II:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II

The company plans to manufacture small quantities of the listed controlled substances for use in diagnostic products.

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 September 29, 2006.

Dated: July 25, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6-12174 Filed 7-28-06; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-59,628]

Cadence Innovation, New Venture Industries, Grand Blanc, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 26, 2006 in response to a petition filed by the United Automobile, Aerospace & Agricultural Implement Workers of America International Union 1C and Local Union 524, on behalf of workers of Cadence Innovation, New Venture Industries, Grand Blanc, Michigan.

The petitioning worker group is covered by an active certification, TA-W-58,625 (amended July 6, 2006), which does not expire until February 23, 2008. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 7th day of July 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-12202 Filed 7-28-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-58,815]

Coating and Assembly, Inc., Mt. Pleasant, MI; Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice rescinds the notice of certification of eligibility to apply for Alternative Trade Adjustment Assistance applicable to TA-W-58,815, which was published in the **Federal Register** on April 13, 2006 (71 FR 19208-19210) in Document E-5518, Billing Code 4510-30-P.

This rescinds the certification of eligibility for workers of TA-W-58,815, to apply for Alternative Trade Adjustment Assistance and confirms eligibility to apply for Worker Adjustment Assistance as identified on page 19209 in the first column, the seventh TA-W-number listed.

The Department appropriately published in the **Federal Register** April 13, 2006, page 19210, under the notice of Negative Determinations for Alternative Trade Adjustment Assistance, the denial of eligibility applicable to workers of TA-W-58,815. The notice appears on page 19210 in the third column, the seventh TA-W-number listed.

Signed in Washington, DC, this 24th day of July 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6-12195 Filed 7-28-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-56,258]

Collins And Aikman Products Company, Division 016, Roxboro, NC (Including Employees Working Out of Troy, MI); Notice of Revised Determination of Alternative Trade Adjustment Assistance on Reconsideration

On February 24, 2005, workers and former workers of Collins and Aikman Products Company, Division 016, Roxboro, North Carolina (subject firm) were certified eligible to apply for Trade Adjustment Assistance (TAA) but not Alternative Trade Adjustment Assistance (ATAA). The Notice of determination was published in the **Federal Register** on April 1, 2005 (70 FR 16847). An amendment was issued on June 6, 2006 to include employees working out of Troy, Michigan. The Notice of amendment was published in the **Federal Register** on June 22, 2006 (71 FR 35951).

Based on information produced on the initial investigation that workers the subject workers possess skills that are easily transferable, the workers were denied eligibility to apply for ATAA. Administrative reconsideration was not requested.

After the Notice of amendment was issued, the Department received new information indicating that the subject workers may possess skills that are not easily transferable. As such, the Department reopened the investigation.

Based on information obtain during the reconsideration investigation, the Department determines that the subject workers do not possess skills that are easily transferable.

At least five percent of the workforce at the subject from is at least fifty years of age. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for the workers of the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Collins and Aikman Products Company, Division 016, Roxboro, North Carolina, including employees working out of Troy, Michigan, who became totally or partially separated from employment on or after December 13, 2003 through February 24, 2007, are eligible to

apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 24th day of July, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-12198 Filed 7-28-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-58,925]

Eaton Corporation, Everett, WA; Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice rescinds the notice of certification of eligibility to apply for Alternative Trade Adjustment Assistance applicable to TA-W-58,925, which was published in the **Federal Register** on April 12, 2006 (71 FR 18771-18773) in FR Document E6-5369, Billing Code 4510-30-P.

This rescinds the certification of eligibility for workers of TA-W-58,925, to apply for Alternative Trade Adjustment Assistance and confirms eligibility to apply for Worker Adjustment Assistance as identified on page 18772 in the first column, the fifth TA-W-number listed.

The Department appropriately published in the **Federal Register** April 12, 2006, page 18773, under the notice of Negative Determinations for Alternative Trade Adjustment Assistance, the denial of eligibility applicable to workers of TA-W-58,925. The notice appears on page 18773 in the first column, the third TA-W-number listed.

Signed in Washington, DC, this 24th day of July 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6-12191 Filed 7-28-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

TA-W-54,434

Gale Group, Inc., A Division of the Thompson Corporation, Belmont, CA; Notice of Revised Determination on Remand

On June 2, 2006, the United States Court of International Trade (USCIT) granted the Department of Labor's motion for voluntary remand for further investigation in *Former Employees of Gale Group, Inc. v. U.S. Secretary of Labor*, Court No. 04-00374. These workers created electronic documents and performed electronic indexing services and occasionally wrote abstracts of articles.

On May 20, 2004, the Department of Labor (Department) issued a negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) for workers of Gale Group, A Division of the Thompson Corporation, Belmont, California (Gale Group). The negative determination was based on the investigation's finding that the workers did not produce an article in accordance with Section 222 of the Trade Act of 1974 (Trade Act). The Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for the subject firm was published in the **Federal Register** on June 17, 2004 (69 FR 33940).

In response to the petitioner's request for administrative reconsideration, the Department affirmed its finding that the subject workers did not produce an article within the meaning of the Trade Act. The Department's Dismissal of Application for Reconsideration was issued on July 16, 2004 and the Notice of Dismissal of Application for Reconsideration was published in the **Federal Register** on July 23, 2004 (69 FR 44064).

The petitioners appealed the denial to the USCIT. The Department made a motion for voluntary remand for further investigation. The CIT granted the Department's motion in an October 25, 2004 Order. In response to that Order, the Department conducted a further investigation to determine whether the petitioners were eligible to apply for TAA. On January 27, 2005, the Department affirmed its conclusion that the workers did not produce an article within the meaning of the Trade Act. The Department's Notice was published in the **Federal Register** on February 8, 2005 (70 FR 6732).

The CIT subsequently ruled that the Department's denial of TAA certification because the plaintiffs did not produce an "article" was reasonable and supported by substantial evidence. The petitioners appealed to the United States Court of Appeals for the Federal Circuit.

After the case reached the Court of Appeals the Department revised its policy to acknowledge that there are tangible and intangible articles. Products that would have been considered an article if embodied in a physical medium will now be considered an article for purposes of the Trade Act even if transmitted or stored electronically. Because it is the Department's practice to apply a new policy if doing so is in the best interest of the workers, the Department requested a voluntary remand from the Court of Appeals to determine whether, under the new policy, the petitioners are eligible to apply for TAA. The Court of Appeals remanded the case to the CIT which remanded it to the Department.

Upon review, the Department has determined that the subject workers produce an intangible article (electronic documents) and that, following the shift of production abroad, documents like or directly competitive with those produced at the subject firm were brought back into the United States.

Conclusion

After careful review of the facts generated through the remand investigation, I determine that a shift in production abroad of electronic documents like or directly competitive to that produced at the subject facility followed by increased imports contributed to the total or partial separation of a significant number or proportion of workers at the subject facilities. In accordance with the provisions of the Act, I make the following certification:

All workers of Gale Group, A Division of the Thompson Corporation, Belmont, California, who became totally or partially separated from employment on or after February 23, 2003, through two years from the issuance of this revised determination, are eligible to apply for Trade Adjustment Assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 19th day of July 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-12192 Filed 7-28-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-58,184]

**Georgia-Pacific Corporation,
Consumer Products Division, Green
Bay, WI; Amended Certification
Regarding Eligibility To Apply for
Worker Adjustment Assistance and
Alternative Trade Adjustment
Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 21, 2005, applicable to workers of Georgia-Pacific Corporation, Consumer Products Division, Green Bay, Wisconsin. The notice was published in the **Federal Register** on December 15, 2005 (70 FR 74368).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of napkins, towels and tissue and are not separately identifiable by product line.

New findings show that there was a previous certification, TA-W-55,156, issued on August 12, 2004, for workers of Georgia-Pacific Corporation, Consumer Products Division, Green Bay, Wisconsin who were engaged in employment related to the production of napkins, towels and tissue. That certification expires August 12, 2006. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from October 12, 2004 to August 13, 2006, for workers of the subject firm.

The amended notice applicable to TA-W-58,184 is hereby issued as follows:

All workers of Georgia-Pacific Corporation, Consumer Products Division, Green Bay, Wisconsin, who became totally or partially separated from employment on or after August 13, 2006, through November 21, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 11th day of July 2006.

Elliott S. Kushner,*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E6-12207 Filed 7-28-06; 8:45 am]

BILLING CODE 4510-30-P**DEPARTMENT OF LABOR****Employment and Training
Administration**

[TA-W-59,554]

**Georgia Pacific Corporation, Mason
Street Operations, Green Bay, WI;
Notice of Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 13, 2006 in response to a petition filed by a company official on behalf of workers at Georgia Pacific Corporation, Mason Street Operations, Green Bay, Wisconsin (TA-W-59,554).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 10th day of July, 2006.

Linda G. Poole,*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E6-12205 Filed 7-28-06; 8:45 am]

BILLING CODE 4510-30-P**DEPARTMENT OF LABOR****Employment and Training
Administration**

[TA-W-59,436]

**Jacquard, LLC, Burlington House
Division, Cliffside, NC; Notice of
Affirmative Determination Regarding
Application for Reconsideration**

By letter dated June 26, 2006, a petitioner 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 denial notice was signed on June 13, 2006, and is pending publication in the **Federal Register**.

The initial investigation resulted in a negative determination based on the finding that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers in a firm or appropriate subdivision thereof, means that at least three workers with a workforce of fewer than 50 workers or five percent of the workers with a workforce of 50 or more.

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the

Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

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 20th of July 2006.

Elliott S. Kushner,*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E6-12200 Filed 7-28-06; 8:45 am]

BILLING CODE 4510-30-P**DEPARTMENT OF LABOR****Employment and Training
Administration**

[TA-W-58,808]

**Lexmark International, Inc., Supply
Chain Workforce, Printing Solutions &
Services Division, Lexington, KY;
Notice of Negative Determination on
Reconsideration**

On April 13, 2006, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Lexmark International, Inc., Supply Chain Workforce, Printing Solutions & Services Division, Lexington, Kentucky (subject firm). The Notice was published in the **Federal Register** on April 24, 2006 (71 FR 21042).

The subject workers are engaged in product planning, purchasing of components, support and engineering, logistics, operations, and vendor relations.

In the initial investigation, the Department had determined that although production occurred within the firm or appropriate subdivision, the subject workers do not directly support this production. The Department had also found that the predominant cause of worker separations was Lexmark International, Inc.'s decision to position tasks to other domestic locations in order to be closer to their production partners and customers, who are located worldwide.

Workers of Lexmark International, Inc., Lexington, Kentucky were certified as eligible to apply for Trade Adjustment Assistance (TAA) on February 12, 2002 (TA-W-40,395) based on increased company imports of printers and inkjet cartridges.

In the request for reconsideration, the petitioner asserts that the subject workers supported the production of components (ink) of articles produced by the subject firm (ink and printer cartridges) and that their support functions were shifted abroad when cartridge production shifted abroad.

New information provided by the subject firm during the reconsideration investigation supports the finding that the subject workers purchased ink components which were used in the ink that was inserted into the ink cartridges which were used in the printers produced by the subject firm. As such, the workers are an integral part of ink and printer cartridge production.

Under the statute, the subject worker group must be employed by a firm (or an appropriate subdivision) which produced an article domestically during the twelve month period prior to the petition date. During the reconsideration investigation, the Department confirmed that neither the subject firm nor Lexmark International, Inc. produced ink or cartridges domestically during the relevant period.

Therefore, the Department determines that the subject workers are not employed by a company covered by the statute and are not eligible to apply for TAA.

In addition, in accordance with section 246 of 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 ATAA for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the subject worker group must be certified eligible to apply for TAA. Since the subject workers are denied eligibility to apply for TAA, they cannot be certified eligible for ATAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify revision of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 19th day of July 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-12196 Filed 7-28-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-58,859]

Midland Prints and Fabrics, Inc., Stenfield, NC; Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice rescinds the notice of certification of eligibility to apply for Alternative Trade Adjustment Assistance applicable to TA-W-58,859, which was published in the **Federal Register** on April 12, 2006 (71 FR 18771-18773) in FR Document E6-5369, Billing Code 4510-30-P.

This rescinds the certification of eligibility for workers of TA-W-58,859, to apply for Alternative Trade Adjustment Assistance and confirms eligibility to apply for Worker Adjustment Assistance as identified on page 18771 in the third column, the eleventh TA-W-number listed.

The Department appropriately published in the **Federal Register** April 12, 2006, page 18773, under the notice of Negative Determinations for Alternative Trade Adjustment Assistance, the denial of eligibility applicable to workers of TA-W-58,859. The notice appears on page 18773 in the first column, the second TA-W-number listed.

Signed in Washington, DC, this 24th day of July 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6-12190 Filed 7-28-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-58,929]

Milprint, Inc., a Division of Bemis Company, Denmark, WI; Notice of Negative Determination on Reconsideration

On May 10, 2006, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The Notice was published in the **Federal Register** on May 17, 2006 (71 FR 28712). The workers produce flexible plastic packaging, used largely in confectionary and snack food markets, and paper for

packaging cigarettes. Workers are not separately identifiable by product line.

The petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) filed on behalf of the workers of Milprint, Inc., A Division of Bemis Company, Denmark, Wisconsin (subject firm) was denied because the subject firm neither imported flexible plastic packaging or cigarette paper, nor shifted production of either article abroad during the relevant period. The investigation also revealed that the parent firm experienced increased sales of articles like or directly competitive with those produced by the subject facility during the investigatory period.

The petitioners had also filed as workers of a secondarily-affected company (supplied component parts for articles produced by a firm with a currently TAA-certified worker group). In the initial determination, the Department stated that the subject facility does not supply cigarette paper component parts to any TAA-certified firm in the relevant time period and that flexible plastic packaging is not a component part of confectionaries.

In the request for reconsideration, the United Steel Workers, Local 7-1203 (Union) stated that cigarette packaging paper constituted ten percent of subject firm production and that it was supplied to a TAA-certified firm, P.H. Gladfether, Neenah, Wisconsin (TA-W-53,612). The Union also stated that flexible plastic packaging constituted ninety percent of subject firm production and that this article was supplied to TAA-certified companies: Farley's and Sather Candy (TA-W-51,546), Archibald Candy (TA-W-53,983), American Safety Razor (TA-W-57,323), and Bob's Candy (TA-W-57,772).

To be certified as a secondarily-affected company, the subject firm must have a customer with a currently TAA-certified worker group and the subject firm produces a component part of the product that was the basis for the customer's certification. In addition, the TAA-certified customer must account for at least twenty percent of subject firm's sales or production or the loss of business with the customer contributed importantly to the workers' separations.

According to the Union, cigarette paper production constituted only ten percent of subject firm production. Even if P.H. Gladfether, Neenah, Wisconsin was the subject firm's only customer of this product, sales to P.H. Gladfether would have accounted for less than twenty percent of overall sales or production of the subject firm. Further, P.H. Gladfether, Neenah, Wisconsin was

not a major customer of the subject firm. Therefore, the Department determines P.H. Gladfether accounted for less than twenty percent of overall subject firm sales or production and the loss of business with this customer did not contribute importantly to the workers' separations.

In order to determine whether the workers are eligible to apply for TAA as secondarily-affected workers of a company that supplied flexible plastic packaging to a firm with a currently TAA-certified worker group, the Department requested the subject firm's 2005 sales figures for Farley's and Sather Candy, Archibald Candy, American Safety Razor, and Bob's Candy.

The reconsideration investigation revealed that, during the relevant period, the subject firm conducted no business with three of the customers identified by the Union and conducted an insignificant amount of business with the fourth customer. As such, the Department determines that each customer accounted for less than twenty percent of overall subject firm sales or production and that the loss of business with each customer did not contribute importantly to the workers' separations.

The Union also alleged in the request for reconsideration that flexible plastic packaging production had shifted abroad. During the reconsideration investigation, the Department confirmed that flexible plastic packaging production did not shift abroad but shifted to affiliated production facilities

in Lancaster, Wisconsin and Lebanon, Pennsylvania.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify revision of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 21st day of July 2006.

Elliott S. Kushner,
Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-12208 Filed 7-28-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications, of Eligibility To Apply for Worker Adjustment Assistance, and Alternative Trade 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 August 10, 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 August 10, 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 20th day of July 2006.

Erica R. Cantor,
Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 7/10/06 and 7/14/06]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
59683	Morse Automotive Corp. (State)	Arkadelphia, AR	07/10/06	07/07/06
59684	Whirlpool Corp. (State)	Fort Smith, AR	07/10/06	07/07/06
59685	Laidlaw Corporation (Comp)	Metropolis, IL	07/10/06	07/07/06
59686	Maxtor Corp. (Comp)	Shrewsbury, MA	07/10/06	07/07/06
59687	Connecticut General Life Insurance Co. (Wkrs)	Philadelphia, PA	07/10/06	05/11/06
59688	Pace Industries Inc. (Comp)	Harrison, AR	07/12/06	07/11/06
59689	Alliance Group Technologies Co. Kokkomo, Inc. (Comp)	Peru, IN	07/12/06	07/10/06
59690	Thomson Micron, LLC (State)	Ronkonkoma, NY	07/12/06	07/10/06
59691	Russell Corporation (Comp)	Brundidge, AL	07/12/06	07/07/06
59692	Hooker Furniture Corp. (Comp)	Roanoke, VA	07/12/06	07/10/06
59693	Bowne (Wkrs)	Cleveland, OH	07/12/06	07/10/06
59694	Telect, Inc. (Comp)	Liberty Lake, WA	07/12/06	07/10/06
59695	Newell Rubbermaid (Comp)	Centerville, IA	07/12/06	06/29/06
59696	Metrobility Optical Systems (Wkrs)	Merrimack, NH	07/12/06	07/10/06
59697	Scharf and Breit, Inc. (Comp)	Franklin Sq., NY	07/12/06	07/10/06
59698	American Fast Print Limited (Comp)	Greenville, SC	07/12/06	07/11/06
59699	Excell Data Corporation (State)	Bellevue, WA	07/12/06	07/10/06
59700	RMG Foundry LLC (USW)	Mishawaka, IN	07/12/06	07/10/06
59701	Pilgrim Home and Hearth, LLC (Comp)	Fairfield, CA	07/12/06	07/11/06
59702	Automatic Products Int'l, LTD (State)	St. Paul, MN	07/12/06	07/11/06
59703	Demers Leather Sales Inc. (Comp)	Lewiston, ME	07/12/06	07/11/06
59704	South Park Pleating, Inc. (Wkrs)	Oakland, CA	07/12/06	07/11/06
59705	Computer Sciences Corporation (Wkrs)	Sterling, VA	07/13/06	06/27/06

APPENDIX—Continued

[TAA petitions instituted between 7/10/06 and 7/14/06]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition 59683
59706	Eaton Filtration LLC (Comp)	Elizabeth, NJ	07/13/06	07/12/06
59707	Welch Allyn, Inc. (Comp)	San Diego, CA	07/13/06	07/11/06
59708	Mar Bax Shirt Company Inc. (State)	Gassville, AR	07/13/06	07/12/06
59709	Stimson Lumber Company (Wkrs)	St. Helens, OR	07/13/06	07/11/06
59710	Oxbow Machine Products (Wkrs)	Livonia, MI	07/13/06	06/20/06
59711	KPMG (State)	Charlotte, NC	07/13/06	07/12/06
59712	American Sunroof Company (UAW)	Lansing, MI	07/13/06	06/23/06
59713	State Farm Insurance (Wkrs)	Parsippany, NJ	07/13/06	06/14/06
59714	Jakel Inc. (Wkrs)	Murray, KY	07/13/06	06/26/06
59715	Salisbury Manufacturing Corp. (Comp)	Salisbury, NC	07/13/06	06/28/06
59716	Pinnacle Frames and Accents, Inc. (State)	Piggott, AR	07/13/06	07/13/06
59717	Kent Sporting Goods (State)	Madison, GA	07/13/06	07/12/06
59718	Monroe Staffing Services, LLC (State)	Wallingford, CT	07/14/06	07/13/06
59719	Eaton Corporation (Comp)	Hastings, NE	07/14/06	07/11/06
59720	MacDermid, Inc. (State)	Waterbury, CT	07/14/06	07/13/06
59721	Mercury Marine (IAMAW)	Fond du Lac, WI	07/14/06	07/13/06
59722	Joan Fabrics Corporation (Comp)	Lowell, MA	07/14/06	07/13/06
59723	C and D Technologies (Comp)	Huguenot, NY	07/14/06	07/13/06
59724	Centris Information Service (Comp)	Longview, TX	07/14/06	07/06/06
59725	Agilent Technologies (Wkrs)	Wilmington, DE	07/14/06	07/13/06

[FR Doc. E6-12185 Filed 7-28-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-59,583]

Nibco, Inc., South Glens Falls, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 20, 2006, in response to a worker petition filed by a company official on behalf of workers at NIBCO, Inc., South Glens Falls, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 11th day of July 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-12204 Filed 7-28-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-59,039]

Nortel, Xpm Gnps, Design and Support, Research Triangle Park, NC; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 25, 2006, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Nortel, XPM GNPS, Design and Support, Research Triangle Park, North Carolina was signed on April 26, 2006 and published in the **Federal Register** on May 11, 2006 (71 FR 27520).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition filed on behalf of workers at Nortel, XPM GNPS, Design

and Support, Research Triangle Park, North Carolina engaged in research and development organization that was responsible for development of software in support of all releases related to XPM was denied because the petitioning workers did not produce an article within the meaning of Section 222 of the Act.

The petitioner contends that the Department erred in its interpretation of work performed at the subject facility as providing a service and further conveys that workers of the subject firm "created a new firmware load for the Calls Modem Resource (aka CMR)" and that "it is a new product which is only sent to paying customers."

A company official was contacted for clarification in regard to the nature of the work performed at the subject facility. The official stated that workers of the subject firm were not directly involved in the work that went into the aforementioned load. Furthermore, the changes that were made in the firmware load were a direct result of a reported problem in the field and were not made to provide a feature to the field. The official further clarified that the firmware was not sold but given to the field and that the production of the modified firmware was not moved to a foreign facility but started and remained offshore, once the changes to it were implemented. The official stated that the loads are being built in a foreign country and the workers of the subject firm support this offshore production.

The sophistication of the work involved is not an issue in ascertaining

whether the petitioning workers are eligible for trade adjustment assistance, but whether they produce an article within the meaning of section 222 of the Trade Act of 1974.

Research, development and technical support of the existing software or offshore production of the software is not considered production of an article within the meaning of Section 222 of the Trade Act. Petitioning workers do not produce an "article" within the meaning of the Trade Act of 1974.

The investigation on reconsideration supported the findings of the primary investigation that the petitioning group of workers does not produce an article.

Service workers can be certified only if worker separations are caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article domestically, who meet the eligibility requirements, or if the group of workers are leased workers who perform their duties at a facility that meets the eligibility requirements.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of July, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-12199 Filed 7-28-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-58,807A]

Panasonic Shikoku Electronics Sales of America, Portland, OR; Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice rescinds the notice of certification of eligibility to apply for Alternative Trade Adjustment Assistance applicable to TA-W-58,807A, which was published in the **Federal Register** on April 12, 2006 (71 FR 18771-18773) in FR Document E6-5369, Billing Code 4510-30-P.

This rescinds the certification of eligibility for workers of TA-W-58,807A, to apply for Alternative Trade

Adjustment Assistance and confirms eligibility to apply for Worker Adjustment Assistance as identified on page 18771 in the third column, the tenth TA-W-number listed.

The Department appropriately published in the **Federal Register** April 12, 2006, page 18773, under the notice of Negative Determinations for Alternative Trade Adjustment Assistance, the denial of eligibility applicable to workers of TA-W-58,807A. The notice appears on page 18773 in the first column, the first TA-W-number listed.

Signed in Washington, DC, this 24th day of July 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6-12189 Filed 7-28-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) number and alternative trade adjustment assistance (ATAA) by (TA-W) number issued during the period of July 2006.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or

production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.
2. Whether the workers in the workers' firm possess skills that are not easily transferable.
3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA-W-59,395; Rowe Furniture Corporation, Poplar Bluff, MO; April 27, 2005

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA-W-59,605; Fuji Photo Film, Inc., Administration Department, Greenwood, SC; June 21, 2005.

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section

222(a)(2)(A) (increased imports) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-59,576; Springs Global U.S. Inc., Chester, SC; June 14, 2005

TA-W-59,584; Republic Conduit, Elyria, OH; June 16, 2005

TA-W-59,596; Gujarat Glass International (GGI), Park Hills, MO; June 20, 2005

TA-W-59,618; Carboloy, Inc., Mfg. Div., Warren, MI; June 19, 2005

TA-W-59,625; P.W. Minor & Son Inc., Batavia, NY; June 14, 2005

TA-W-59,472; Graftech International, UCAR Carbon Company, Carbon Electrode Division, Columbia, TN; May 19, 2005

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-59,504; Eaton Corporation/Eaton Hydraulic Operations, Screw-In Cartridge Valve Production, Petersburg, IL; June 2, 2005

TA-W-59,504A; Eaton Corporation/Eaton Hydraulic Operations, Manifolds for Hydraulic Control Production, Petersburg, IL; June 2, 2005

TA-W-59,531; Prostonite Wire Corporation, Ford Strategic Business Unit, Tifton, GA; June 30, 2006

TA-W-59,564; Greatbatch-Sierra, Inc., Carson City, NV; June 13, 2005

TA-W-59,580; SSA Global Technologies, Inc., Solutions Management and Development Div., Chicago, IL; June 15, 2005

TA-W-59,621; Irving Tissue, Inc, Fort Edward, NY; June 23, 2005

TA-W-59,650; Pendleton Woolen Mills Inc., Bellevue, NE; June 27, 2005

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-59,597; Fisher Dynamics, St. Clair Shores, MI; June 21, 2005

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department as determined that criterion (1) of section 246 has not been met. Workers at the firm are 50 years of age or older.

None.

The Department as determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department as determined that criterion (3) of section 246 has not been met. Competition conditions within the workers' industry are not adverse.

TA-W-59,395; Rowe Furniture Corporation, Poplar Bluff, MO; TA-W-59,605; Fuji Photo Film, Inc., Administration Department, Greenwood, SC

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Since the workers of the firm are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA-W-59,611; Tree Frog Studios, Hendersonville, NC; TA-W-59,679; American Standard, Inc., Paintsville, KY

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA-W-59,504B; Eaton Corporation/Eaton Hydraulic Operations, Hydraulic Remote Control Production, Petersburg, IL

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA-W-59,358; Cenveo-Waterbury, Waterbury, CT; TA-W-59,512; Royal Precision, Inc., FM Precision Golf Mfg. Corp., A Subsidiary of Royal Associates, Torrington, CT.

TA-W-59,590; *Kenda Knits, Inc., Clover, SC.*

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country).

TA-W-59,570; *Non Metallic Components, Inc., Cuba City, WI*

TA-W-59,589; *JB-DM Jewelry, LLC, Los Angeles, CA*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-59,483; *B.C. Moore & Sons, Buying Office, Cheraw, NC*

TA-W-59,553; *Convergys Corporation, Hillsboro, OR*

TA-W-59,581; *VF Imagewear, Martinsville, VA*

TA-W-59,582; *Convergys Corp., Customer Management Group, Hillsboro, OR*

TA-W-59,616; *Sure Fit, Inc., Catalog Call Center, Allentown, PA*

TA-W-59,653; *Utility Craft, Inc., dba Wood-Armfield Furniture, Retail Store, High Point, NC*

TA-W-59,653A; *Utility Craft, Inc., dba Wood-Armfield Furniture, Retail Store, High Point, NC*

TA-W-59,672; *Anage, Inc., New York, NY*

The investigation revealed that criteria of section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the month of July 2006. Copies of These determinations are available for inspection in Room C-5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 24, 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6-12201 Filed 7-28-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-58,956]

Sony Technology Center Pittsburgh, Mount, PA; Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice rescinds the notice of certification of eligibility to apply for Alternative Trade Adjustment Assistance applicable to TA-W-58,956, which was published in the **Federal Register** on April 12, 2006 (71 FR

This rescinds the certification of eligibility for workers of TA-W-58,956, to apply for Alternative Trade Adjustment Assistance and confirms eligibility to apply for Worker Adjustment Assistance as identified on page 18772 in the first column, the fourteenth TA-W-number listed.

The Department appropriately published in the **Federal Register** April 12, 2006, page 18773, under the notice of Negative Determinations for Alternative Trade Adjustment Assistance, the denial of eligibility applicable to workers of TA-W-58,956. The notice appears on page 18773 in the first column, the fifth TA-W-number listed.

Signed in Washington, DC, this 24th day of July 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6-12193 Filed 7-28-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-58,763]

Spartech Polycom, Washington, PA; Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice rescinds the notice of certification of eligibility to apply for Alternative Trade Adjustment Assistance applicable to TA-W-58,763, which was published in the **Federal Register** on April 4, 2006 (71 FR 16832-16834) in FR Document E6-4858, Billing Code 4510-30-P.

This rescinds the certification of eligibility for workers of TA-W-58,763, to apply for Alternative Trade Adjustment Assistance and confirms

eligibility to apply for Worker Adjustment Assistance as identified on page 16833 in the second column, the eighth TA-W-number listed.

The Department appropriately published in the **Federal Register** April 4, 2006, page 16834, under the notice of Negative Determinations for Alternative Trade Adjustment Assistance, the denial of eligibility applicable to workers of TA-W-58,763. The notice appears on page 16834 in the first column, the twelfth TA-W-number listed.

Signed in Washington, DC, this 24th day of July 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6-12194 Filed 7-28-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-59,230]

Stolt Sea Farm, a Subsidiary of Stolt-Nielsen, S.A., Currently Known as Marine Harvest U.S., Inc., Acquired by True North Foods, U.S., Inc., Including On-Site Temporary Workers of Hamilton Connections and Adecco, Stratford, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on May 18, 2006, applicable to workers of Stolt Sea Farm, a subsidiary of Stolt-Nielsen, S.A., including on-site leased workers of Hamilton Connections and Adecco, Stratford, Connecticut. The notice was published in the **Federal Register** on June 9, 2006 (71 FR 33488).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers processed Atlantic salmon.

On December 30, 2005, True North Foods, U.S., Inc. purchased certain U.S. East Coast operating assets of Marine Harvest U.S., Inc., formerly known as Stolt Sea Farm.

Information also shows that all workers separated from employment at Stolt Sea Farm had their wages reported under a separate unemployment insurance (UI) tax account for True North Foods U.S., Inc.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Stolt Sea Farm, a subsidiary of Stolt-Nielsen, S.A., currently known as Marine Harvest U.S., Inc., acquired by True North Foods, U.S., Inc. who were adversely affected by a shift in production to New Brunswick, Canada.

The amended notice applicable to TA-W-59,230 is hereby issued as follows:

All workers of Stolt Sea Farm, a subsidiary of Stolt-Nielsen, S.A., currently known as Marine Harvest U.S., Inc., acquired by True North Foods, U.S., Inc., including on-site temporary workers of Hamilton Connections and Adecco, Stratford, Connecticut, who became totally or partially separated from employment on or after April 17, 2005, through May 18, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of July 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-12206 Filed 7-28-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-59,094]

The U.S. Baird Corporation, Stratford, CT, Including Employees of the U.S. Baird Corporation, Stratford, CT Located in TA-W-59,094A Tallahassee, FL, TA-W-59,094B Jenison, MI, TA-W-59,094C Middleville, MI, TA-W-59,094D Englewood, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and

section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 1, 2006, applicable to workers of The U.S. Baird Corporation, Stratford, Connecticut. The notice was published in the **Federal Register** on June 22, 2006 (71 FR 35949).

At the request of a State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations have occurred involving four employees of the Stratford, Connecticut facility of The U.S. Baird Corporation located in Tallahassee, Florida, Jenison, Michigan, Middleville, Michigan and Englewood, Ohio. Mr. John Mitteer, Mr. Don Farmer, Mr. Eric Shogren and Mr. James Glaser provided management and sales function services for the production of multiple transfer presses, wire forming machines and wire bending machines produced by the subject company.

Based on these findings, the Department is amending this certification to include employees of the Stratford, Connecticut facility of The U.S. Baird Corporation located in Tallahassee, Florida, Jenison, Michigan, Middleville, Michigan and Englewood, Ohio.

The intent of the Department's certification is to include all workers of The U.S. Baird Corporation, Stratford, Connecticut who were adversely affected by increased customer imports.

The amended notice applicable to TA-W-59,094 is hereby issued as follows:

"All workers of The U.S. Baird Corporation (TA-W-59,094), and including employees of The U.S. Baird Corporation, Stratford, Connecticut, located in Tallahassee, Florida (TA-W-59,094A), Jenison, Michigan (TA-W-59,094B), Middleville, Michigan (TA-W-59,094C) and Englewood, Ohio (TA-W-59,094D), who became totally or partially separated from employment on or after March 27, 2005, through June 1, 2008, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974

and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974."

Signed at Washington, DC this 19th day of July 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6-12197 Filed 7-28-06; 8:45 am]

BILLING CODE 4510-30-P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 06-10]

Notice of Quarterly Report (April 1, 2006-June 30, 2006)

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Corporation (MCC) is reporting for the quarter April 1, 2006 through June 30, 2006 with respect to both assistance provided under Section 605 of the Millennium Challenge Act of 2003 (Pub. L. 108-199, Division D (the Act)), and transfers of funds to other federal agencies pursuant to Section 619 of that Act. The following report shall be made available to the public by means of publication in the **Federal Register** and on the Internet Web site of the MCC (www.mcc.gov) in accordance with Section 612(b) of the Act.

ASSISTANCE PROVIDED UNDER SECTION 605

Projects	Obligated	Objectives	Quarterly disbursements	Measures
Country: Madagascar Year: 2006 Quarter 3 Entity to which the assistance is provided: MCA Madagascar		Total obligation: \$109,733,000 Total Quarterly disbursement: \$5,392,000		
Land Tenure Project	\$37,803,000	Increase Land Titling and Security.	\$5,392,000	Legislative proposal (“loin de cadrage”) reflecting the PNF submitted to Parliament and passed. Percentage of land documents inventoried, restored, and/or digitized. Average time and cost required to carry out property-related transactions at the local and/or national land services offices. Time/cost to respond to information request, issue titles and to modify titles after the first land right. Number of land disputes reported and resolved in the target zones and sites of implementation. Percentage of land in the zones that is demarcated and ready for titling. Promote knowledge and awareness of land tenure reforms among inhabitants in the zones (surveys).
Finance Project	\$35,888,000	Increase Competition in the Financial Sector.	\$0	Submission to Parliament and passage of new laws recommended by outside experts and relevant commissions. CPA Association (CSC) list of accountants registered. Maximum check clearing delay. Volume of funds in payment system and number of transactions. Public awareness of new financial instruments (surveys). Report of credit and payment information to a central database. Number of holders of new denomination T-bill holdings, and T-bill issuance outside Antananarivo as measured by Central Bank report of redemption date. Volume of production covered by warehouse receipts in the zones. Volume of MFI lending in the zones. MFI portfolio-at-risk delinquency rate. Number of new bank accounts in the zones.
Agricultural Business Investment Project.	\$17,683,000	Improve Agricultural Production Technologies and Market Capacity in Rural Areas.	\$0	Number of rural producers receiving or soliciting information from ABCs about the opportunities. Zones identified and description of beneficiaries within each zone submitted. Number of cost-effective investment strategies developed. Number of plans prepared. Number of farmers and business employing technical assistance received.
Program Administration* and Control, Monitoring and Evaluation.	\$18,399,000	.....	\$0	

Projects	Obligated	Objective	Disbursements	Measures
Country: Honduras Year: 2006 Quarter 3 Total obligation: \$215,000,000 Entity to which the assistance is provided: MCA-Honduras Total Quarterly disbursement: \$0				
Rural Development Project	\$72,195,000	Increase the productivity and business skills of farmers who operate small and medium-size farms and their employees.	\$0	Hours of technical assistance delivered to Program Farmers (thousands). Funds lent by MCA-Honduras to financial institutions (cumulative). Hours of technical assistance to financial institutions (cumulative). Lien Registry equipment installed. Kilometers of farm-to-market road upgraded (cumulative).
Transportation Project	\$125,700,000	Reduce transportation costs between targeted production centers and national, regional and global markets.	\$0	Kilometers of highway upgraded. Kilometers of secondary road upgraded. Number of weight stations built.
Program Administration* and Control, Monitoring and Evaluation.	\$17,105,000	.....	\$0	
Projects	Obligated	Objectives	Quarterly Disbursements	Measures
Country: Cape Verde Year: 2006 Quarter 3 Total obligation: \$110,078,000 Entity to which the assistance is provided: MCA Cape Verde Total Quarterly disbursement: \$0				
Watershed and Agricultural Support.	\$10,848,000	Increase agricultural production in three targeted watershed areas on three islands.	\$0	Productivity: Horticulture (tons per hectare). Value-added for farms and agribusiness (millions of dollars).
Infrastructure Improvement	\$78,760,000	Increase integration of the internal market and reduce transportation costs.	\$0	Volume of goods shipped between Praia and other islands (tons). Mobility Ratio: Percentage of beneficiary population who take at least 5 trips per month. Savings on transport costs from improvements (million dollars).
Private Sector Development ...	\$7,200,000	Spur private sector development on all islands through increased investment in the priority sectors and through financial sector reform.	\$0	Value added in priority sectors above current trends (escudos). Volume of private investment in priority sectors above current trends.
Program Administration* and Control, Monitoring and Evaluation.	\$13,270,000	.....	\$0	
Projects	Obligated	Objective	Disbursements	Measures
Country: Nicaragua Year: 2006 Quarter 3 Total obligation: \$174,925,000 Entity to which the assistance is provided: MCA Nicaragua Total Quarterly disbursement: \$1,483,000				
Property Regularization Project.	\$26,400,000	Increase Investment by strengthening property rights.	\$99,000	Automated registry-cadastre database installed. Number of parcels with a registered title, rural and urban (total of 21,000 and 22,000, rural and urban, respectively). Projected areas demarcated. Number of projected area management plans implemented. Number of conflicts resolved by program mediation.
Transportation Project	\$92,800,000	Reduce transportation costs between Leon and Chinandega and national, regional and global markets.	\$0	N-1 Road: Kilometers of roads upgraded. Secondary Roads: Kilometers of secondary road upgraded.
Rural Business Development Project.	\$33,500,000	Increase the value added of farms and enterprises in the region.	\$307,000	Rural business development centers: Value of TA and support services delivered to program businesses. Improvement of water supply for farming and forest production: Watershed Management Action Plan. Funds disbursed for improvement of water supply for farming and forest production projects.

Projects	Obligated	Objective	Disbursements	Measures
Program Administration,* Due Diligence, Monitoring and Evaluation.	\$22,225,000	.....	\$1,077,000	
Projects	Obligated	Objective	Disbursements	Measures

Country: Georgia Year: 2006 Quarter 3 Total obligation: \$294,693,000
 Entity to which the assistance is provided: MCA Georgia Total Quarterly disbursement: \$3,603,000

Regional Infrastructure Rehabilitation.	\$211,700,000	Key Regional Infrastructure Rehabilitated.	\$1,379,000	Reduction in journey time: Akhalkalaki-Ninotsminda-Teleti (hours). Reduction in vehicle operating costs (cumulative). Increase in internal regional traffic volumes (cumulative). Decreased technical losses. Reduction in the production of greenhouse gas emissions measured in tons of CO ₂ equivalent. Increase in collection rate of GGIC. Number of household beneficiaries served by RID projects (cumulative). Actual operations and maintenance expenditures (USD).
Regional Enterprise Development.	\$47,500,000	Enterprises in Regions Developed.	\$346,000	Increase in annual revenue in portfolio companies (in 1,000 USD). Increase in number of portfolio company employees and number of local suppliers. Increase in portfolio companies' wages and payments to local suppliers (in 1,000 USD). Jobs created. Increase in aggregate incremental net revenue to project assisted firms (in 1,000 USD and cumulative over five years). Direct household net income (in 1,000 USD cumulative over five years). Direct household net income for market information initiative beneficiaries (in 1,000 USD cumulative over five years). Number of beneficiaries.
Program Administration,* Due Diligence, Monitoring and Evaluation.	\$35,493,000	\$1,878,000	

Projects	Obligated	Objective	Disbursements	Measures
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Country: Vanuatu Year: 2006 Quarter 3 Total obligation: \$65,690,000
 Entity to which the assistance is provided: MCA Vanuatu Total Quarterly disbursement: \$1,127,000

Transportation Infrastructure Project.	\$60,690,000	Facilitate transportation to increase tourism and business development.	\$0	Traffic volume (average annual daily traffic). Days road is closed (number per annum). Number of S-W Bay, Malekula flights cancelled due to flooding (per annum). Time of wharf (hours/vessel).
Program Administration,* Due Diligence, Monitoring and Evaluation.	\$5,000,000	.....	\$1,127,000	

*Program administration funds are used to pay items such as salaries, rent, and the cost of office equipment.

619 Transfer funds—U.S. Agency to which funds were transferred	Amount	Country	Description of program or project
USAID	\$20,000,000 FY04 funding.	Threshold Countries.	Implementation of Threshold Country Plan.
USAID	\$135,000,000 FY05 funding.	Threshold Countries.	Implementation of Threshold Country Plan.

Dated: July 25, 2006.

Frances C. McNaught,

Vice President, Congressional and Public Affairs, Millennium Challenge Corporation.

[FR Doc. E6-12156 Filed 7-28-06; 8:45 am]

BILLING CODE 9210-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-424 and 50-425]

Southern Nuclear Operating Company, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-68 and NPF-81 issued to Southern Nuclear Operating Company, Inc. (SNC), for operation of the Vogtle Electric Generating Plant (VEGP), Units 1 and 2, located in Burke County, Georgia.

The proposed amendment would revise, Technical Specification (TS) 5.5.9, "Steam Generator (SG) Tube Surveillance Program," to incorporate changes in the SG inspection scope for VEGP, Unit 1 during Refueling Outage 13 and the subsequent operating cycle and for Unit 2, during Refueling Outage 12 and the subsequent operating cycle. The proposed changes modify the inspection requirements for portions of SG tubes within the tubesheet region of the SGs.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR) Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed changes that alter the SG inspection criteria do not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed changes will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

Of the applicable accidents previously evaluated, the limiting transients with consideration to the proposed changes to the SG tube inspection criteria, are the SG tube rupture (SGTR) event and the steam line break (SLB) accident.

During the SGTR event, the required structural integrity margins of the SG tubes will be maintained by the presence of the SG tubesheet. SG tubes are hydraulically expanded in the tubesheet area. Tube rupture in tubes with cracks in the tubesheet is precluded by the constraint provided by the tubesheet. This constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet and from the differential pressure between the primary and secondary side. Based on this design, the structural margins against burst discussed in Regulatory Guide (RG) 1.121, "Bases for Plugging Degraded PWR SG Tubes," are maintained for both normal and postulated accident conditions.

The proposed changes do not affect other systems, structures, components or operational features. Therefore, the proposed changes result in no significant increase in the probability of the occurrence of a SGTR accident.

At normal operating pressures, leakage from primary water stress corrosion cracking (PWSCC) below the proposed limited inspection depth is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region. The consequences of an SGTR event are affected by the primary-to-secondary leakage flow during the event. Primary-to-secondary leakage flow through a postulated broken tube is not affected by the proposed change since the tubesheet enhances the tube integrity in the region of the hydraulic expansion by precluding tube deformation beyond its initial hydraulically expanded outside diameter.

The probability of a SLB is unaffected by the potential failure of a SG tube as this failure is not an initiator for a SLB.

The consequences of a SLB are also not significantly affected by the proposed changes. During a SLB accident, the reduction in pressure above the tubesheet on the shell side of the SG creates an axially uniformly distributed load on the tubesheet due to the reactor coolant system pressure on

the underside of the tubesheet. The resulting bending action constrains the tubes in the tubesheet thereby restricting primary-to-secondary leakage below the midplane.

The hydraulically expanded tube-to-tubesheet joints in Model F SGs are not leaktight without the tube end weld. Considerations were also made with regard to the potential for primary-to-secondary leakage during postulated faulted conditions. However, the leak rate during postulated accident conditions would be expected to be less than that during normal operation for indications near the bottom of the tubesheet based on an evaluation [by the Westinghouse Electric Company dated July 11, 2006] which shows that while the driving pressure increases by about a factor of almost two, the flow resistance increases because the tube-to-tubesheet contact pressure also increases. Depending on the depth within the tubesheet, the relative increase in resistance could easily be larger than that of the pressure potential. Therefore, the leak rate under normal operating conditions could exceed its allowed value before the accident condition leak rate would be expected to exceed its allowed value. This approach is termed an application of the "bellwether principle." While such a decrease in the leak rate is expected, the postulated accident leak rate could conservatively be taken to be bounded by twice the normal operating leak rate if the increase in contact pressure is ignored.

Since normal operating leakage is limited by the TS changes proposed in SNC letter NL-06-0124 and by NEI 97-06 to less than 0.10 gpm [gallons per minute], (150 gpd [gallons per day]) throughout one SG in the VEGP Units 1 and 2 SGs, the attendant accident condition leak rate, assuming all leakage to be from lower tubesheet indications, would be bounded by 0.20 gpm in the faulted SG which is less than the accident analysis assumption of 0.35 gpm to the affected SG included in Section 15.1.5 of the VEGP Updated Final Safety Analysis Report (FSAR). Hence it is reasonable to omit any consideration of inspection of the tube, tube end weld, bulges/overexpansions or other anomalies below 17 inches from the top of the hot leg tubesheet.

Based on the above discussion, the proposed changes do not involve an increase in the consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes do not involve the use or installation of new equipment and the currently installed equipment will not be operated in a new or different manner. No new or different system interactions are created and no new processes are introduced. The proposed changes will not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases.

Based on this evaluation, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed changes maintain the required structural margins of the SG tubes for both normal and accident conditions. Nuclear Energy Institute (NEI) 97-06, "Steam Generator Program Guidelines," and Regulatory Guide (RG) 1.121, "Bases for Plugging Degraded PWR Steam Generator Tubes," are used as the bases in the development of the limited tubesheet inspection depth methodology for determining that SG tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC for meeting General Design Criteria (GDC) 14, "Reactor coolant pressure boundary," GDC 15, "Reactor coolant system design," GDC 31, "Fracture prevention of reactor coolant pressure boundary," and GDC 32, "Inspection of reactor coolant pressure boundary," by reducing the probability and consequences of a SGTR. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

Application of the limited tubesheet inspection depth criteria will preclude unacceptable primary-to-secondary leakage during all plant conditions. The methodology for determining leakage provides for large margins between calculated and actual leakage values in the proposed limited tubesheet inspection depth criteria.

Therefore, the proposed changes do not involve a significant hazards consideration under the criteria set forth in 10 CFR 50.92(c).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a

timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board

Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no

significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, hearingdocket@nrc.gov; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by E-mail to OGCMailCenter@nrc.gov. A copy of the request for hearing and petition for leave to intervene should also be sent to Arthur H. Domby, Esquire, Troutman Sanders, NationsBank Plaza, 600 Peachtree Street, NE., Suite 5200, Atlanta, GA 30308-2216, the attorney for the licensee.

For further details with respect to this action, see the application for amendment dated July 20, 2006, which is available for public inspection at the Commission's PDR, located at One

White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 25th day of July 2006.

For the Nuclear Regulatory Commission.

Christopher Gratton,

Sr. Project Manager, Plant Licensing Branch II-1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6-12169 Filed 7-28-06; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

SUNSHINE FEDERAL REGISTER NOTICE

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Week of July 24, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Additional Matters To Be Considered

Week of July 24, 2006

Thursday, July 27, 2006

3 p.m. Discussion of Management Issues (closed—ex. 2).

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: Michelle Schroll, (301) 415-1662.

* * * * *

Additional Information

By a vote of 5-0 on July 24 and 25, 2006, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Management Issues (closed—ex 2)" be held July 27, 2006 and by a vote of 4-1 that the meeting be held on less than one week's notice to the public. Commissioner Jaczko did not vote to hold the meeting on short notice.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: www.nrc.gov/what-we-do/policy-making/schedule.html.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301-415-7041, TDD: 301-415-2100, or by e-mail at DLC@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov,

Dated: July 26, 2006

Sandy Joosten,

Office of the Secretary.

[FR Doc. 06-6613 Filed 7-27-06; 12:58 pm]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Waiver of Discriminatory Purchasing Requirements With Respect to Goods and Services Covered by Chapter 9 of the Dominican Republic-Central America-United States Free Trade Agreement for Guatemala

AGENCY: Office of the United States Trade Representative.

ACTION: Determination under Trade Agreements Act of 1979.

EFFECTIVE DATE: July 31, 2006.

FOR FURTHER INFORMATION CONTACT: Dawn Shackleford, Director for International Procurement, Office of the United States Trade Representative, (202) 395-9461, or Jason Kearns, Associate General Counsel, Office of the United States Trade Representative, (202) 395-9439.

On August 5, 2004, the United States and Guatemala entered into the Dominican Republic-Central America-

United States Free Trade Agreement ("the CAFTA-DR"). Chapter 9 of the CAFTA-DR sets forth certain obligations with respect to government procurement of goods and services, as specified in Annex 9.1.2(b)(i) of the CAFTA-DR. On August 2, 2005, the President signed into law the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act ("the CAFTA-DR Act") (Pub. L. 109-53, 119 Stat. 462) (19 U.S.C. 4001 note). In section 101(a) of the CAFTA-DR Act, the Congress approved the CAFTA-DR. The CAFTA-DR entered into force on July 1, 2006, for Guatemala.

Section 1-201 of Executive Order 12260 of December 31, 1980 (46 FR 1653) delegates the functions of the President under Sections 301 and 302 of the Trade Agreements Act of 1979 ("the Trade Agreements Act") (19 U.S.C. 2511, 2512) to the United States Trade Representative.

Now, therefore, I, Susan C. Schwab, United States Trade Representative, in conformity with the provisions of Sections 301 and 302 of the Trade Agreements Act, and Executive Order 12260, and in order to carry out U.S. obligations under Chapter 9 of the CAFTA-DR, do hereby determine that:

1. Guatemala is a country, other than a major industrialized country, which, pursuant to the CAFTA-DR, will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products. In accordance with Section 301(b)(3) of the Trade Agreements Act, Guatemala is so designated for purposes of Section 301(a) of the Trade Agreements Act.

2. With respect to eligible products of Guatemala (i.e., goods and services covered by the Schedules of the United States in Annex 9.1.2(b)(i) of the CAFTA-DR) and suppliers of such products, the application of any law, regulation, procedure, or practice regarding government procurement that would, if applied to such products and suppliers, result in treatment less favorable than accorded—

(A) to United States products and suppliers of such products; or

(B) to eligible products of another foreign country or instrumentality which is a party to the Agreement on Government Procurement referred to in section 101(d)(17) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(17)) and suppliers of such products, shall be waived.

With respect to Guatemala, this waiver shall be applied by all entities listed in the Schedule of the United States to Section A of Annex 9.1.2(b)(i)

and in List A of Section C of Annex 9.1.2(b)(i) of the CAFTA-DR.

3. The designation in paragraph 1 and the waiver in paragraph 2 are subject to modification or withdrawal by the United States Trade Representative.

Dated: July 25, 2006.

Susan C. Schwab,

United States Trade Representative.

[FR Doc. E6-12222 Filed 7-28-06; 8:45 am]

BILLING CODE 3190-W6-P

OFFICE OF PERSONNEL MANAGEMENT

Nonforeign Area Cost-of-Living Allowance; General Population Rental Equivalence Survey Report

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This notice publishes the "Nonforeign Area General Population Rental Equivalence Survey Report." The General Population Rental Equivalence Survey (GPRES) was a special research project in which the Office of Personnel Management (OPM) collected data on homeowner estimates of the rental value of their homes and market rents in the nonforeign area cost-of-living allowance (COLA) areas and in the Washington, DC area. OPM conducted GPRES to determine whether rental survey data collected in the COLA surveys should be adjusted to account for homeowner shelter costs. Based on the GPRES results, OPM has determined that no adjustment is appropriate. OPM is publishing this report to inform interested parties of the research results and provide an opportunity for comment.

DATES: Comments on this report must be received on or before September 29, 2006.

ADDRESSES: Send or deliver comments to Jerome D. Mikowicz, Acting Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415-8200; fax: (202) 606-4264; or e-mail: COLA@opm.gov.

FOR FURTHER INFORMATION CONTACT: Donald L. Paquin, (202) 606-2838; fax: (202) 606-4264; or e-mail: COLA@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) conducted the General Population Rental Equivalence Survey (GPRES) to determine whether OPM should adjust

the rent indexes it computes from data collected in the nonforeign area cost-of-living allowance (COLA) surveys. The Federal Government pays COLAs to certain white collar Federal and U.S. Postal Service employees in Alaska, Hawaii, Guam and the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. As provided by subpart B of title 5, Code of Federal Regulations, OPM conducts living-cost surveys to set COLA rates.

One of the items OPM surveys during the COLA surveys is market rents for detached houses, duplexes and triplexes, town and row houses, and apartments. We use rental data to estimate the relative price of shelter for both homeowners and renters between the COLA areas and the Washington, DC area. (For an example, see the 2004 Pacific COLA survey report published at 70 FR 44989-45023.) As applied to homeowners, this approach is called "rental equivalence" because it estimates the shelter value of owned homes rather than surveying homeowner costs directly.

OPM adopted the rental equivalence approach pursuant to the settlement in *Caraballo, et al. v. United States*, No. 1997-0027 (D.V.I.), August 17, 2000. The settlement provides for several significant changes in the COLA methodology, including the use of rental equivalence. The settlement also established the Survey Implementation Committee (SIC), composed of seven plaintiffs' representatives and two OPM representatives, and the Technical Advisory Committee (TAC), composed of three economists with expertise in living-cost analysis. The TAC advises the SIC and OPM on living-cost issues. The SIC and the TAC agreed OPM could use, on an interim basis, market rents collected in the COLA surveys to estimate homeowner costs. The TAC noted, however, that the relative price of shelter for homeowners could differ compared with the relative price of market rents between the COLA areas and the DC area. If this were the case, it would be appropriate for OPM to adjust COLA survey market rent indexes before applying them to homeowners.

Therefore, OPM conducted a special research project, i.e., GPRES, to collect information on market rents and homeowner estimates of the rental value of their homes in the COLA areas and in the Washington, DC area. The SIC and the TAC were involved heavily in the design of the survey, and the TAC analyzed the survey results. The TAC also compared GPRES results with the results of the 1998 Federal Employee Housing and Living Patterns Survey (FEHLPS), which Joel Popkin and

Company conducted as part of the research leading to the *Caraballo* settlement.

Using the GPRES results, the TAC found that no adjustment to the COLA survey market rents was appropriate because there were no statistically significant differences between homeowner estimated rents and market rents in the COLA areas compared with the DC area. The TAC found essentially the same results using FEHLPS. Therefore, the TAC recommended no rental equivalence adjustment be made. However, the TAC noted some differences between GPRES results and FEHLPS results and speculated these differences could reflect trends in relative rent prices/rental price estimates. Therefore, the TAC recommended OPM consider conducting additional GPRES-type surveys if OPM were to adopt a rental equivalence adjustment. Because OPM agrees that no rental equivalence adjustment is warranted, we do not plan to conduct additional GPRES-type surveys at this time.

Office of Personnel Management.

Linda M. Springer,

Director.

Nonforeign Area General Population Rental Equivalence Survey Report

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1. Introduction

This report provides the results of the General Population Rental Equivalence Survey (GPRES), which Westat, Incorporated, conducted for OPM in the winter of 2004/2005. In addition, the report provides for comparison purposes the results of the 1998 Federal Employee Housing and Living Patterns Survey (FEHLPS), which Joel Popkin and Company conducted for plaintiffs' representatives and Government representatives who were working collaboratively to resolve long-contested issues in the nonforeign area cost-of-living allowance (COLA) program. The collaborative work lead to the settlement of *Caraballo, et al. v. United States*, No. 1997-0027 (D.V.I.), August 17, 2000, and to major changes in the nonforeign area cost-of-living allowance (COLA) program. Therefore, although this report is principally about GPRES, it also covers the FEHLPS as it applies to rental equivalence analyses.

The report describes how OPM planned and prepared for the conduct of GPRES. In planning the survey, OPM consulted closely with the Survey Implementation Committee (SIC) and the Technical Advisory Committee (TAC), both established pursuant to the *Caraballo* settlement. The SIC has seven members—five plaintiffs' representatives from the COLA areas and two OPM representatives. The TAC has three members—economists who have expertise in living-cost measurement. The TAC performs research for and advises the members of the SIC.

The purpose of GPRES was two-fold. First, it was to determine whether there are statistically significant "homeowner factors" (HFs) that reflect the difference between homeowners' estimates of the rental value of their homes compared with market rents, holding rental unit characteristics constant. (The HF is the estimated rental value of owned homes divided by the market rent for homes of equivalent observed quality and quantity.) Second, GPRES was to determine whether HFs varied between the COLA areas and the Washington, DC area to a statistically significant degree. If so, OPM could use the results to adjust the market rents it collects during the COLA surveys to reflect homeowner shelter costs.

FEHLPS was used to look at the same two questions. The purpose of FEHLPS was to collect a wide range of information on Federal employees—much more than housing data. However, among the data FEHLPS collected were homeowner estimates of the rental value of their homes, so it was possible to use the survey to compute HFs and to examine whether these varied to a statistically significant degree between the COLA areas and the Washington, DC area. The scope of FEHLPS was more limited than GPRES. It had approximately a third fewer housing observations and was limited to Federal employees—a subset of the general population.

Comparing GPRES and FEHLPS results was very informative. This report describes those comparisons and why, based on the results and comparisons, no adjustment to rental indexes to account for homeowner shelter costs appears warranted at this time.

2. Purpose of GPRES

2.1 Rental Equivalence and Rents

There are two commonly accepted approaches for measuring the shelter value of owned homes. One is the user-cost approach. The other is rental equivalence. In simplistic terms, user costs are the costs of owning and maintaining a home minus the annual discounted expected capital gains that the owner will realize when he or she sells the home. Rental equivalence is what an owned home would rent for if it were available for rent in the rental market.

Rental equivalence is a well-known approach and is used by the Bureau of Labor Statistics (BLS) in the computation of the Consumer Price Index. Instead of measuring the change in owner user costs, which tend to be volatile, BLS attributes the change in market rents to homeowner shelter costs. This approach is supported by research that BLS conducted in the 1990's. Economists advising the plaintiffs' and Government representatives prior to the *Caraballo* settlement recommended that OPM adopt a similar approach for the COLA program, and the *Caraballo* settlement and OPM regulations adopted pursuant to the settlement prescribe that OPM use a rental equivalence approach to estimate the "price" of homeowner shelter.

Economic theory suggests that homeowners' estimates of the rental value of their homes will on average be higher than market rents for housing with equivalent observed characteristics (i.e., of equivalent observed quantity

and quality). (See Akerlof, George A., 1970. "The Market for 'Lemons': Quality Uncertainty and the Market Mechanism," *The Quarterly Journal of Economics*, MIT Press, vol. 84(3), pages 488–500.) Imperfect market knowledge on the part of potential renters' and homeowners' awareness of *unobserved* amenities of their homes cause owner rent estimates to be higher than market rents. In other words, the HF should be greater than one. The size of the HF, however, could vary between one or more COLA areas and the Washington, DC area if owned homes in some areas have more unobserved amenities than owned homes in other areas.

Other factors could also affect owner rent estimates of the rental value of their homes, such as the owner's limited knowledge of local rental markets. Although some owners might have an excellent knowledge of rental markets and the rental value of their homes, most owners have little reason to pay much attention to the rental market, and their estimates might well be less accurate. In fact, GPRES results suggest that homeowners often relied on their mortgage payments to estimate the rental value of their homes, and mortgage payments are not necessarily correlated with market rents.

Although homeowner estimates may be somewhat inaccurate, the expectation is that the inaccurate estimates would be distributed normally in any area—some too high and some too low. Once again, it is possible that the effect might not be constant across all areas. Owners might overestimate in areas where home values are rising rapidly, even though market rents were trailing. On the other hand, owners might estimate more accurately in areas with a higher proportion of transient population because owners might have a greater opportunity to acquire rental market knowledge if homes near to them become available for rent. Variation in the accuracy of owner estimates among areas would make it difficult to compare differences between owner estimates and market rents from one area to the next.

Another factor that might lead to inaccurate homeowner estimates could be the pride of ownership. It is conceivable that home owners systematically might estimate high rental values because the owners take pride in their homes and think they should be worth more, regardless of any unobserved amenities. This could further contribute to the "noise" in the survey—i.e., undermine the survey's ability to reflect higher owner shelter values attributable to unobserved amenities. Whether the effect of this

"pride factor" might vary among areas is speculative.

GPRES was designed to collect information that could be used to compare homeowner estimated rents with market rents. It also obtained information on many of the characteristics and amenities of the respondents' homes to allow the comparison of estimated rents and market rents while holding observed quality and quantity constant.

2.2 *Caraballo* Settlement and Rental Equivalence

As stated in the previous section, pursuant to the *Caraballo* settlement OPM adopted a rental equivalence approach to measure the shelter value of owner-occupied housing. Appendix A of the stipulation for settlement provides 26 "Safe Harbor Principles" (SHPs) concerning the operation of the COLA program. One of the key principles, SHP-18, describes how OPM will measure the relative cost of shelter:

18. *Hedonic Housing Model and Rental Equivalence*: Shelter price relatives will be estimated for owners and renters from the triennial regional sample. The sample for the region will be pooled with the comparison sample from the base area and price relatives for the COLA areas will be estimated using hedonic regression models to adjust for quality differences.

Discussion: OPM will adopt a rental-equivalence approach to estimate shelter costs and a hedonic regression approach to compare housing of similar quality. To identify the living communities to be surveyed, OPM will use the results of the 1992/93 employees survey, JPC's [Joel Popkin and Company] survey, and/or other appropriate information. How the housing data will be collected is not known or stipulated. OPM may survey Federal employees, collect the data on its own or through a contractor, enter into an interagency agreement with another Federal agency (e.g., the Department of Interior), or use some other appropriate approach.

OPM adopted this principle when it published final regulations at 67 FR 22339. Section 591.219 of title 5, Code of Federal Regulations, prescribes how OPM will compute shelter price indexes based on rental and rental equivalence prices and/or estimates. As noted in Section 2.1, rental equivalence compares the shelter value (rental value) of owned homes rather than total owner costs because the latter are influenced by capital gains (i.e., the investment value of a home). Most living-cost surveys do not compare how consumers invest their money.

In the COLA surveys, OPM surveys market rents in each of the COLA areas and in the Washington, DC area, obtaining over 80 characteristics of the

rental units for use in the hedonic regression equations. (A hedonic regression is a statistical technique, specifically a form of multiple linear regression. For an explanation of how OPM applies these regressions, see "2004 Nonforeign Area Cost-of-Living Allowance Survey Report: Pacific and Washington, DC Areas," published at 70 FR 44989.) The SIC and the TAC agreed that OPM could use market rents as an estimate for rental equivalence until the issue of rental equivalence could be explored more fully through a GPRES-type survey.

GPRES explored two questions. The first question was whether the rental value of owned homes in the COLA and DC areas differed to a statistically significant degree from market rents in the same area holding observed quality and quantity constant. To do this, the TAC computed homeowner factors, as described in Section 6.1. The second question was whether the COLA area homeowner factors differed to a statistically significant degree compared with the DC area homeowner factor. If the homeowner factors were significantly different, it might be appropriate for OPM to make a rental equivalence adjustment to account for homeowner shelter costs. As it turned out, no adjustment was appropriate because we did not find statistically significant differences between the COLA and DC areas.

3. Planning GPRES

3.1 *Consultation With the SIC and TAC*

OPM worked closely with the SIC and TAC to plan and develop GPRES. In August 2001, OPM provided the SIC and TAC with a rough draft of a survey questionnaire that could be used with homeowners and renters to obtain and compare information about estimated rental values and market rents. The SIC and TAC subsequently met on several occasions to refine the questionnaire and begin planning GPRES. The goal was to design a survey that was sufficiently brief as to encourage renters and owners to participate but sufficiently detailed so that OPM could compare market rents and rental equivalence estimates for comparable housing. By early 2002, the SIC and TAC had developed such a questionnaire. Later that year, at the request of the SIC and TAC, the *Caraballo* trustee entered into a contract with Joel Popkin and Company (JPC) to review draft plans for GPRES, review current literature regarding rental equivalence, and to make recommendations to the SIC and TAC

concerning GPRES. JPC's research emphasized the importance of conducting GPRES. The SIC and TAC reviewed JPC's findings, incorporated them as appropriate in the survey, and recommended that OPM proceed with the conduct of GPRES. This OPM did.

OPM continued to consult with the SIC and TAC as it finalized plans for GPRES and kept them apprised during the conduct of GPRES. The TAC analyzed GPRES results, and OPM and the TAC discussed those results with the SIC.

3.2 Survey Instrument, Sampling Methodology, and Sample Size

In the fall of 2002, OPM contracted with Westat, Inc., a statistical research firm, to review JPC's research, propose a survey methodology, develop a survey instrument, and recommend sample sizes and sampling strategies for GPRES. In terms of a survey methodology, Westat recommended the use of Computer Assisted Telephone Interviews (CATIs). This approach appeared to offer the probability of greater response rates at reasonable cost compared with other approaches, such as mail-out questionnaires. Appendix A shows the GPRES questionnaire that Westat developed as modified by OPM.

To develop sample sizes, Westat used the results of FEHLPS and OPM's 2002 Caribbean and DC area COLA rental survey, applying standard sample size calculations. (See Cochran, W.G., *Sampling Techniques: third edition*, New York: John Wiley & Sons, Inc., 1977) Westat used FEHLPS to estimate the standard deviation of homeowner estimated rents for each COLA area and the Washington, DC area. Westat also used the results of the survey to estimate the standard deviation of market rents by area, except for the Caribbean and DC areas. For these areas, Westat used the results of the 2002 COLA survey because that survey had more observations and covered the general population, not just Federal employees. From the surveys, Westat developed sample sizes for owner and renters for the COLA areas and the Washington, DC area. Westat developed two sets each for owners and renters. One set was the sample size necessary for estimating rent or rental equivalence within a margin of error of \pm \$500 in annual rent with 90 percent confidence level, and the other was the sample size for estimating rent or rental equivalence at the same margin of error at the 95 percent confidence level. Subsequent to the 2003 Alaska COLA survey, OPM modified the renter sample sizes for the Alaska and DC areas based on the additional rental data that OPM had

collected in these areas. Appendix B shows the sample sizes Westat recommended, as modified by OPM.

Within each area, OPM limited the geographic scope of GPRES to the zip code areas in which OPM collected rental data in the annual COLA surveys. In the Washington, DC area, OPM further allocated the sample among the District of Columbia and the Counties of Montgomery, MD; Prince Georges, MD; Arlington, VA; Fairfax, VA; and Prince William, VA; and the independent cities therein, based on the relative numbers of owners and renters within these areas as reflected by the 2000 Census.

OPM obtained approval for GPRES from the Office of Management and Budget (OMB) as required by 5 CFR Part 1320, and OMB assigned GPRES an information collection number. Federal surveys and other information collections that Federal agencies conduct are covered by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Participation in GPRES was voluntary, and any identifying information regarding the respondents is protected under the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

4. Conducting the Survey

4.1 Survey Period

In the fall of 2004, OPM awarded a second contract to Westat to conduct GPRES. Using CATI, Westat began collecting data in October 2004 and finished in March 2005. Although Westat started data collection in some areas before others, Westat essentially collected data in all of the areas throughout this entire time period. Westat provided OPM with interim deliverables throughout the survey so that OPM and the TAC could begin testing analyses prior to receiving the final deliverable. Westat provided the final deliverable in early April 2005.

4.2 Efforts to Ensure Quality Participation

Westat used commercially available lists of phone numbers and addresses of owners and renters for the Washington, DC area and all of the COLA areas, except Guam, Puerto Rico, and the U.S. Virgin Islands for which such lists were unavailable. Using the sampling strategy described in Section 3.2, Westat drew the sample using commercial data bases where available. Westat then mailed letters to the prospective respondents informing them of the survey and asking for their cooperation. The letter was prepared by OPM on OPM letterhead and signed by Donald J. Winstead, who at that time was OPM's Deputy

Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division. For those areas where commercial mailing/phone lists were unavailable, Westat was unable to mail advance letters; and Westat used simple random sampling to select potential participants.

At the beginning of each telephone interview, Westat surveyors explained the purpose of the survey, that the survey was voluntary, and provided the respondent the OMB-provided information collection number. Westat made certain that the respondent was a knowledgeable adult who could answer questions relating to the housing unit. If the adult was not available, Westat made arrangements to call back at a more convenient time to conduct the interview. The complete interview took approximately 8 minutes.

It was critically important that GPRES collect accurate information from persons who either owned their own homes or rented homes at current market rents. To this end, some GPRES questions were designed to eliminate respondents who did not meet these criteria. For example, Westat discontinued the survey if the respondent lived in rent-subsidized or rent-controlled housing, occupied military housing, or rented from relatives or other persons at rates other than market rates. Likewise, Westat discontinued the survey if the respondent was renting a room in a home or was living in a mobile home or similar lodging.

In addition, OPM identified for Westat several "threshold" questions that were critical to the survey and instructed Westat to discontinue the survey if the respondent could not or would not answer these questions. For example, if the respondent did not know or refused to answer how many bathrooms or bedrooms were in the home, Westat was instructed to discontinue the survey. The questionnaire in Appendix A shows the threshold questions. They are identified by the interview instruction "GO TO END." Similarly, OPM provided Westat with guidelines to help ensure that respondents did not provide frivolous responses or occupied housing so atypical as to be outside the scope of the survey. Appendix C shows the Guidelines that Westat used to help identify frivolous and highly atypical responses.

4.3 Survey Complications

Westat encountered two unexpected complications in conducting GPRES. One involved the respondent's lack of knowledge concerning home size. The

other involved an unexpectedly high proportion of the population in certain areas residing in subsidized or rent-controlled housing.

4.3.1 Home Size

One problem that Westat encountered was that respondents often did not know and could not estimate or guess the number of square feet in their home. As shown in Appendix A, OPM had identified this as a critical threshold question; and as shown in Appendix C, OPM provided guidelines concerning acceptable data. Westat noted that invalidating these responses was increasing the non-response rate and the cost of the survey. Westat suggested that OPM reconsider whether home size should be a threshold question and/or subject to the guidelines.

OPM discussed the issue with the TAC. The TAC was not surprised and noted that BLS, the Bureau of the Census, and other housing surveys encountered the same problem and dropped home size as a question in their surveys. The TAC suggested that OPM use room count and a limited number of other characteristics to impute home size for respondents who were unknowledgeable or provided atypical responses. OPM tested this approach using the rental data it had collected in the COLA surveys and found it feasible. Therefore, OPM informed Westat to continue survey interviews even when respondents did not know and could not estimate home size and instructed Westat not to apply guidelines to flag atypical responses. OPM and the TAC later tested whether to use imputed home sizes but decided against it because the imputation process had a systematic error in estimating the size of relatively small and relatively large homes.

4.3.2 Prevalence of Subsidized Housing in Some Areas

Westat also discovered difficulties obtaining the desired sample of renters in certain areas because an unexpectedly large portion of the renter population appear to occupy subsidized or rent-controlled housing. This was most noticeable in Guam, Puerto Rico, and the U.S. Virgin Islands (USVI), as well as in the District of Columbia. Under the contract, OPM paid Westat on a price-per-completed-survey-response basis. When Westat began encountering unexpectedly high respondent invalidation rates, Westat informed OPM that it would not be able to provide the desired sample sizes in certain areas because the company had reached the breakeven point at which

further data collection would not be profitable.

Therefore, OPM modified the price schedule in the contract to ensure that Westat could obtain at least the "minimum" sample size shown in Appendix B in all areas. As shown in Appendix D, Westat exceeded this level in several areas, but it was unable to obtain the minimum number of renter samples in Guam and Puerto Rico.

5. Survey Results and Response Rates

5.1 GPRES Survey Results and Response Rates

Appendix D shows the number of renter and owner observations that Westat obtained by area. Except in Guam and Puerto Rico, Westat obtained a sample that equaled or exceeded the sample size necessary for estimating rent or rental equivalence within a margin of error of +/- \$500 in annual rent with a 90 percent confidence level. In all, Westat obtained 6,170 observations.

To do this, Westat made more than 152,000 phone calls. Therefore, one simplistic measure of the response rate might be 4 percent (*i.e.*, 6,170 divided by 152,000). Many of those calls, however, particularly in the areas for which commercial phone list data as described in Section 4.2 were unavailable, were screening calls to businesses, facsimile machines, and other non-residential phone numbers. Also, many of the residential respondents (*e.g.*, those occupying rent-controlled or subsidized housing) were not eligible to be part of the survey universe. Therefore, another and perhaps more meaningful way to look at the response rate is to compare the number of respondents with the total number of those who were determined, after the screening questions, to be part of the survey universe. According to Westat, a total of 23,662 respondents passed the screening questions. Using this as a basis, the response rate was 26.1 percent (*i.e.*, 6,170 divided by 23,662). This does not, however, include respondents who become ineligible in the "extended interview," *i.e.*, the main part of the interview that followed the screening questions. Taking this into consideration, the overall GPRES response rate according to Westat was 28 percent. Appendix D shows this type of response rate for each COLA area and the for Washington, DC area.

5.2 FEHLPS Survey Results and Response Rates

JPC conducted FEHLPS in cooperation with OPM in 1998. It was a survey of a sample of non-U.S. Postal

Service Federal employees in the COLA areas and in the Washington, DC area. JPC selected a sample size of approximately 15,800, of which 11,478 were to be drawn from the COLA areas and 4,324 were to come from the Washington, DC area. The sample was drawn from OPM's Central Personnel Data File (CPDF), which is essentially a census of non-Postal Federal employees. According to the CPDF, there were approximately 44,027 non-Postal Federal employees in 1998 in the COLA areas and 258,304 in the DC area.

JPC collected 5,662 responses from the COLA areas, which makes the average response rate for those areas 49.3 percent. JPC collected 1,081 responses from the Washington, DC area, which makes the DC area response rate 25 percent. Appendix E shows the FEHLPS sample sizes, responses, and response rates by COLA area and for the Washington, DC area. Not all of the respondents provided usable housing data. Therefore, the TAC could use only 4,275 FEHLPS observations in its analyses.

The survey was a "mail out" survey, delivered to employees at their worksite. Agencies were encouraged to grant employees time at work to complete the survey. FEHLPS covered numerous topics, including transportation and travel, K-12 private education, college education, medical costs, and housing. Appendix F shows the housing related portion of the survey.

6. Survey Analyses

The TAC performed most of the analyses of the GPRES results, with OPM's support and oversight. OPM also contracted with JPC to review the GPRES results and analyses. JPC concurred with the TAC's analyses, findings, and recommendations.

6.1 Homeowner Factors: Comparison of Owner Rent Estimates and Market Rents

As discussed in Section 2, one purpose for conducting GPRES was to compare owner estimates of the rental value of their homes with market rents for comparable housing in terms of quality and quantity. The goal was to express mathematically the relationship of rents and rent estimates within each COLA area and the Washington, DC area. The second purpose was to examine whether those relationships varied significantly between the COLA areas and the Washington, DC area.

The TAC computed homeowner factors (HFs) to express the relationship of homeowner rent estimates and market rents in and among the COLA

areas and the Washington, DC area. The HF is the estimated rental value of owned homes divided by the market rent for homes of equivalent observed quality and quantity. To compute the HF, the TAC used hedonic regressions to hold quality and quantity constant.

The TAC used two distinctly different approaches to analyze HF's. One approach involved comparing HF's by COLA region with the DC area HF. The other involved estimating HF's for each COLA survey area and comparing these with the DC area HF. The results of the two approaches were quite different but lead to the same conclusion.

6.2. Regional Comparisons

The COLA areas are divided into three regions—the Alaska, Pacific, and Caribbean regions. The Alaska region is composed of the Anchorage, Fairbanks, and Juneau COLA survey areas. The Pacific region is composed of the Honolulu County; Hilo and Kailua Kona, Hawaii County; Kauai County; Maui County; and Guam COLA survey areas. The Caribbean region is composed of the Puerto Rico; St. Croix,

USVI, and St. Thomas/St. John, USVI, COLA survey areas.

The TAC noted that there were virtually no previous studies to serve as a guide on how to analyze HF's by area and compare them between areas. The TAC believed if there were systematic differences in HF's across areas, the TAC would need as many observations as possible to identify these relationships. Pooling the data by region allowed the use of all of the survey observations (GPRES or FEHLPS) at one time.

The TAC applied semi-logarithmic hedonic regressions to compute rental equivalence indexes and market rent indexes for the COLA regions relative to the Washington, DC area, holding quantity and quality of housing constant. The dependent variable of the regression was the logarithm of rent. Appendix G shows the SAS GPRES regression results that the TAC used. (SAS is a proprietary statistical analysis computer software package.) The independent variables for the GPRES regression are listed below:

Type of dwelling (e.g., detached house, townhouse, apartment),

Whether the unit had central air conditioning,
 Number of baths,
 Number of bedrooms,
 Number of baths crossed with type of dwelling, and
 Tenure (i.e., owned or rented) by the COLA region or DC area in which unit is located.

The parameter of interest in this regression was tenure by COLA region and the results are shown in the table below. The HF is shown in column (1). (The logarithmic form of the HF's and standard errors and t values are shown in columns (2) through (4).) An HF of 1.223 for Alaska means that homeowner estimates of the rental value of their homes are on average 22.3 percent higher than market rents holding observed quality and quantity of the housing unit characteristics constant. The critical values of "t" at the 5 percent and 1 percent levels are 1.96 and 2.58 respectively. In other words, HF's with t-values equal to or greater than 2.58 are significant at a 99 percent confidence level or higher.

TABLE 1.—GPRES HOMEOWNER FACTORS BY REGION

COLA region	HF	Logarithmic HF	Standard error	t-value
	(1)	(2)	(3)	(4)
Alaska	1.223	0.201	0.027	7.50
Pacific	1.171	0.158	0.018	8.74
Caribbean	1.117	0.111	0.023	4.94
Washington, DC Area	1.153	0.142	0.031	4.62

The TAC also computed homeowner factors on a regional basis using the results of FEHLPS. Again, the dependent variable was the log of rent,

but the independent variables were somewhat different than those used in the GPRES analyses. Appendix H shows the TAC's regression results using the

FEHLPS data. The homeowner factors are shown in Table 2, below:

TABLE 2.—FEHLPS HOMEOWNER FACTORS BY REGION

COLA region	HF	Logarithmic HF	Standard error	t-value
	(1)	(2)	(3)	(4)
Alaska	1.274	0.242	0.0301	8.03
Pacific	1.092	0.088	0.0195	4.49
Caribbean	1.168	0.155	0.0326	4.75
Washington, DC Area	1.254	0.226	0.0479	4.71

The HF's from both surveys are statistically significant and greater than 1 when the results are analyzed on a regional basis. HF's greater than one is what economic theory would predict. The key question is whether there are

statistically significant differences between the HF's for the COLA regions compared with the DC area HF. To do this, the TAC again used a t-test where the standard error is the difference between HF's calculated from a

covariance matrix of the regression coefficients on owners and renters. Tables 3 and 4 below show the results for GPRES and FEHLPS respectively.

TABLE 3.—GPRES TEST OF DIFFERENCE BETWEEN REGIONAL HFS AND DC AREA HF

COLA region	COLA region HF divided by DC	Logarithmic COLA region HF	Standard error	t-value
	(1)	(2)	(3)	(4)
Alaska	1.061	0.0595	0.0375	1.58
Pacific	1.016	0.0161	0.0328	0.49
Caribbean	0.970	-0.0301	0.0353	-0.85

TABLE 4.—FEHLPS TEST OF DIFFERENCE BETWEEN REGIONAL HFS AND DC AREA HF

COLA region	COLA region HF divided by DC Area HF	Logarithmic COLA region HF - DC Area HF	Standard error	t-value
Alaska	1.016	0.0161	0.0548	0.29
Pacific	0.871	-0.1379	0.0500	-2.76
Caribbean	0.932	-0.0705	0.0560	-1.26

As shown in Table 3, the TAC found, based on the GPRES results, the differences between the COLA region HFs and the DC area HF were not statistically significant. Similarly, as shown in Table 4, the TAC found, based on the FEHLPS results, there was no statistically significant difference between the COLA region HFs and the DC area HF. Therefore, no adjustment to the COLA survey rental index was appropriate to account for homeowner shelter values (rental equivalence).

Although analyses of both surveys found no statistically significant differences between the COLA and DC area HFs, the TAC also noted the significant differences between the GPRES results compared with the FEHLPS results. For example, GPRES showed the Pacific region HF was

slightly higher than the DC area HF, but FEHLPS show the Pacific region HF to be somewhat lower than the DC area HF. Unless Federal employees were atypical of the general population with regard to market rents and homeowner estimates, it appeared that the HFs changed substantially over the 6-year interval between FEHLPS and GPRES. The TAC found the apparent lack of stability over time troubling.

6.3 COLA Survey Area Comparisons

The second approach the TAC used to analyze GPRES and FEHLPS results was to compute HFs by COLA survey area and compare these with the DC HF. The advantage of this approach was more consistency with the COLA program, which sets COLA rates by COLA area, not COLA region. It also allowed the

HFs to be computed separately for each area, using different equations as appropriate. The disadvantage was that each regression used far less data than in the regional analyses.

To compute HFs for each of the COLA survey areas, the TAC pooled the survey data by region and computed HFs for each of the COLA survey areas within the region. Appendix I has an example of the SAS regression results for one of the survey areas—the Pacific region—using GPRES. Appendix J has an example of the SAS regression results for one of the survey areas—the Caribbean region—using FEHLPS. Table 5 shows the HFs by area and their relationship to the DC HF using GPRES. Table 6 shows the same results using FEHLPS.

TABLE 5.—GPRES HFS BY COLA SURVEY AREA

Survey area	HF	Logarithmic HF	Standard error	t ratio
	(1)	(2)	(3)	(4)
Anchorage	1.025	0.0250	0.0354	0.70
Fairbanks	0.958	-0.0434	0.0416	-1.04
Juneau	0.935	-0.0667	0.0392	-1.70
Honolulu	1.061	0.0588	0.0321	1.81
Hilo	0.986	-0.0141	0.0499	-0.28
Kailua Kona	0.957	-0.0440	0.0546	-0.81
Kauai	0.930	-0.0728	0.0396	-1.84
Maui	1.013	0.0134	0.0355	0.38
Guam	0.997	-0.0030	0.0351	-0.09
Puerto Rico	1.002	0.0018	0.0495	0.04
St. Croix	1.141	0.1321	0.0395	3.35
St. Thomas/St. John	1.124	0.1166	0.0442	2.64
DC Area	1.110	0.1040	0.0415	2.51

Unlike the COLA region analyses, the GPRES results in Table 5 show that the HFs are less than 1 in half of the COLA survey areas. This is contrary to what economic theory would predict. In

addition, 10 of the 13 COLA survey area HFs are not statistically significant at a 95 percent confidence level. By comparison, the results using FEHLPS are quite different. (See Table 6.) All of

the HFs are greater than 1, which conforms with economic theory, and only four of the HFs are not significant at a 95 percent confidence level.

TABLE 6.—FEHLPS HFs BY COLA SURVEY AREA

Survey area	HF	Logarithmic HF	Standard error	t ratio
	(1)	(2)	(3)	(4)
Anchorage	1.278	0.2451	0.0397	6.17
Fairbanks	1.011	0.0106	0.0623	0.17
Juneau	1.222	0.2006	0.0707	2.84
Honolulu	1.120	0.1130	0.0240	4.71
Hawaii County	1.011	0.0108	0.0424	0.25
Kauai	1.083	0.0798	0.0587	1.36
Maui	1.176	0.1618	0.0495	3.27
Guam	1.168	0.1549	0.0488	3.17
Puerto Rico	1.208	0.1888	0.0497	3.80
St. Croix	1.045	0.0440	0.0784	0.56
St. Thomas/St. John	1.468	0.3842	0.0839	4.58
DC Area	1.279	0.2461	0.0450	5.46

As with the regional analysis, the key question is whether the COLA survey area HFs are statistically significantly different from the DC area HF. The TAC used the same approach it used to produce Tables 3 and 4 in the region analyses. As shown in Table 7, the GPRES results indicate that the HFs in the COLA survey areas are lower than the DC area HF except in the USVI. The

t-ratios, however, show that these results are not significant at the 95 percent confidence level in 8 out of 12 cases. (Keep in mind that 10 of the 13 HFs were not statistically significant at that level, which further weakens the statistical validity of the comparison.) Table 8, which shows the FEHLPS results, also shows that the COLA survey area HFs are lower than the DC

area HF, except in St. Thomas/St. John, USVI. (**Note:** Unlike GPRES, it was not possible using FEHLPS data to split Hawaii County into the Hilo and Kailua Kona survey areas.) In addition, the FEHLPS differences are not statistically significant at a 95 percent confidence level in 7 out of 13 areas.

TABLE 7.—GPRES TEST OF DIFFERENCE BETWEEN SURVEY AREA HFs AND DC AREA HF

Survey area	COLA area HF divided by DC area HF	Logarithmic COLA area HF – DC area HF	t ratio
	(1)	(2)	(3)
Anchorage	0.924	–0.0790	–1.45
Fairbanks	0.863	–0.1474	–2.51
Juneau	0.843	–0.1707	–2.99
Honolulu	0.956	–0.0452	–0.86
Hilo	0.889	–0.1181	–1.82
Kailua Kona	0.862	–0.1480	–2.16
Kauai	0.838	–0.1768	–3.09
Maui	0.913	–0.0906	–1.66
Guam	0.899	–0.1070	–1.97
Puerto Rico	0.903	–0.1022	–1.58
St. Croix	1.028	0.0281	0.49
St. Thomas/St. John	1.013	0.0126	0.21
DC Area	1.000	0.0	

TABLE 8.—FEHLPS TEST OF DIFFERENCE BETWEEN SURVEY AREA HFs AND DC AREA HF

Survey area	COLA area HF divided by DC area HF	Logarithmic COLA area HF – DC Area HF	t ratio
	(1)	(2)	(5)
Anchorage	0.999	–0.0010	–0.02
Fairbanks	0.790	–0.2355	–3.06
Juneau	0.956	–0.0455	–0.54
Honolulu	0.875	–0.1331	–2.61
Hawaii County	0.790	–0.2353	–3.80
Kauai	0.847	–0.1663	–2.25
Maui	0.919	–0.0843	–1.26
Guam	0.913	–0.0912	–1.37
Puerto Rico	0.944	–0.0573	–0.85
St. Croix	0.817	–0.2021	–2.23
St. Thomas/St. John	1.148	0.1381	1.45
DC Area	1.000	0.0	.....

As with the regional analyses, the TAC found troubling the significant differences between the GPRES and FEHLPS results. Once again, the question was whether there were trends over the 6-year period between the surveys that could explain these differences or the differences were simply inherent in the populations surveyed and/or survey techniques used. The TAC recommended that OPM not implement any adjustments to the rental data based on the COLA survey area analyses without first conducting additional GPRES-like surveys.

7. Summary and Conclusions

OPM conducted GPRES to determine whether OPM should adjust rental data that it collects during its annual COLA surveys. In these annual surveys, OPM collects prices on market rents on various types of housing units. OPM uses rental data to estimate the relative price of shelter for both homeowners and renters between the COLA areas and the Washington, DC area.

The TAC analyzed the GPRES results and compared them with similar analyses using rental data and estimates from an earlier survey of Federal employees—FEHLPS. Using regression analyses, the TAC computed homeowner estimated rent and market rent indexes and from these computed homeowner factors (HFs), which were homeowner indexes divided by the market rent indexes for units of equivalent observed quality and quantity. Economic theory suggests that HFs will be greater than 1.

The TAC conducted two significantly different analyses—one pooled the COLA region and DC area data and the other treated each COLA area separately. The TAC conducted these analyses using GPRES results and then using FEHLPS results for comparison. For both surveys, the regional analyses showed that the HF were greater than 1 for all areas, which means that homeowner rent estimates are higher than market rents, holding observed housing characteristics constant. This is as economic theory would predict. But the TAC also found that for both surveys, the COLA area HFs did not

differ to a statistically significant degree compared with the DC area HF. Therefore, no adjustments to the COLA survey rent index to account for rental equivalence are appropriate. In addition, the differences between the results using GPRES and those using FEHLPS raised questions of whether HFs are changing over time.

The TAC also analyzed the results of both surveys on a COLA survey area basis. These analyses showed that the COLA area HFs were generally less than 1, which is the opposite of the findings from the regional analyses and what economic theory would predict. Most of these HFs were not statistically significant using GPRES, and many were not significant using FEHLPS. For both surveys, the COLA area HFs were lower than the DC area HF, with the exception of the USVI HFs, but several of the COLA area HFs did not differ to a statistically significant degree from the DC area HF. As with the regional analyses, the COLA survey area analyses indicates that no adjustments to the COLA survey rent index are appropriate. In addition, the differences between the results using GPRES and those using FEHLPS were even more extreme and raised more questions of whether HFs are changing over time.

Based on these analyses, the TAC recommended that no adjustments be made in the COLA survey rent index to account for homeowner shelter costs. The TAC further recommended that OPM conduct additional GPRES-like surveys before considering any such adjustment. OPM hired JPC to review the TAC's analyses. JPC found the TAC's analyses to be appropriate and comprehensive and concurred with the TAC's recommendations. Therefore, OPM will not adjust COLA survey rent indexes to account for homeowner shelter costs. OPM does not see a need to conduct additional GPRES surveys at this time.

Appendix A—GPRES Survey Questionnaire

The interviewer must provide the following information to each respondent: My name is {INTERVIEWER'S NAME} and I am calling on behalf of the U.S. Office of

Personnel Management. We are conducting a study to determine housing costs in your area. Although the results of the study may be public, we will not divulge any information that would allow someone to identify you or your home.

Your participation is voluntary and very important to the success of this study. This study should take approximately 8 minutes. You may send any comments concerning this study to the Office of Personnel Management. [IF NEEDED: The address is office of Personnel Management, Forms Officer, Washington, DC 20415-8900]. We invite comments about how long the study takes and how this time could be reduced.

The Office of Management and Budget has approved this study and assigned it a collection number of 3206-0247. We would not be able to conduct this study without this approval. The approval expires 5/31/2007.

- 1. Do you own or rent your home?
 - OWN—1 GO TO Q8a
 - RENT—2 GO TO 2
 - OTHER (SPECIFY _____)—91 GO TO END
 - REFUSED—7 GO TO END
 - DON'T KNOW—8 GO TO END

RENTERS ONLY

- 2. Which of the following best describes your rental agreement? Would you say . . .
 - You live in subsidized or rent controlled housing—1 GO TO END
 - You live in military housing—2 GO TO END
 - You rent from a family member or friend who does not charge you market rate for your home—3 GO TO END
 - You pay the market rate for renting your home—4
 - REFUSED—7 GO TO END
 - DON'T KNOW—8 GO TO END
- 3. What is the length of your lease?
 - YEAR—1
 - 6 MONTHS—2
 - NO LEASE (e.g., month-to-month)—3
 - OTHER—91
 - (SPECIFY)—
 - REFUSED—7
 - DON'T KNOW—8
- 4a. What is your monthly rent?
 - \$ _____ MONTHLY RENTAL
 - AMOUNT
 - REFUSED—7 GO TO END
 - DON'T KNOW—8 GO TO END
- 4b. Are any utilities included in the rent?
 - YES—1
 - NO—2 GO TO Q5
 - REFUSED—7 GO TO Q5
 - DON'T KNOW—8 GO TO Q5
- 4c. Which of the following utilities are included in the rent? Does it include . . .

		YES	NO	REF	Don't know
4ca	Water?	1	2	-7	-8
4cb	Electric?	1	2	-7	-8
4cc	Gas?	1	2	-7	-8
4cd	Heat?	1	2	-7	-8

5. Are any of the following included in the rent? How about . . .

		YES	NO	REF	Don't know
5a	Maintenance, e.g. faucet/appliance repair?	1	2	-7	-8
5b	Lawn care?	1	2	-7	-8
5c	Snow removal?	1	2	-7	-8
5d	Trash removal?	1	2	-7	-8
5e	Parking in covered public style garage?	1	2	-7	-8
5f	Furnishings?	1	2	-7	-8

6a. Are pets allowed at your rental unit?
 YES—1
 NO—2 GO TO 7a
 REFUSED—7 GO TO 7a
 DON'T KNOW—8 GO TO 7a

6b. Is there an additional fee for pets?
 YES—1
 NO—2 GO TO 7a
 REFUSED—7 GO TO 7a
 DON'T KNOW—8 GO TO 7a

6c. How much is the additional fee?
 \$ _____ AMOUNT OF PET FEE
 MONTHLY—1
 ANNUALLY—2
 ONE-TIME DEPOSIT—3
 OTHER (SPECIFY) _____—91
 REFUSED—7
 DON'T KNOW—8

7a. Approximately how long have you rented at this location?
 NOTE: LESS THAN 1 MONTH = 1 MONTH

_____ TIME RENTED AT THIS ADDRESS MONTHS
 _____ TIME RENTED AT THIS ADDRESS YEARS
 REFUSED—7
 DON'T KNOW—8

7b. Would you consider the place that you're renting a permanent rental property, that is, the property is consistently rented out, or is it a temporary rental, for example the owner is abroad and intends to return?
 PERMANENT—1 GO TO 11a
 TEMPORARY—2 GO TO 11a
 REFUSED—7 GO TO 11a
 DON'T KNOW—8 GO TO 11a

OWNERS ONLY

8a. If you were to rent your home on a long term basis, not as a vacation rental, what do you think your home would rent for per month? We are not asking you whether you want to rent it, only to estimate what it might rent for if it were for rent.
 \$ _____ MONTHLY RENTAL
 AMOUNT—SKIP TO 8c
 REFUSED—7 GO TO 8b
 DON'T KNOW—8 GO TO 8b

8b. Would you estimate that your home would rent for . . .
 Less than \$200 per month—1 GO TO END
 \$201 to \$500 per month—2 GO TO 8c
 \$501 to \$1,000 per month—3 GO TO 8c
 \$1,001 to \$1,500 per month—4 GO TO 8c
 \$1,501 to \$2,000 per month—5 GO TO 8c
 \$2,001 to \$2,500 per month—6 GO TO 8c
 \$2,501 to \$3,000 per month—7 GO TO 8c
 \$3,001 to \$6000 per month—or 8 GO TO 8c
 Over \$6000 per month?—9 GO TO END
 REFUSED—7 GO TO END
 DON'T KNOW—8 GO TO END

8c. How did you arrive at the rental amount? Was it based on . . .

	NOTE: ALL RESPONDENTS WILL BE ASKED ABOUT EACH REASON	YES	NO	REF	Don't know	
8ca	Other neighborhood rentals?	1	2	-7	-8	GO TO 10a
8cb	Rental ads in newspapers, etc?	1	2	-7	-8	GO TO 10a
8cc	Realtor or property manager advice?	1	2	-7	-8	GO TO 10a
8cd	Previous experience renting this home?	1	2	-7	-8	GO TO 9a
8ce	Cost incurred, for example, receiving enough to cover your mortgage?	1	2	-7	-8	GO TO 10a
8cf	Something else? (Specify):	1	2	-7	-8	GO TO 10a

9a. How long ago did you rent it?
 _____ TIME SINCE RENTED MONTHS
 _____ TIME SINCE RENTED YEARS
 REFUSED—7
 DON'T KNOW—8

9b. How much rent did you charge?
 \$ _____ PER MONTH—1
 WEEK—2
 YEAR—3
 REFUSED—7
 DON'T KNOW—8

10a. What is the approximate monthly mortgage payment on your home?
 \$ _____ MORTGAGE PAYMENT
 REFUSED—7
 DON'T KNOW—8

10b. Given current market conditions in your area, at what price would your home sell?
 \$ _____
 REFUSED—7
 DON'T KNOW—8

OWNERS AND RENTERS

11a. Which one of the following best describes where you currently live? Do you live in a . . .
 One-family detached house—1 GO TO Q12a
 Duplex or triplex—2 GO TO Q12a
 Townhouse or rowhouse—3 GO TO Q12a
 Apartment—4 GO TO Q11b
 Rented room in a house—5 GO TO END
 Trailer, or—6 GO TO END
 Somewhere else?—91 GO TO END
 REFUSED—7 GO TO END
 DON'T KNOW—8 GO TO END

11b. Would you say that your home is . . .
 An apartment in a home—1
 An apartment in a building without an elevator or—2
 An apartment in a building with an elevator—3
 REFUSED—7
 DON'T KNOW—8

12a. Approximately how many square feet of living space do you have?
 _____ LIVING SPACE IN SQUARE FEET GO TO NOTE 1
 REFUSED—7 GO TO 12b
 DON'T KNOW—8 GO TO 12b

12b. Would you estimate that your living space is
 Less than 250 square feet,—1 GO TO END
 250 to less than 500 square feet,—2 SEE PROGRAMMER NOTE, ABOVE
 500 to 1,000 square feet,—3 GO TO NOTE 1
 1,001 to 1,500 square feet,—4 GO TO NOTE 1
 1,501 to 2,000 square feet,—5 GO TO NOTE 1
 2,001 to 2,500 square feet,—6 GO TO NOTE 1
 2,501 to 3,000 square feet,—7 GO TO NOTE 1
 3,001 to less than 6,000 square feet, or—8 GO TO NOTE 1
 Over 6,000 square feet,—9 GO TO NOTE 1
 REFUSED—7 GO TO END
 DON'T KNOW—8 GO TO END

13. What is the lot size of your property?
 _____ PROPERTY LOT SIZE
 13.1 ACRES—1
 SQUARE FEET—2
 REFUSED—7
 DON'T KNOW—8

14. Does your home have an exceptional view, for example, overlooking a body of water or a city skyline?
 YES—1
 NO—2
 REFUSED—7
 DON'T KNOW—8

15a. How old is your home?
 LESS THAN 1 YEAR = 1 YEAR
 _____ TIME IN YEARS
 REFUSED—7

- DON'T KNOW—8
- 15b. How many years has it been since it was remodeled/renovated?
LESS THAN 1 YEAR = 1 YEAR
TIME IN YEARS
NOT REMODELED/RENOVATED—N
REFUSED—7
DON'T KNOW—8
- 16a. Do you live in a studio or efficiency apartment?
YES—1 GO TO 17A.
NO—2 GO TO 16
REFUSED—7 GO TO 16
DON'T KNOW—8 GO TO 16
- 16. Please tell us how many bedrooms you have?
NUMBER OF BEDROOMS
REFUSED—7 GO TO END
DON'T KNOW—8 GO TO END
- 17a. How many full bathrooms are in your home?
NUMBER OF FULL BATHS
REFUSED—7 } GO TO END
DON'T KNOW—8 } GO TO END
- 17b. How many 1/2 bathrooms are in your home?
NUMBER OF HALF BATHS
REFUSED—7 } GO TO END
DON'T KNOW—8 } GO TO END
- 18. Excluding the bedrooms and bathrooms you just mentioned, how many other rooms are there? (Note: Closets and hallways are not rooms.)
NUMBER OF OTHER ROOMS
REFUSED—7
DON'T KNOW—8
- 19. Do you have a security system or live in a gated or guarded community?
YES—1
NO—2
REFUSED—7
DON'T KNOW—8

- 20a. Do you have air conditioning?
YES—1
NO—2 GO TO Q21a
REFUSED—7 GO TO Q21a
DON'T KNOW—8 GO TO Q21a
- 20b. Is it central air or individual room units?
CENTRAL AIR—1
ROOM UNIT—2
BOTH—3
REFUSED—7
DON'T KNOW—8
- 21a. How do you mainly heat your home?
SPACE HEATERS [electric or kerosene]—1
WALL UNIT [gas, electric]—2
BASEBOARD [electric, hot water]—3
CENTRAL HEAT [forced air]—4
NONE—5 GO TO Q22
OTHER—91
(SPECIFY)—
REFUSED—7 GO TO Q22
DON'T KNOW—8 GO TO Q22
- 21b. What type of fuel does it use?
GAS [Includes LP/ Propane]—1
ELECTRIC—2
OIL—3
OTHER—91
(SPECIFY)—
REFUSED—7
DON'T KNOW—8
- 22. What type of water system do you have?
Is your water provided via* * *
Municipal water system,—1
Well,—2
Cistern, or—3
Something else?—91
(SPECIFY)—
REFUSED—7
DON'T KNOW—8
- 23. Do you have a garage? By this I mean your own garage, not a large public style parking garage.

- YES—1
NO—2
REFUSED—7
DON'T KNOW—8
 - 24. Do you have a carport?
YES—1
NO—2
REFUSED—7
DON'T KNOW—8
 - 25a. Do you work outside of the home either full or part time?
YES—1
NO—2 GO TO 26
REFUSED—7 GO TO 26
DON'T KNOW—8 GO TO 26
 - 25b. What is the one-way distance, in miles, from your home to your work?
LESS THAN ONE MILE—1
1-5 MILES—2
6-10 MILES—3
11-15 MILES—4
16-20 MILES—5
21-25 MILES—6
26-30 MILES—7
MORE THAN 30 MILES—8
REFUSED—7
DON'T KNOW—8
 - 26. Do you or a member of your household work for the Federal Government?
YES—1
NO—2
REFUSED—7
DON'T KNOW—8
 - 27. What is your zip code?
 ZIP CODE—
REFUSED—7
DON'T KNOW—8
- END.

Appendix B—GPRES Sample Sizes

Geographic area	"Minimum" Quantity	"Target" Quantity				
		Renter quantity	Owner quantity	Total quantity	Renter quantity	Owner quantity
Area A: District of Columbia	105	43	148	151	61	212
Area B: Montgomery Co., MD	72	88	160	103	126	229
Area C: Prince Geo. Co., MD	78	75	153	112	107	219
Area D: Arlington Co., VA	35	16	51	50	23	73
Area E: Fairfax Co., VA	82	108	190	116	155	271
Area F: Prince William Co., VA	20	7	27	28	9	37
Area G: Anchorage, AK	239	182	421	342	260	602
Area H: Fairbanks, AK	122	126	248	174	179	353
Area I: Juneau, AK	174	114	288	249	162	411
Area J: Honolulu County, HI	412	279	691	587	398	985
Area K: Hilo Area, HI	112	107	219	159	153	312
Area L: Kailua Kona Area, HI	85	69	154	121	98	219
Area M: Kauai County, HI	187	155	342	268	221	489
Area N: Maui County, HI	237	246	483	337	352	689
Area O: Guam	278	246	524	396	351	747
Area P: Puerto Rico	256	361	617	365	515	880
Area Q: St. Croix, USVI	185	295	480	264	422	686
Area R: St. Thomas, USVI	219	234	462	312	346	658
Area T: St. John, USVI	17	25	42	25	35	61
Totals	2,915	2,776	5,700	4,159	3,973	8,133

Note: The "Minimum" set was the sample size necessary for estimating rent or rental equivalence within a margin of error of +/-

\$500 in annual rent with 90 percent confidence level, and the "Target" set was the sample size for estimating rent or rental

equivalence at the same margin of error at the 95 percent confidence level.

Appendix C—Guidelines for Possible Flags to Identify Potentially Spurious or Highly Atypical Responses

Responses outside the range are assumed to be spurious and/or highly atypical and are not acceptable.

4a. Monthly Rent	\$200 to \$5000.
6c. Typical Pet fees	Suggest this field not be flagged.
7a. Time at this address	Suggest this field not be flagged.
8a. Rental equivalence	\$200 to \$6000.
9a. Time since last rented	Suggest this field not be flagged.
9b. Rent charged	\$200 to \$5000.
10a. Mortgage payment	\$0 to \$6000.
10b. Market Price	\$10,000 to \$1,000,000.
12a. Home square footage	Apartments: 250 to 3000; Houses: 500 to 6000.
13. Lot size	One-Family Detached House: Greater than home square footage and 5 acres or less. All other homes: Suggest this field not be flagged.
15a. Age in years	0 to 200.
15b. Years since remodeled	0 to 50.
16. Bedrooms	Apartments: 0 to 4; All others: 1 to 8.
17a. Full baths	1 to the number of bedrooms plus 1.
17b. Half baths	0 to the number of bedrooms minus 1.
18. Other rooms	Apartments: 1 to 5; All other: 2 to 8.

Appendix D—General Population Rental Equivalence Survey—Final Response Rates

Area	#Wrkd	Hsehlds	Screener				Extended			Respondents			
			Refusals	Ineligible	Eligible	Re-sponse (per-cent)	Refusals	Re-sponse (per-cent)	Ineligible	Total	Owners	Renters	Combined* (percent)
A—DC	820	594	231	3	360	61	72	80	122	166	61	105	49
B—Mont Co	858	676	302	3	371	55	77	79	95	199	126	73	44
C—PG Co	795	581	247	3	331	57	63	81	80	188	109	79	47
D—Arlington	320	252	148	3	101	41	25	75	20	56	21	35	31
E—Fairfax	1,016	798	365	2	431	54	77	82	109	245	155	90	45
F—PW	178	123	69	4	50	44	5	90	15	30	10	20	40
G—Anchorage	4,054	2,869	1,640	70	1,159	43	208	82	454	497	248	249	35
H—Fairbanks	1,436	1,135	444	47	644	61	90	86	282	272	150	122	52
I—Juneau	12,878	5,225	2,638	351	2,236	50	315	86	1,597	324	163	161	43
J—Honolulu	10,563	7,908	5,313	16	2,579	33	427	83	1,445	707	288	419	27
K—Hilo	2,953	2,339	1,382	57	900	41	167	81	505	228	123	105	33
L—Kona	9,454	4,009	2,857	19	1,133	29	238	79	723	172	87	85	23
M—Kauai	14,862	9,261	7,064	263	1,934	24	310	84	1,243	381	210	171	20
N—Maui	11,239	6,489	4,660	23	1,806	28	429	76	894	483	246	237	21
O—Guam	20,791	2,638	1,249	2	1,387	53	136	90	781	470	247	223	47
Puerto Rico	39,613	18,788	14,127	1	4,660	25	477	90	3,718	465	363	102	22
Q—St. Croix	10,004	3,178	1,405	1	1,772	56	392	78	662	718	533	185	43
R—St. Thomas	7,020	1,797	611	5	1,181	66	418	65	238	525	278	247	43
T—St. John	3,672	1,931	1,304	0	627	32	352	44	231	44	27	17	14
	152,526	70,591	46,056	873	23,662	35	4,278	82	13,214	6,170	3,445	2,725	28

* Combined response rate.

Appendix E—1998 Federal Employee Housing and Living Patterns Survey Sample Size, Responses, and Response Rates

Survey area	Number of non-postal federal employees	Sample size	Responses	Response rate (percent)
Anchorage	7,549	1,379	748	54.2
Fairbanks	1,625	519	320	61.7
Juneau	814	412	248	60.2
Rest of AK	2,413	524	336	64.1
Honolulu County	16,073	3,768	1,923	51.0
Hawaii County	728	577	378	65.5
Kauai County	332	332	182	54.8

Survey area	Number of non-postal federal employees	Sample size	Responses	Response rate (percent)
Maui County	471	471	216	45.9
Guam	2,026	820	338	41.2
Puerto Rico	11,195	1,875	629	33.5
U.S. Virgin Islands	801	801	344	42.9
St. Croix .....	.....	.....	155	.....
St. Thomas/St. John .....	.....	.....	184	.....
COLA Areas Subtotal	44,027	11,478	5,662	49.3
Washington DC Area	258,304	4,324	1,081	25.0
Total	302,331	15,802	6,743	42.7

BILLING CODE 6325-39-P

Appendix F — FEHLPS Survey Questionnaire — Housing Portion
FEDERAL EMPLOYEE
HOUSING AND LIVING PATTERNS SURVEY
1 9 9 8

Confidentiality: The survey is designed so responses cannot be linked to individuals. No self-identifying information, such as name, address or social security number, is requested nor should it be included. No record of who received and/or completed the survey is being retained.

Answering: Please write legibly with a number 2 pencil (or dark ink pen, if necessary). Corrections should be made by erasing (or crossing through incorrect answers and writing corrections above, if necessary).

A Personal and Family Characteristics

A1. Indicate your grade/level and step: a. grade/level b. step

A2. What is the name of your employing agency?

- | | | | |
|---|---|---|---|
| 1 <input type="checkbox"/> Air Force | 6 <input type="checkbox"/> Agriculture | 11 <input type="checkbox"/> Housing & Urban Development | 16 <input type="checkbox"/> Transportation |
| 2 <input type="checkbox"/> Army | 7 <input type="checkbox"/> Commerce | 12 <input type="checkbox"/> Interior | 17 <input type="checkbox"/> Treasury |
| 3 <input type="checkbox"/> Navy | 8 <input type="checkbox"/> Education | 13 <input type="checkbox"/> Justice | 18 <input type="checkbox"/> Veteran Affairs |
| 4 <input type="checkbox"/> Other DoD | 9 <input type="checkbox"/> Energy | 14 <input type="checkbox"/> Labor | 19 <input type="checkbox"/> U.S. Courts |
| 5 <input type="checkbox"/> Postal Service | 10 <input type="checkbox"/> Health & Human Services | 15 <input type="checkbox"/> State | 20 <input type="checkbox"/> Other |

A3. What is the location of your duty station or place of work?

- | | | | |
|---|--|--|--|
| 1 <input type="checkbox"/> Anchorage | 6 <input type="checkbox"/> Honolulu County | 11 <input type="checkbox"/> Puerto Rico | 15 <input type="checkbox"/> District of Columbia |
| 2 <input type="checkbox"/> Fairbanks | 7 <input type="checkbox"/> Hawaii County | 12 <input type="checkbox"/> St. Croix | 16 <input type="checkbox"/> Maryland |
| 3 <input type="checkbox"/> Juneau | 8 <input type="checkbox"/> Kauai County | 13 <input type="checkbox"/> St. Thomas/St. Johns | 17 <input type="checkbox"/> Virginia |
| 4 <input type="checkbox"/> Alaska Other | 9 <input type="checkbox"/> Maui County | 14 <input type="checkbox"/> Caribbean Other | 18 <input type="checkbox"/> Other |
| 5 <input type="checkbox"/> Guam | 10 <input type="checkbox"/> Kalawao County | | |

A4. What is the zip code of your place of residence?

A5. How many people live in your household? (Count yourself, your spouse, and all dependent children, including those away at school, etc. Do NOT include other relatives, renters or boarders.)

- a. Adults (including yourself and spouse only)
- b. Children (enter zero if you have no dependent children)

A6. Which category BEST describes your marital status?

- 1 Single, Never Married 2 Married 3 Divorced or Separated 4 Widowed

A7. What is the approximate age for yourself and your spouse? (Skip "Spouse" if divorced or separated.)

- | | | | | | |
|--------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| | LESS THAN 30 YEARS | 30-39 YEARS | 40-49 YEARS | 50-59 YEARS | 60 AND ABOVE |
| Self | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> | 3 <input type="checkbox"/> | 4 <input type="checkbox"/> | 5 <input type="checkbox"/> |
| Spouse | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> | 3 <input type="checkbox"/> | 4 <input type="checkbox"/> | 5 <input type="checkbox"/> |

A8. Which category BEST describes the highest education level you and your spouse attained? (Skip "Spouse" if divorced or separated.)

- | | | |
|--|----------------------------|----------------------------|
| | SELF | SPOUSE |
| Some high school or less | 1 <input type="checkbox"/> | 1 <input type="checkbox"/> |
| High school graduate | 2 <input type="checkbox"/> | 2 <input type="checkbox"/> |
| Junior college or vocational program | 3 <input type="checkbox"/> | 3 <input type="checkbox"/> |
| Some college, but not a graduate | 4 <input type="checkbox"/> | 4 <input type="checkbox"/> |
| Bachelor's degree | 5 <input type="checkbox"/> | 5 <input type="checkbox"/> |
| Master's degree or other professional postgraduate degree (LLB, MBA, etc.) | 6 <input type="checkbox"/> | 6 <input type="checkbox"/> |
| Doctorate | 7 <input type="checkbox"/> | 7 <input type="checkbox"/> |

A9. Does your spouse work? (Skip if divorced or separated.) 1 Yes 2 No

If yes, does your spouse usually work full-time (35 hours or more per week)? 1 Yes 2 No

A10. What was the approximate total of the gross salaries earned by you and your spouse in calendar year 1997? (Do not include income for spouse if divorced or separated. Include any cost-of-living allowances or locality pay received by you and your spouse.)

- 1 Less than \$30,000 4 \$50,000 to \$59,999 7 \$80,000 to \$89,999 10 \$120,000 to \$139,999
2 \$30,000 to \$39,999 5 \$60,000 to \$69,999 8 \$90,000 to \$99,999 11 \$140,000 and Above
3 \$40,000 to \$49,999 6 \$70,000 to \$79,999 9 \$100,000 to \$119,999

Residents of Maryland, Virginia or the District of Columbia, skip to Section B: Housing Costs below.

A11. ONLY residents of Alaska, Hawaii, Puerto Rico, Guam or the Virgin Islands: What was the approximate total of cost-of-living allowances (COLA or T-COLA) received by you and your spouse in calendar year 1997? (Do not include spouse's COLA or T-COLA if divorced or separated.)

- 1 Less than \$5,000 3 \$10,000 to \$14,999 5 \$20,000 to \$24,999 7 \$30,000 and Above
2 \$5,000 to \$9,999 4 \$15,000 to \$19,999 6 \$25,000 to \$29,999

B Housing Costs: Homeowners Only (If you are a renter, skip to Section C for renters only on page 3.)

The questions below pertain to the ENTIRE property you own and use as your primary residence. Even if you rent or share a portion of your house, INCLUDE those portions of the property in your answers.

B1. What year did you purchase your house? _____

B2. What was the purchase price of your house? \$ _____

B3. Which category BEST describes your ownership status at the date you purchased your house?

- 1 Fee simple (you bought both the lot and building)
2 Leasehold (you bought the building, leased the lot)
3 Other

B4. Which category BEST describes your ownership status at the present time?

- 1 Fee simple (you own both the lot and building)
2 Leasehold (you own the building, lease the lot)
3 Other

B5. If your current ownership status is leasehold, what is your monthly rent for the lot? \$ _____

B6. If your current ownership status is fee simple, but was leasehold at the date you purchased your house:

- a. What was the purchase price of the fee interest? \$ _____
b. What year did you acquire the fee interest? _____

B7. What is your BEST estimate of the current market value of your house (including the lot)? \$ _____

B8. What is your BEST estimate of how much your house could be rented for on a monthly basis assuming tenant pays utilities? (Include any currently shared or rented portion of the house. See B9 below for ways to calculate estimate. Do not consider short-term rentals during vacation season, etc.) \$ _____

If you can only provide a range for the rental value:

- a. What is the low-end estimate? \$ _____
b. What is the high-end estimate? \$ _____

B9. What is the MOST important method you used to estimate the rental value of your house? (Check only one.)

- 1 Actual rent for this house (e.g., the house was recently rented)
2 Actual rent on a similar house in your neighborhood
3 Advertisements for similar properties
4 Opinion of real estate professionals
5 Other

B10. Which of the following appliances are available with your house? (Check all that apply.)

- a. Refrigerator
b. Stove and/or oven
c. Dishwasher
d. Private washer/dryer
e. Shared washer/dryer (including coin operated)

Homeowners: Skip to Section D: Housing Characteristics on page 3.

C Housing Costs: Renters Only

The questions on rent and other payments pertain to the ENTIRE property. Even if you sublet or share a portion of the property or you receive a subsidy, DO NOT reduce reported rent or other payments by the share others pay or subsidies you receive.

C1. Which category BEST describes the character of your rental house?

- 1 General market rental
- 2 Military housing
- 3 Federal civilian housing
- 4 Government subsidized housing
- 5 Other

► If you live in military housing, skip to Section E: Transportation on page 6.

C2. Length of lease or rental agreement:

- 1 Month-to-month basis
- 2 Lease of one year or less
- 3 Lease of more than one year

C3. What year did you start living in your present rental house? _____

C4. What is the monthly rent on the house? (Include MANDATORY fees but NOT discretionary fees) \$ _____
(MANDATORY fees include utility or maintenance fees, condo fees, association dues, etc. DISCRETIONARY fees include health club fees, etc.)

C5. Which utilities payments are included in the rent and which are not included? (Check all that apply.)

	INCLUDED	NOT INCLUDED	NOT APPLICABLE
a. Water and/or sewer	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
b. Electricity	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
c. Gas	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
d. Other (e.g., oil, wood, coal)	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
e. Garbage pick up	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>

C6. Which amenities and services payments are included in the rent and which are not included? (Check all that apply.)

	INCLUDED	NOT INCLUDED	NOT APPLICABLE
a. Cable TV	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
b. Parking	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
c. Interior maintenance	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
d. Exterior maintenance	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
e. Lawn/garden care	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
f. Snow removal	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
g. Swimming pool, tennis courts, etc.	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>

C7. Did the landlord provide all or most of the furniture in your house? 1 Yes 2 No

C8. Which of the following appliances were provided to you by your landlord? (Check all that apply.)

- a. Refrigerator
- b. Stove and/or oven
- c. Dishwasher
- d. Private washer/dryer
- e. Shared washer/dryer (including coin operated)

D Housing Characteristics: Homeowners and Renters

D1. Which type of structure BEST describes your house?

- 1 Single, detached
- 2 Single, semi-detached (connected to another unit on one side)
- 3 Single, attached (connected to other units on two or more sides)
- 4 Multi-unit building or housing complex (three stories or less)
- 5 High-rise housing complex (four stories or more)
- 6 Mobile home
- 7 Other

D2. If you live in a high-rise housing complex, on which floor is your unit located? _____

D3. What year was your house built?

If construction year is unknown, what is the approximate age of your house? ... LESS THAN 10 YEARS 10-19 YEARS 20-29 YEARS 30-39 YEARS 40 AND ABOVE

D4. Which category BEST describes the overall condition of your house?

- 1 New or newly renovated within the past year
2 Above average condition
3 Average condition
4 Below average condition
5 In need of major repair

D5. What is the size of your lot? (Not applicable to multi-unit buildings, apartment complexes or condominiums)

a. acres OR b. square feet OR c. square meters

If exact size is unknown, which BEST approximates the lot size? (Check only one.)

- ACRES SQUARE FEET SQUARE METERS
1 Under 1/8 8 Under 5,000 15 Under 500
2 1/8 to almost 1/4 9 5,000 - 9,999 16 500 - 999
3 1/4 to almost 1/2 10 10,000 - 19,999 17 1,000 - 1,999
4 1/2 to almost 3/4 11 20,000 - 29,999 18 2,000 - 2,999
5 3/4 to almost 1 12 30,000 - 39,999 19 3,000 - 3,999
6 1 to almost 5 13 40,000 - 199,999 20 4,000 - 19,999
7 5 or more 14 200,000 or more 21 20,000 or more

D6. What is the square footage of the finished living areas in your house? (Include finished areas in the basement, garage or attic that are in use as living space. Do NOT include the deck, patio or lanai.) ... sq. ft.

If exact size is unknown, which BEST approximates the finished living area size?

- 1 Under 750 square feet
2 750 to 999 square feet
3 1,000 to 1,499 square feet
4 1,500 to 1,999 square feet
5 2,000 to 2,499 square feet
6 2,500 to 2,999 square feet
7 3,000 square feet or more

D7. How many of each room type are in your house? (Count each room only ONCE.)

- a. Bedrooms
b. Full baths
c. Half baths
d. Kitchen, with dining area
e. Kitchen, without dining area
f. Dining and living room combination
g. Dining room
h. Living room
i. Family room, rec. room, den or study
j. Other finished rooms (sun room, etc.)
k. Unfinished rooms (in the basement or attic)

D8. Which of the following amenities and services are available with your house? (Include all AVAILABLE amenities and services regardless of whether you use them or whether it costs extra to use them. Check all that apply.)

- a. Garage j. Deck, patio, lanai or balcony
b. Carport k. Swimming pool, community
c. Off-street parking other than garage or carport l. Swimming pool, private
d. Cable TV m. Tennis courts
e. Fireplace n. Other recreational or exercise facility
f. Elevator o. Scenic view or special access (mountain view, beachfront, golf course, etc.)
g. Alarm system and/or secured community
h. Yard, not fenced p. None of the above
i. Yard, fenced

D9. How is your house cooled? (Check all that apply.)

- a. Central air conditioning
- b. Room air conditioning
- c. Overhead or pedestal fans
- d. Other
- e. None
- f. Don't need cooling systems because of climate

D10. How is your house heated? (Check all that apply.)

- a. Central heating
- b. Room heating units
- c. Space heaters
- d. Wood stove/fireplace
- e. Other
- f. None
- g. Don't need heating systems because of climate

D11. What is the energy source for heating your house? (Check all that apply.)

- a. Electricity
- b. Gas
- c. Oil
- d. Solar
- e. Other
- f. Question not applicable
- g. Do not know

D12. What is the PRIMARY source of water for your house?

- 1 Piped
- 2 Well
- 3 Cistern
- 4 Other
- 5 Do not know

D13. Which BEST describes the quality of drinking water supplied to your house?

- 1 Safe, rarely contaminated
- 2 Somewhat unsafe, contamination occurs at least once a year
- 3 Tap water is not safe for drinking

D14. Does your house have a built-in (non-portable) electric generator? 1 Yes 2 No

If you have an electric generator, is it your only source of electricity? 1 Yes 2 No

D15. If you have electric service provided by a utility company, how frequent are interruptions or problems? (Check only one.)

	DAILY	WEEKLY	MONTHLY	NOT MONTHLY, BUT MORE THAN ONCE A YEAR	ONCE A YEAR OR LESS
a. Power outages	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
b. Voltage fluctuations/brownouts ..	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

D16. Rate the area where you live based on the following criteria:

	POOR					EXCELLENT	NO COMMENT
	1	2	3	4	5		6
a. Condition of houses in neighborhood	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>		6 <input type="checkbox"/>
b. Proximity to schools	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>		6 <input type="checkbox"/>
c. Proximity to parks, libraries, etc.	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>		6 <input type="checkbox"/>
d. Proximity to shopping	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>		6 <input type="checkbox"/>
e. Fire and rescue services	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>		6 <input type="checkbox"/>

D17. Rate the area where you live based on the following criteria:

	SERIOUS PROBLEM				NO PROBLEM	NO COMMENT
	1	2	3	4	5	6
a. Crime	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>	6 <input type="checkbox"/>
b. Traffic	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>	6 <input type="checkbox"/>
c. Flooding	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>	6 <input type="checkbox"/>

Appendix G

GPRES SAS Regression Results—Regional Analyses

Pooled Regression of Ln Rent on Rent Determining Variables (Without Observations Where Living Area in Square Feet not Reported)

Number of Observations Read 5310
Number of Observations Used 5310

Dependent Variable: lrent

Source	DF	Sum of Squares	Mean Square	F Value	Pr > F
Model	17	637.832442	37.519555	245.48	<.0001
Error	5292	808.840656	0.152842		
Corrected Total	5309	1446.673097			

R-Square Coeff Var Root MSE lrent Mean
0.440896 5.571493 0.390950 7.016976

Parameter		Estimate	Standard Error	t Value
Intercept		6.626151303 B	0.04128156	160.51
sqfeet_num		0.000033595	0.00000427	7.87
dwelling_type	DetHouse	-0.103103696 B	0.03885335	-2.65
dwelling_type	Hi-Rise	-0.089364657 B	0.06088868	-1.47
dwelling_type	Not_hi-rise	-0.382465819 B	0.04889791	-7.82
dwelling_type	TwnDup	0.000000000 B	.	.
central_air	No	-0.133303715 B	0.02092567	-6.37
central_air	Yes	0.000000000 B	.	.
baths		0.164457813 B	0.01920599	8.56
Rooms		0.028956820	0.00383805	7.54
baths*dwelling_type	DetHouse	0.062049960 B	0.02027523	3.06
baths*dwelling_type	Hi-Rise	0.147918407 B	0.03977981	3.72
baths*dwelling_type	Not_hi-rise	0.246485974 B	0.03444783	7.16
baths*dwelling_type	TwnDup	0.000000000 B	.	.
ownrent*Svy_Region	1 (Own) Alaska	0.160571904 B	0.02278671	7.05
ownrent*Svy_Region	1 (Own) Caribbean	-0.167999513 B	0.01968251	-8.54
ownrent*Svy_Region	1 (Own) DC Region	0.188065044 B	0.02906838	6.47
ownrent*Svy_Region	1 (Own) Pacific	0.147119465 B	0.01852452	7.94
ownrent*Svy_Region	2 (Rent) Alaska	-0.015653449 B	0.02211807	-0.71
ownrent*Svy_Region	2 (Rent) Caribbean	-0.305218828 B	0.02263953	-13.48
ownrent*Svy_Region	2 (Rent) DC Region	0.054426706 B	0.02821029	1.93
ownrent*Svy_Region	2 (Rent) Pacific	0.000000000 B	.	.

Appendix H

FEHLPS SAS Regression Results—Regional Analyses

Pooled Regression of Ln Rent on Rent Determining Variables Homeowners and Renters Distinguished

The GLM Procedure					
Source	DF	Squares	Mean Square	F Value	Pr > F
Model	22	345.1341947	15.6879179	145.48	<.0001
Error	4253	458.6256774	0.1078358		
Corrected Total	4275	803.7598721			

	R-Square	Coeff Var	Root MSE	lren Mean	
	0.429400	4.666017	0.328384	7.037772	
Parameter	Estimate	Standard Error	t Value	Pr > |t|	
Intercept	6.220476363	0.05530999	112.47	<.0001	
Renter in Alaska	-0.036013690	0.03892253	-0.93	0.3549	
Renter in Caribbean	-0.398417222	0.03963146	-10.05	<.0001	
Renter in Hawaii	0.078082206	0.03246995	2.40	0.0162	
Renter in Washington	-0.175054471	0.05421308	-3.23	0.0013	
Owner in Alaska	0.155162010	0.01923408	8.07	<.0001	
Owner in Caribbean	-0.293877288	0.02336001	-12.58	<.0001	
Owner in Hawaii	0.115261736	0.01813282	6.36	<.0001	
Owner in Washington	0.000000000				
Number of Bathrooms	0.118175076	0.00897624	13.17	<.0001	
Number of Bed-Rooms	0.024589795	0.00736325	3.34	0.0008	
Number of Other Rooms	0.021024360	0.00609921	3.45	0.0006	
Above Average Condition	0.061948287	0.01105173	5.61	<.0001	
Close to School	-0.041912153	0.01346712	-3.11	0.0019	
Close to Park	0.038439625	0.01342737	2.86	0.0042	
Traffic-Crime Problem	-0.100415347	0.03213033	-3.13	0.0018	
Parking Available	0.050483499	0.01968779	2.56	0.0104	
Cable Available	0.052362884	0.01274107	4.11	<.0001	
Deck	0.059659369	0.01109869	5.38	<.0001	
Room air-conditioning	0.055858734	0.01341308	4.16	<.0001	
Age*Own 0	-0.001995503	0.00101766	-1.96	0.0500	
Age*Own 1	0.000715434	0.00039672	1.80	0.0714	
Area Squared	-0.000000034	0.00000001	-3.17	0.0015	
Area in Sq.Feet	0.000247483	0.00004079	6.07	<.0001	

Appendix I
GPRES SAS Regression Results—Example of Regional Analyses

Pacific COLA Survey Areas

Equation for Homeowner Factor for the Pacific from GPRES Survey

Dependent Variable: lrent

Source	DF	Sum of Squares	Mean Square	F Value	Pr > F
Model	29	317.1635209	10.9366731	96.23	<.0001
Error	2286	259.8077432	0.1136517		
Corrected Total	2315	576.9712642			

Parameter	R-Square	Coeff Var	Root MSE	lrent Mean	Standard Error	t Value	Pr > |t|
	0.549704	4.780084	0.337123	7.052651			
Intercept							
totalbaths							
TypeDwelling Apt Hi_Rise							
TypeDwelling Apt Walkup							
TypeDwelling Duplex							
TypeDwelling TownHouse							
TypeDwelling Z_DetHouse							
sqfeetrange2 1 (Less than 250)							
sqfeetrange2 2 (250 - 499)							
sqfeetrange2 3 (500 - 1,000)							
sqfeetrange2 4 (1,001 - 1,500)							
sqfeetrange2 5 (1,501 - 2,000)							
sqfeetrange2 6 (2,001 - 2,500)							
Mortgage Payments Monthly							
Age of home							
Age squareed							
HasAC CentralAC							
HasAC NoAC							
HasAC WindowAC							
HasSecurity N							
HasSecurity Y							
lengthofLease Other							
lengthofLease monthly							
excview N							
excview Y							
Svy_Area*OwnerRenter Guam Owner							
Svy_Area*OwnerRenter Guam Renter							
Svy_Area*OwnerRenter Hilo Owner							
Svy_Area*OwnerRenter Hilo Renter							
Svy_Area*OwnerRenter Kailua Kona Owner							
Svy_Area*OwnerRenter Kailua Kona Renter							
Svy_Area*OwnerRenter Kauai Owner							
Svy_Area*OwnerRenter Kauai Renter							
Svy_Area*OwnerRenter Maui Owner							
Svy_Area*OwnerRenter Maui Renter							
Svy_Area*OwnerRenter zHonolulu Owner							
Svy_Area*OwnerRenter zHonolulu Renter							

Appendix J

FEHLPS SAS Regression Results—Example of Regional Analyses

Caribbean COLA Survey Areas

Equation for Homeowner Factor for the Caribbean from Employee Survey

Dependent Variable: lren

Source	DF	Sum of Squares	Mean Square	F Value	Pr > F
Model	16	62.2250856	3.8890678	29.52	<.0001
Error	563	74.1771610	0.1317534		
Corrected Total	579	136.4022466			

R-Square	Coeff Var	Root MSE	lren Mean
0.456188	5.484864	0.362979	6.617821

Parameter	Estimate	Standard Error	t Value	Pr > |t|
Intercept	5.992454708	0.08083290	74.13	<.0001
Number of Baths	0.238031347	0.02335781	10.19	<.0001
Floor AREA of Apartments	0.000055825	0.00002488	2.24	0.0252
Floor AREA of Houses	-0.000010658	0.00004145	-0.26	0.7972
Parking Available	0.149525860	0.04350118	3.44	0.0006
Cable	0.094031692	0.03649253	2.58	0.0102
Deck	0.086382981	0.03215025	2.69	0.0074
Good Neighborhood	0.099100608	0.03371420	2.94	0.0034
Age	-0.005465688	0.00205097	-2.66	0.0079
Age*Age	0.000026026	0.00001050	2.48	0.0135
Crime-traffic Good	0.199714911	0.05249977	3.80	0.0002
Crime-traffic Average	0.089690467	0.03427986	2.62	0.0091
Crime-traffic Poor	0.000000000	.		
Puerto Rico Owner	-0.243712084	0.05086756	-4.79	<.0001
Puerto Rico Renter	-0.432533867	0.06430713	-6.73	<.0001
St.Thomas/John Owner	0.397836877	0.07156010	5.56	<.0001
St.Thomas/John Renter	0.013624941	0.07772708	0.18	0.8609
StCroix Owner	0.000000000			
StCroix Renter	-0.044008721	0.07844090	-0.56	0.57500

[FR Doc. 06-6568 Filed 7-28-06; 8:45 am]
BILLING CODE 6325-39-C

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:* Employer Reporting.

(2) *Form(s) submitted:* AA-12, G-88A.1, G-88A.2, BA-6a, BA-6a (Internet), BA-6a (E-mail).

(3) *OMB Number:* 3220-0005.

(4) *Expiration date of current OMB clearance:* 9/30/2006.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Business or other for-profit, Individuals or Households.

(7) *Estimated annual number of respondents:* 495.

(8) *Total annual responses:* 1,958.

(9) *Total annual reporting hours:* 418.

(10) *Collection description:* Under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, railroad employers are required to report service and compensation for employees needed to determine eligibility to and the amounts of benefits paid.

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. E6-12210 Filed 7-28-06; 8:45 am]

BILLING CODE 7905-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54206; File No. SR-Amex-2005-096]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Relocation of Registered Options Traders Assigned Options Classes

July 25, 2006.

I. Introduction

On September 22, 2005, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² a proposed rule change to permit registered options traders (“ROT’s”) to send proprietary electronic orders, representing a bona fide hedge and/or liquidating orders, in an assigned option class for up to three (3) months following a relocation of such option class when the ROT is no longer physically present in such trading crowd. On April 5, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed

rule change and Amendment No. 1 were published for comment in the **Federal Register** on April 20, 2006.³ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

Amex Rule 110 (applicable to options through Amex Rule 950—ANTE(a)) and Amex Rule 958—ANTE(a) require that each ROT be qualified and registered with the Exchange as a ROT and assigned by the Exchange to one or more classes of options. In addition, Amex Rule 958—ANTE(a) provides that Exchange options transactions initiated by a ROT on the floor of the Exchange for any account in which such ROT has an interest must be in his or her assigned classes and Amex Rule 958—ANTE(h) requires a ROT to be physically present at the specialist’s post on the floor of the Exchange where the ROT’s assigned options class is traded, whenever the ROT is using an automated quote calculation system, joining the specialist’s quote in a given option class, or sending an order into the ANTE system in that option.

When an option class is relocated on the trading floor, a ROT has two alternatives: (i) Stay in his or her present location and no longer keep the assigned options class, in which case, the ROT may only hedge and/or liquidate positions in the relocated options class by sending orders to another options exchange ⁴ or (ii) keep the assigned options class and relocate with the option to the new location which may be difficult, and near impossible, depending on the ROT’s other assigned classes. When an options class is relocated, the Exchange stated that a ROT would no longer be considered assigned to an option class once an assigned option class has been relocated to a different floor location and the ROT has not communicated his intention to relocate with such assigned options class.

Accordingly, the Exchange proposes to permit ROTs to apply to the Exchange to send proprietary electronic orders constituting bona fide hedging and/or position liquidations in a formerly assigned option class ⁵ without the need to be physically present that the

specialist’s post for that formerly assigned options class, for up to a three (3) month period from the date the application is granted. The Exchange believes that providing ROTs with this limited ability to send orders for the purpose of creating a bona fide hedge or liquidating positions in a formerly assigned options class would provide an effective and efficient means for ROTs to reduce position risk. The Exchange determined that three (3) months is a reasonable amount of time considering that that is the time period within which an expiration of an options class normally occurs. The Exchange also considered whether advance notice of an option class relocation is more suitable than a three (3) month extension; however, according to the Exchange, advance notice may be difficult, if not impossible, for such occurrences as market maker consolidations and mergers which are often the cause for the relocation and thus the Exchange believes that the three (3) month extension is the best alternative.

In order to send electronic orders in a formerly assigned options class under this proposal, a ROT would be required to submit an application in writing to the Exchange’s Division of Regulation and Compliance (“R&C”) and the R&C must approve such application.⁶ The Exchange stated that the R&C would take into consideration several factors in determining whether to grant the ROT approval, including, but not limited to, if the ROT is in good standing with the Exchange, whether the ROT has had any recent regulatory issues and whether advance notice of the relocation was provided. The Exchange stated that the R&C would generally approve a ROT application to take advantage of the ability to send electronic orders under this proposal consistent with the absence of regulatory issues and sufficient advance notice of relocation. Once approved by R&C, a ROT would be able to send proprietary electronic orders, representing a bona fide hedge or position liquidation, in a formerly assigned option class, when such ROT is no longer physically present in the trading crowd, for a period of up to three (3) months, without extension.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

³ Securities Exchange Act Release No. 53640 (April 12, 2006), 71 FR 20426 (April 20, 2006).

⁴ See Amex Rule 958—ANTE(a).

⁵ The Exchange stated that a ROT must communicate his intention to relocate if he wants to keep the assigned option class. For purposes of this order, such relocated assigned option class shall be referred to as a ROT’s “formerly assigned option class.”

⁶ Proposed Commentary .10 to Amex Rule 958—ANTE.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

exchange⁷ and, in particular, the requirements of Section 6(b) of the Act⁸ and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁹ in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that providing ROTs with a limited ability to send orders in connection with a bona fide hedge or liquidating position in a formerly assigned options class is a reasonable response by the Exchange to the need for ROTs to reduce the position risk that occurs when an options class is relocated.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-Amex-2005-096), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6-12175 Filed 7-28-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54192; File No. SR-CBOE-2006-27]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Strike Price Intervals for VIX Options

July 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 15, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" or

⁷ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

"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. On July 19, 2006, the CBOE filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice and order to solicit comments on the proposal from interested persons and to approve the proposed rule change, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes rules that would permit the Exchange to list and trade VIX options in \$1 strike price intervals within certain parameters. The text of the proposed rule change, as amended, is below. Proposed new language is in *italics*.

* * * * *

Rule 24.9 Terms of Index Option Contracts

No change.

* * * Interpretations and Policies:

.01 The procedures for adding and deleting strike prices for index options are provided in Rule 5.5 and Interpretations and Policies related thereto, as otherwise generally provided by Rule 24.9, and include the following:

(a)-(d) No change.

(e)(i) *Notwithstanding paragraph (a), the interval between strike prices for options on the CBOE Volatility Index (VIX) will be no less than \$2.50; provided, that subject to the following conditions, the interval between strike prices for VIX will be no less than \$1.00:*

(A) *The Exchange may open for trading series at \$1.00 or greater strike price intervals for each expiration on up to 5 VIX option series above and 5 VIX option series below the current index level;*

(B) *The Exchange may open for trading additional series at \$1.00 or greater strike price intervals for each expiration as the current index level of VIX moves from the exercise price of those VIX options series that already have been opened for trading on the Exchange so as to maintain at least 5 VIX option series above and 5 VIX option series below the current index level;*

(C) *The Exchange may not open for trading series with \$1.00 intervals within \$0.50 of an existing \$2.50 strike price with the same expiration month; and*

³ Amendment No. 1 replaced and superseded the original rule filing in its entirety.

(D) *The interval between strike prices for VIX LEAPs will be no less than \$2.50.*

(ii) *For the purposes of adding strike prices on options on VIX at \$1.00 or greater strike price intervals, as well as at \$2.50 or greater strike price intervals, the "current index level" shall mean the implied forward level based on VIX futures prices.*

.02-.14 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the Exchange to list and trade options on the CBOE Volatility Index ("VIX") in \$1 strike price intervals within certain parameters described below.⁴ VIX is calculated using real-time quotes of out-of-the-money and at-the-money nearby and second nearby index puts and calls on the S&P 500 Index ("SPX"). Generally, VIX provides investors with up-to-the-minute market estimates of expected volatility of the S&P 500 Index.

VIX is quoted in absolute numbers that represent the volatility of the S&P 500 Index in percentage points per annum. For example, an index level of 12.66 (the closing value of the VIX on March 7, 2006) represents an annualized volatility of 12.66% in the S&P 500 Index. The VIX level fluctuates quite differently than individual equity securities or indexes of individual equity securities. Specifically, the

⁴ The Commission has also granted approval for CBOE to list options on the increased-value version of VIX ("Increased-Value VIX") (see Securities Exchange Act Release No. 49698 (May 13, 2004), 69 FR 29152 (May 20, 2004) (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Options on Certain CBOE Volatility Indexes)). This proposed rule change does not apply to options on Increased-Value VIX.

Exchange states that indices such as VIX that track volatility are “mean-reverting,” which is a statistical way of saying that there is a strong tendency for the volatility index to move toward its long-term historical average level. In other words, at historically low volatility index levels, there is a higher probability that the next big move will be up rather than down. Conversely, at historically high volatility index levels, the next big move is more likely to be down rather than up.

Thus, as exemplified by VIX, the Exchange states volatility indexes tend to move within set ranges, and even when a level moves outside that range, the tendency towards mean-reversion often results in the volatility index returning to a level within the range. In the case of VIX, the historical average of VIX since 1990 is 19.4 and has closed at levels from a low of 9.3 to a high of 45.7. Since January 1, 2004, VIX has fluctuated in a narrow range between a level of 10.2 and a level of 21.6. Furthermore, VIX closed under 25 for 82% of the days on which the level was calculated since 1990 (3,360 days out of a total of 4,078 days) and has closed under 30 for 93% of the days on which the level was calculated since 1990 (3,791 days out of a total of 4,078 days).

Under current CBOE rules, the Exchange may only list strikes on VIX options with intervals no less than \$2.50. Therefore, the Exchange currently lists strikes on puts and calls on VIX

options at 10, 12.50, 15, 17.50, 20, 22.5 and 25. However, because of the generally limited range in which VIX has fluctuated, the Exchange believes that investors will be better served if the Exchange is able to list \$1 strike price intervals in VIX option series. To address this, the Exchange is proposing to list series at \$1 or greater strike price intervals for each expiration on up to 5 VIX option series above and 5 VIX option series below the current index level. Additional series at \$1.00 or greater strike price intervals could be listed for each expiration as the current index level of VIX moves from the exercise price of the VIX options series that already have been opened for trading on the Exchange in order to maintain at least 5 VIX option series above and 5 VIX option series below the current index level. For purposes of adding strike prices at \$1.00 or greater strike price intervals, as well as at \$2.50 or greater strike price intervals, the “current index level” would be defined as the “implied forward level” of VIX for each expiration.⁵ The Exchange intends to determine implied forward levels of VIX through the use of VIX futures prices. Its reasons for using this approach are explained below.

By way of background, the Exchange states that option prices reflect the market’s expectation of the price of the underlying at expiration, which is referred to as the “forward” level. For stock indexes such as the SPX and the

S&P 100 (“OEX”), the best estimate of the forward level is the current, or “spot,” price adjusted for the “carry,” which is the financing cost of owning the component stocks in the index less the dividends paid by those stocks. For VIX, the Exchange states that a better estimate than the standard “cash and carry” model for calculating the forward levels of VIX at each expiration is reflected in the prices of the options that will be used to calculate VIX on that expiration day. For example, September SPX options will be used to calculate VIX on the August VIX expiration date. Likewise, November VIX options are tied to the implied volatility of December SPX options, and so on.

The Exchange states that one important property of implied volatility is that it exhibits a “term structure.” In other words, the VIX volatility of options expiring on different dates can trade at different levels and can move independently. Another property related to the term structure is that implied volatility tends to trend toward the market’s expectation of a long-term “average” value. As a result, the Exchange states that a large spike in one-month implied volatility might not affect implied volatility of longer-dated options very much at all. For example, the following table illustrates the recent behavior of forward VIX levels relative to dramatic change in the current VIX price.

VIX expiration month	Based on SPX options expiring in . . .	VIX forward prices (5/5/06)	VIX forward prices (5/19/06)	Change
Spot VIX .....	.....	11.62	17.18	+5.56
June 2006	July 2006	12.55	14.86	+2.31
August 2006	September 2006	13.66	14.67	+1.01
November 2006	December 2006	14.59	15.10	+0.51
February 2007	March 2007	15.27	15.46	+0.19
May 2007	June 2007	15.75	15.93	+0.18
May 2008	June 2008	17.13	17.36	+0.36

On May 5, 2006, “spot” VIX closed at 11.62. Forward VIX levels at different points along the term structure ranged from 12.55 (June 2006) to 17.13 (May 2008). Two weeks later, spot VIX closed at 17.18—a gain of more than 5.5 points from the May 5th spot VIX. However, June forward VIX levels increased by only 2.31 points, August forward VIX rose by 1.01 points, and November rose by 0.51 point. The increase in forward levels for contracts expiring 9 months

and longer was only approximately 0.2 points.

The Exchange notes that many traders use VIX futures prices as a proxy for forward VIX levels. The CBOE Futures Exchange, LLC (CFE) lists VIX futures corresponding to each VIX options expiration month. CBOE believes that using these prices is an accurate and transparent method for determining the “current index level” used to center the limited range in which \$1 or greater

strikes in VIX options will be listed and the broader range in which \$2.50 or greater strikes in VIX options will be listed. Thus, the Exchange will use the corresponding VIX futures prices as a method for determining the “current index level” for listing series with both \$1 and \$2.50 strikes in VIX options.

Additionally, the Exchange is proposing that it would not list series with \$1 intervals within \$0.50 of an existing \$2.50 strike price with the same

⁵ With respect to \$2.50 or greater strikes, the \$2.50 or greater strike price intervals will be reasonably related to the current index value of VIX at or about the time such series are first opened for trading. The term “reasonably related to the current index value

of the underlying index” means that the exercise price is within 30% of the current index value. The Exchange may also open additional \$2.50 or greater strike price series that are more than 30% away from the current index value, provided that

demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. See Interpretations and Policies .01(d) and .04 of Rule 24.9.

expiration month (e.g., if there is an existing 12.50 strike, the Exchange would not list a 12 or 13 strike). Finally, the interval between strike prices for VIX long-term option series ("LEAPs®") will continue to be no less than \$2.50.

The Exchange states that the \$1 strike price intervals will more closely bracket the level of VIX when it remains locked within a static range, as currently exists and will enable investors to assume more dynamic volatility index option positions that reflect greater possibilities of settling in-the-money.

Finally, CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the additional traffic associated with the listing and trading of \$1 strike VIX options as proposed herein.

2. Statutory Basis

CBOE believes the proposed rule change is consistent with the Act⁶ and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ requirements that the rules of an exchange be 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

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, 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-CBOE-2006-27 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-CBOE-2006-27. 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 offices 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-CBOE-2006-27 and should be submitted on or before August 21, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁹ In particular, the Commission finds that the proposed rule change, as amended, is consistent

with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Commission believes that this proposal, as amended, is a reasonable means of providing investors with greater flexibility to establish investment positions that can be better tailored to meet their objectives. Specifically, the Commission believes that the implementation of \$1 strike price intervals for VIX options is designed to better serve investors in that product in that it will provide more dynamic strike levels that better reflect movements in the VIX. As explained by CBOE, the VIX level fluctuates much differently than individual equity securities or indexes of individual equity securities and has generally remained in a relatively narrow range since its inception. Because of these unique characteristics of the VIX, the Commission believes that the implementation of \$1 strike price intervals in the VIX option product, within the parameters detailed in CBOE's proposal, is appropriate. The Commission notes that CBOE's proposed use of VIX futures as a proxy for the "implied forward level" of VIX used to calculate the "current index value" for purposes of adding strike price intervals is a methodology reasonably designed to reflex the unique properties of the VIX. The Commission further notes that CBOE has represented that the Exchange and OPRA have the necessary systems capacity to absorb the additional options traffic caused by the introduction of VIX \$1 strikes.

The Exchange has requested accelerated approval of the proposed rule change. The Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹¹ for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the **Federal Register**. The Commission believes that allowing the Exchange to list and trade options on the VIX in \$1 strike price intervals immediately will provide investors with new means of managing their risk exposures and carrying out their investment objectives, and that any potential concerns about VIX \$1 strikes are mitigated by the parameters detailed in the proposal.

⁶ 15 U.S.C. 78a et seq.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(2).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-CBOE-2006-27), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6-12155 Filed 7-28-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54191; File No. SR-CHX-2006-04]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to a Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto Relating to the Transfer of Securities Among Co-Specialists Within a Specialist Firm

July 21, 2006.

On March 8, 2006, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its rules to permit the transfer of securities to different co-specialists within a specialist firm. On May 3, 2006, CHX filed Amendment No. 1 to the proposed rule change.³ On May 22, 2006, CHX filed Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on June 15, 2006.⁵ On July 3, 2006, CHX filed Amendment No. 3 to

the proposed rule change.⁶ The Commission received no comments regarding the proposal, as amended. This order approves the proposed rule change, as amended.

Under the Exchange's current rules relating to the assignment of securities to specialist firms, the Committee on Specialist Assignment and Evaluation ("CSAE") assigns each security to a specialist firm and this firm is responsible both financially and as a regulatory matter for the trading of the security.⁷ At the same time, however, when a specialist firm applies to trade a security, it must identify the co-specialist that will trade the security and the CSAE will review the co-specialist's trading performance in making its assignment decision.⁸ As an overall matter, the specialist firm and the individual co-specialist are jointly responsible for each assigned security and the decision by either the firm or the individual trader to deregister in a security could result in the posting of the security for re-assignment.⁹

The current Exchange rules generally require that a co-specialist to whom a security was assigned in competition to keep the assigned security for a period of two years.¹⁰ Alternatively, if the specialist unit agrees to have the security posted, a period of at least one year must have elapsed from the date of the original assignment.¹¹ Further, securities assigned without competition may be transferred without a waiting period. However, in all situations, the transfers must be approved by the CSAE.¹²

The Exchange proposes to delete the waiting period requirement prior to approving a request for deregistration and to permit the transfer of securities among co-specialists within a firm, without seeking prior CSAE approval, as long as: (1) The specialist unit immediately notifies the Exchange of such transfer; and (2) when such a transfer is made within six months of an initial assignment of the security to the specialist unit, the specialist unit provides written notification to the

Exchange of the transfer decision and of its reasons for making the change. Accordingly, each intrafirm transfer by the specialist unit effectively would deregister a co-specialist in the securities that the co-specialist no longer trades and register another co-specialist in any newly-assigned securities.

In addition, under the Exchange's existing rules, when the CSAE makes a decision to assign a particular security, the CSAE considers the qualifications of the specialist unit and the co-specialist's demonstrated ability and experience. Because the CSAE bases its decision, in part, on a co-specialist's qualifications, the Exchange proposes to make explicit in its rules that it is important that a specialist firm accurately represent plans for having a particular co-specialist trade a security. Under the proposal, a specialist unit must not designate a co-specialist with relatively strong demonstrated ability and experience when applying for a security and then immediately transfer the security to a co-specialist with less demonstrated ability and experience without good cause for making the change.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ In particular, the Commission believes that the proposal, as amended, is consistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Commission believes that the proposed rule change, as amended, is designed to provide specialist firms with greater flexibility to respond to various market conditions that may require prompt transfer of securities among co-specialists within the same firm. With respect to the Exchange's proposal to require that a specialist unit not designate a co-specialist with relatively strong demonstrated ability and experience when applying for a security and then immediately transfer the security to a co-specialist with less demonstrated ability and experience without good cause for making the change, the Commission believes that

¹² *Id.*

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange revised the rule text of the proposed rule change to clarify the application of the proposal to intrafirm transfers and revised the purpose section to discuss the proposed provision requiring the specialist unit to accurately represent its plans in the specialist application regarding designating a particular co-specialist to trade a security.

⁴ In Amendment No. 2, the Exchange revised the rule text of the proposed rule change to clarify the impact of an intrafirm transfer on the deregistration and registration of individual co-specialists within a specialist firm and made non-substantive changes to the proposed rule text. The proposed rule text set forth in Amendment No. 2 superceded and replaced the rule text set forth in the initial filing and Amendment No. 1 in its entirety.

⁵ See Securities Exchange Act Release No. 53949 (June 6, 2006), 71 FR 34648.

⁶ In Amendment No. 3, the Exchange makes minor, non-substantive changes to the rule text of the proposed rule change. This is a technical amendment and is not subject to notice and comment.

⁷ See Article XXX, Rule 1, Interpretation and Policy .01, Section II, Introductory paragraphs; and Section I.4.

⁸ See Article XXX, Rule 1, Interpretation and Policy .01, Sections II and III.

⁹ See Article XXX, Rule 1, Interpretation and Policy .01, Section I.4.

¹⁰ See Article XXX, Rule 1, Interpretation and Policy .01, Section I.2.

¹¹ *Id.*

¹² *Id.*

¹³ In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

this requirement is designed to provide the CSAE with accurate and complete information at the time it makes specialist assignment decisions and to protect the integrity of the specialist assignment process.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-CHX-2006-04), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6-12151 Filed 7-28-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54198; File No. SR-CHX-2005-01]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Relating to the Exchange's Order Priority Rule and the Mandatory Use of Order Match Functionalities

July 24, 2006.

I. Introduction

On February 3, 2005, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to amend Exchange Article XXX, Rule 2 to clarify the requirements of the Exchange's priority rule and to require specialists to make use of Exchange-provided order match functionalities except in limited circumstances. On September 16, 2005 and October 6, 2005, the Exchange filed Amendment Nos. 1 and 2, respectively, to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on October 28, 2005.³ The Commission received no comments on the proposal. On July 13, 2006, the Exchange filed

Amendment No. 3.⁴ This order approves the proposed rule change, as amended by Amendment Nos. 1, 2, and 3, grants accelerated approval to Amendment No. 3, and solicits comments on Amendment No. 3.

II. Description

The Exchange proposes to amend Exchange Article XXX, Rule 2, to clarify the requirements of the Exchange's priority rule and to require specialists to make use of Exchange-provided order match functionalities except in limited circumstances. The Exchange's priority rule generally requires Exchange specialists to give precedence to orders in their books for the purchase or sale of securities over their own dealer (proprietary) orders.⁵

The Exchange's systems incorporate order match functionalities that are designed to replace proposed specialist proprietary orders with eligible customer orders in the specialist's book. These order match functionalities, among other things, prevent a specialist from manually executing a proprietary order when there is a customer order on the same side on the book that is eligible for execution. The proposed rule change would require specialists to use the order match functionalities except when there are system problems with the order match functionalities,⁶ and in certain circumstances related to the execution of preopening orders pursuant to the Exchange's rules,⁷ or related to satisfaction through ITS of a trade through of a customer order.⁸

⁴ See Partial Amendment dated July 13, 2006 ("Amendment No. 3"). The text of Amendment No. 3 is available on the Exchange's Web site (http://www.chx.com/rules/proposed_rules.htm), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

⁵ See Exchange Article XXX, Rule 2, Precedence to Orders in Book. Specialists, however, are not required to give precedence to certain professional orders.

⁶ The Exchange stated that it does not anticipate that systems problems will occur frequently, but has included this exception to the rule to address those relatively rare circumstances when the order match functionality is not operating properly due to unexpected consequences of unrelated systems changes or a software failure. The Exchange stated that it did not intend the exception to allow participants to avoid the use of order match functionalities, but to recognize that there could be limited circumstances when the order match functionalities are malfunctioning.

⁷ See Exchange Article XXX, Rule 37(a)(4). In Amendment No. 3, the Exchange clarified that this proposed exception only applies to listed securities.

⁸ In addition, in Amendment No. 3, the Exchange eliminated the proposed exception that when a specialist received an inbound ITS execution in satisfaction of a complaint lodged by an Exchange specialist against another market center, the specialist would not be required fill any other customer order(s) in his or its book as a result of having received the "satisfying" ITS execution. In Amendment No. 3, the Exchange revised the rule

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 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-CHX-2005-01 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-CHX-2005-01. 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 Amendment No. 3 of File Number SR-CHX-2005-01 and should be submitted on or before August 21, 2006.

text to clarify that when a specialist receives an inbound ITS execution in satisfaction of another market center's trade-through of a customer order that the specialist has already filled, the specialist, under current Exchange rules, is required to give the customer order that was traded through by the other ITS market center any better price that the specialists receives in satisfaction of the trade-through.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 52647 (October 21, 2005), 70 FR 62152 ("Notice").

IV. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act⁹ and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹¹ which 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 a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed change to clarify the requirements of the Exchange's priority rule is designed to provide both investors and specialists with a better understanding of a specialist's obligations. The Commission further believes that the proposed change to require specialists to make use of order match functionalities, except under limited circumstances, could prevent potential trading ahead violations from occurring by ensuring that eligible orders on the book are executed in place of the specialist's proprietary interest.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after publishing notice of Amendment No. 3 in the **Federal Register** pursuant to Section 19(b)(2) of the Act.¹² The Commission believes that the changes proposed in Amendment No. 3 clarify the application of the Exchange's priority rule and proposed exception to the requirement to use order match functionalities. Further, the Commission believes the proposal in Amendment No. 3 to eliminate one of the exceptions proposed in the Notice reflects the specialist's obligations under the Exchange's rules.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-CHX-2005-01), as amended by Amendment Nos. 1,

2, and 3, is hereby approved, and that Amendment No. 3 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6-12184 Filed 7-28-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54203; File No. SR-NASD-2006-089]

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NASD Rule 5100 (Short Sale Rule)

July 25, 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 July 21, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. NASD proposes to implement the proposed rule change on the date on which The Nasdaq Stock Market LLC (the "Nasdaq Exchange") commences operation as a national securities exchange for Nasdaq-listed securities. 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

NASD is proposing to amend NASD Rule 5100 to allow members to use, for a transitional period only, the Nasdaq Exchange best (inside) bid rather than the national best (inside) bid for purposes of application of the rule. Pursuant to SR-NASD-2005-087, Rule

5100 will become effective on the date upon which the Nasdaq Exchange operates as a national securities exchange for Nasdaq-listed securities.⁴ Currently, that date is projected to be August 1, 2006.

Below is the text of the proposed rule change. Proposed new language is *italicized*.

* * * * *

5000. Trading Other Than on an Exchange

* * * * *

5100. Short Sale Rule

(a) With respect to trades reported to the ADF or the Trade Reporting Facility, no member shall effect a short sale in a Nasdaq Global Market Security (as that term is defined in Rule 4200) otherwise than on an exchange for the account of a customer or for its own account at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid in the security. *In addition, for a transitional period ending on November 3, 2006, members may use the Nasdaq Exchange best (inside) bid rather than the national best (inside) bid for purposes of the application of this rule, provided that the member has submitted prior written notification to NASD of this selection. Members are required to use the same bid tick test on a firm-wide basis. A member using the Nasdaq Exchange best (inside) bid may not use the national best (inside) bid prior to the end of the transitional period unless the member submits prior written notification to NASD of this change.* For the purposes of this rule, the term "customer" includes a non-member broker-dealer.

(b) through (l) 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, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B,

⁴ NASD filed SR-NASD-2005-987 on July 11, 2005 and Amendment No. 1 on June 15, 2006. The Commission approved SR-NASD-2005-087, as amended, on June 30, 2006. See Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006).

⁹ 15 U.S.C. 78f.

¹⁰ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(2). Pursuant to Section 19(b)(2) of the Act, the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On June 30, 2006, the Commission approved SR-NASD-2005-087.⁵ Among other things, SR-NASD-2005-087 proposed (1) amendments to the NASD Delegation Plan, NASD By-Laws and NASD rules to reflect a proposed phased implementation strategy for the operation of the Nasdaq Exchange as a national securities exchange with respect to Nasdaq-listed securities during a transitional period, and (2) rules for reporting transactions effected otherwise than on an exchange to the new Trade Reporting Facility.

NASD is filing this proposed rule change in anticipation of SR-NASD-2005-087 becoming effective to amend Rule 5100 to allow members to use, for a transitional period only, the Nasdaq Exchange best (inside) bid rather than the national best (inside) bid for purposes of application of the rule.

Proposed Amendment to Rule 5100

Pursuant to SR-NASD-2005-087, NASD proposed to renumber Rule 3350 (Short Sale Rule) as Rule 5100 under the Rule 5000 Series (Trading Otherwise Than On An Exchange). Rule 5100 provides that, with respect to trades reported to NASD's Alternative Display Facility or the Trade Reporting Facility, no member shall effect a short sale in a Nasdaq Global Market Security otherwise than on an exchange at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid.

Pursuant to current Rule 3350(a)(2), with respect to trades in Nasdaq Global Market securities reported to Nasdaq, the application of the rule is based on the best (inside) bid displayed in the Nasdaq Market Center. Thus, some members are currently using the Nasdaq best bid for purposes of the application of this rule and may need additional time to revise their systems to use the national best bid for purposes of over-the-counter trading reported to the Trade Reporting Facility. Accordingly, NASD is proposing to amend Rule 5100 to provide that, for a transitional period ending on November 3, 2006,⁶ members

may use the Nasdaq Exchange best (inside) bid rather than the national best (inside) bid for purposes of application of the rule. Members must submit prior written notice to NASD of this selection and will be required to use the same bid tick test on a firm-wide basis. The proposed rule change would also expressly provide that a member using the Nasdaq Exchange best (inside) bid may not use the national best (inside) bid prior to the end of the transitional period on November 3, 2006 unless the member submits prior written notice to NASD of this change.

As noted in Item 2 of this filing, NASD has filed the proposed rule change for immediate effectiveness. The effective date will be the date upon which the Nasdaq Exchange operates as a national securities exchange for Nasdaq-listed securities, which is the effective date of SR-NASD-2005-087.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will protect investors because it will afford members sufficient time to make necessary systems adjustments to ensure compliance with the Short Sale Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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

amendment will be automatically deleted from the NASD Manual without submission of another proposed rule change.

⁷ 15 U.S.C. 78o-3(b)(6).

(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 and Rule 19b-4(f)(6) thereunder.⁸ A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.⁹ However, Rule 19b-4(f)(6)(iii)¹⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

NASD 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. NASD believes that the waiver of the five-day pre-filing requirement is necessary so that members will have certainty with respect to this change and can be formally notified immediately. NASD believes that the waiver of the 30-day operative requirement is necessary so that the proposed rule change can become effective on the same date that SR-NASD-2005-087 becomes effective. As noted above, it is currently anticipated that the effective date will be August 1, 2006. 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 will maintain the status quo for NASD members while they revise their systems. For the reasons stated above, the Commission designates the proposal to become effective and operative on the same date that SR-NASD-2005-087 becomes effective, currently anticipated to be August 1, 2006.¹¹

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 furtherance of the purposes of the Act.¹²

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6)(iii).

¹⁰ *Id.*

¹¹ 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).

¹² 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 July 21, 2006, the date on which the Exchange submitted this filing.

⁵ *Id.*

⁶ NASD contemplates that when the transitional period expires on November 3, 2006, this

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2006-089 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-2006-089. 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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2006-089 and should be submitted on or before August 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6-12176 Filed 7-28-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54194; File No. SR-NSX-2006-10]

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Chapter XVI of the NSX Rules Relating to Dues, Fees, Assessments, Charges, and Market Data Rebate Programs

July 24, 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 July 13, 2006, National Stock Exchange ("NSX" 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 NSX. NSX filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective upon filing with the Commission.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSX proposes to adopt Chapter XVI of its Rules relating to dues, fees, assessments, charges and market data revenue sharing programs. The text of the proposed rule change is available at the Commission, at NSX, and at www.nsx.com.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSX 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. NSX 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

NSX Rule 11.10 currently sets forth the Exchange's fees, dues and rebate programs. NSX proposes to remove the language in NSX Rule 11.10 concerning fees, dues and rebate programs in connection with the Exchange's proposed changes to Chapter XI of its Rules, which are part of a separate proposed rule change.⁶ The Exchange proposes to adopt Chapter XVI relating to fees, dues and rebate programs. Chapter XVI will replace current NSX Rule 11.10 when the Exchange's proposed changes to Chapter XI of its Rules become effective.

Proposed NSX Rule 16.1(a) authorizes the Exchange to prescribe such reasonable dues, fees, assessments or other charges as it may, in its discretion, deem appropriate. Such dues, fees, assessments and charges may include ETP Holder dues, transaction fees, communication and technology fees, regulatory charges, listing fees, and other fees and charges as the Exchange may determine. NSX Rule 16.1 further provides that all dues, fees and charges shall be equitably allocated among ETP Holders, issuers and other persons using the Exchange's facilities.

Proposed NSX Rule 16.1(b) provides for a regulatory transaction fee pursuant to Section 31 of the Act.⁷ This proposed Rule is identical to current Exchange Rule 11.10(q).

Proposed NSX Rule 16.1(c) states that the Exchange will provide ETP Holders with notice of all relevant dues, fees, assessments and charges. The Exchange proposes to maintain a separate fee schedule that contains its current fees, dues and other charges, instead of including all of its specific fees, dues and charges in the text of its Rules (as it currently does with NSX Rule 11.10). The Exchange notes that this approach is consistent with the approach taken by other national securities exchanges.⁸

¹³ 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).

⁵ NSX provided the Commission with written notice of its intent to file the proposed rule change on June 29, 2006. See Section 19(b)(3)(A) of the Act, and Rule 19b-4(f)(6)(iii) thereunder. 15 U.S.C. 78s(b)(3)(A), 17 CFR 240.19b-4(f)(6)(iii).

⁶ See SR-NSX-2006-08.

⁷ 15 U.S.C. 78ee.

⁸ See, e.g., Chicago Stock Exchange, Article XIV, Rules 1, 2 and 7; NYSE Arca Equities Rule 3.7.

Proposed NSX Rule 16.2(a) provides that crosses executed in Tape A, B and C securities will not be subject to any transaction fees. Under current NSX Rule 11.10(A)(k), the Exchange generally does not charge any transaction fees for trades in Tape B securities. Proposed NSX Rule 16.2(a) would replace current NSX Rule 11.10(A)(k), and would eliminate fees for crosses executed in Tape A and C securities.⁹

Proposed NSX Rule 16.2(b) contains the Exchange's market data revenue rebate programs, which are being moved from current NSX Rule 11.10(A)(l). The Exchange's current rebate programs, as reflected in NSX Rule 11.10(a)(l), consist of a 50% transaction credit on revenues generated by transactions in Tape B and C securities. Proposed NSX Rule 16.2(b) is equivalent to current NSX Rule 11.10(A)(l), except that proposed NSX Rule 16.2(b) also establishes a rebate program for Tape A securities.

Like the Exchange's current Tape B and C rebate programs, the proposed new Tape A rebate program will provide a 50% transaction credit on revenues generated by transactions in Tape A securities, and will be allocable to members on a pro rata basis based upon the Tape A revenue generated by such members. The Exchange believes that there is no regulatory reason to distinguish Tape A transactions from Tape B and C transactions, and is therefore proposing an equivalent rebate program. As with the Exchange's current Tape B and C rebate programs, to the extent that market data revenue from Tape A transactions is subject to any adjustment, credits provided under the Tape A program may be adjusted accordingly.

The Exchange notes that, consistent with its Tape B and C programs, the Tape A rebate program will be based on gross Tape A revenue. The Exchange believes that the addition of this Tape A rebate program, and the calculation of rebates on a gross basis, will not impair its ability to carry out its regulatory responsibilities under the Act, as the change is likely to lead to greater transactional volume in Tape A securities on the Exchange and therefore greater revenues that may be applied to the Exchange's regulatory programs. The Exchange is cognizant of its surveillance and compliance responsibilities as a self-regulatory organization; its responsibilities as a self-regulatory

organization will be in no way compromised by the implementation of the changes proposed herein. The Exchange notes that the calculation of rebates based on gross revenues is consistent with market data revenue sharing programs of other national securities exchanges.¹⁰

Proposed NSX Rule 16.3 provides that Chapter XVI will become effective upon written notice by the Exchange to ETP Holders. The Exchange is proposing this effectiveness provision in order to ensure that the effectiveness of this new Chapter coincides with the effectiveness of the Exchange's proposed changes to its trading rules,¹¹ and the launch of its new trading system.

The Exchange believes this proposed rule change is consistent with the protection of investors and the public interest because it is designed to lower the cost of trading and market data to broker-dealers and the investing public, and to enhance competition in the trading of Tape A securities.

2. Statutory Basis

NSX believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,¹² in general, and with Section 6(b)(4) of the Act,¹³ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges by crediting members on a pro rata basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSX does not believe that the proposed rule change will impose any inappropriate burden on competition.

¹⁰ NSX's definition of "gross revenue" is the revenue received by the Exchange from the tape associations after the tape associations take into account the "allocated support cost" and "unincorporated business costs." Some markets, such as the Chicago Stock Exchange ("CHX"), provide for rebates based upon monthly tape revenue from the Consolidated Tape Association (less all direct TA costs) generated by a particular Tape A or Tape B security (See CHX Fee Schedule, Section M). Other markets, like the Nasdaq Stock Market, allow members to earn credits from one or two pools, with each pool representing 50% of the tape revenue paid by the Consolidated Tape Association for each of the Tape A or Tape B transactions after deducting the amount that the market pays to the Consolidated Tape Association for capacity usage (See NASD Rule 7010(c)(2)). While the NYSE Arca LLC has some limitations on who is eligible to receive rebates, the amount of the pool for calculation purposes is based on 50% of the gross revenues derived from market data fees (See NYSE Arca "Market Data Revenue Sharing Credits" under Exchange Fees).

¹¹ See SR-NSX-2006-08.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has asked that the Commission waive the 30-day operative delay to ensure that this proposed rule change will be both effective and operative on or before the effective date of SR-NSX-2006-08 and the date of NSX's launch of its new trading system. The Exchange expects to launch its new system on August 1, 2006. Waiver of the 30-day operative delay will eliminate the potential that the Exchange will not have rules in place relating to dues, fees, assessments, charges, and rebate programs at the time it launches its new system. In light of the foregoing, the Commission believes such waiver is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁶

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.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ The Exchange's current fees for crosses in Tape A and C securities are contained in current NSX Rule 11.10(A)(e). NSX Rule 11.10(A)(e) is proposed to be removed as part of SR-NSX-2006-08.

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-NSX-2006-10 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-NSX-2006-10. 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 NSX. 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-NSX-2006-10 and should be submitted on or before August 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6-12149 Filed 7-28-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54195; File No. SR-NYSE-2006-01]

Self-Regulatory Organizations; New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC); Order Approving Proposed Rule Change to Require Specialists to Publish a 100 x 100 Share Market to Suspend Direct+ for Exchange Rule 127 Block Cross Transactions

July 24, 2006.

On January 17, 2006, the New York Stock Exchange, Inc.¹ (n/k/a New York Stock Exchange LLC) ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ a proposed rule change to eliminate Exchange Rule 1000(v), which suspends the Exchange's Direct+ facility if the specialist publishes a bid and/or offer that is more than five cents away from the last reported transaction price when an Exchange Rule 127 block cross transaction is being executed. The Exchange proposes to replace this procedure with a rule that requires the specialist to quote a 100 x 100 share market when all Exchange Rule 127 block cross transactions are being executed, regardless of the amount the cross price is away from the last reported transaction price. The proposed rule change was published for comment in the **Federal Register** on June 8, 2006.⁴ The Commission received no comments regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.⁵ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act⁶ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing,

¹ The Exchange is now known as the New York Stock Exchange LLC. See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 53932 (June 1, 2006), 71 FR 33328.

⁵ 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

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.

The Commission believes that eliminating the requirement that specialists quote a price that is more than five cents away from the last reported transaction price when a Rule 127 transaction is being executed should simplify the procedure for suspending Direct+ while a Rule 127 block transaction is being executed.⁷

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-NYSE-2006-01) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6-12147 Filed 7-28-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54205; File No. SR-NYSE-2005-38]

Self-Regulatory Organizations; New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC); Order Approving Proposed Rule Change and Amendment No. 1 Thereto to Rules 104 ("Dealings by Specialists") and 123E ("Specialist Combination Review Policy") To Change the Exchange's Capital Requirements for Specialist Organizations

July 25, 2006.

I. Introduction

On May 26, 2005, the New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC) (the "Exchange" or "NYSE") filed with the Securities and Exchange Commission ("SEC" or the "Commission") a proposed rule change to amend Rules 104 ("Dealings by Specialists") and 123E ("Specialist Combination Review Policy") in order to change the Exchange's capital requirements for specialist organizations pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the

⁷ The Commission notes that this rule will not be in effect upon the implementation of the Hybrid Market. See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

¹⁷ 17 CFR 200.30-3(a)(12).

“Exchange Act”² and Rule 19b-4 thereunder.³ On November 22, 2005, the NYSE amended the proposed rule change, replacing it in its entirety (“Amendment No. 1”). The proposed rule change, as amended, was issued by the Commission on December 16, 2005 and published for comment in the **Federal Register** on December 23, 2005 (the “Proposing Release”).⁴ In the Proposing Release, the Commission requested public comment on the proposed rule change (the comment period ended January 13, 2006). The Commission received comments from two commenters regarding the proposed rule change.⁵ The NYSE responded directly to the comments made by the first commenter.⁶ The second commenter raised no new issues and the NYSE’s responses to the first commenter addressed the comments made by the second commenter. This order approves the proposed rule change, as amended.

II. Description of Proposed Rule Change

Exchange Rule 104.20 (“Regular Specialists”) presently requires a specialist organization to maintain sufficient financial resources to assume certain specified positions in each stock that it is allocated. Further, the rule requires specialist organizations that engage in certain types of business to maintain specified levels of net liquid assets. The rule also sets a minimum capital requirement for specialist organizations.

Exchange Rule 104.21 presently requires that specialist organizations maintain additional amounts of net liquid assets to the extent the specialist organization’s market share exceeds 5% of certain “concentration measures” specified in the rule.

Exchange Rule 104.22 presently requires that, when two or more specialist organizations combine as the result of a merger, consolidation, acquisition or other combination of assets, the combined specialist entity must maintain the aggregate net liquid assets of the respective specialist entities prior to their combination. The Exchange has indicated that this is commonly referred to as the “marriage penalty.” Similarly, Exchange Rule

123E(f)(i) requires that combinations of specialist organizations maintain the higher capital requirement of the combined unit, rather than allowing a possible reduction of capital.

The Exchange has proposed to amend Rules 104 and 123E to change the capital requirement of specialist organizations. The Exchange stated in the proposal that the amendments to Rule 104 are designed to more accurately address market risks and volatility. The Exchange also indicated in the proposal that the amendments to Rules 104.22 and 123E(f)(i) are intended to eliminate the “marriage penalty” capital requirement for specialist organization combinations.

The Exchange proposed that NYSE Rule 104.20 (to be re-titled “Specialist Organizations—Minimum Capital Requirements”) be amended to require a specialist organization to maintain the greater of \$1,000,000 or an amount calculated under the proposed amendment to Rule 104.21 described below. For ETFs, the Exchange proposed amending Rule 104.20 to clarify that a specialist organization registered solely in ETFs maintain the greater of \$500,000 for each ETF or \$1,000,000. These new requirements would replace the current financial requirements, which are based on the number of securities allocated to the specialist organization.

The Exchange proposed that NYSE Rule 104.21 (to be re-titled “Specialist Organizations—Additional Capital Requirements”) be amended to require a specialist organization to meet, with its own net liquid assets, a minimum capital requirement determined by adding two separately calculated amounts. The first amount is equal to \$1,000,000 for each one tenth of one percent (.1%) of Exchange transaction dollar volume in the specialist organization’s allocated securities, plus \$500,000 for each Exchange Traded Fund. The second amount—an add-on to the first amount—is calculated either by multiplying by three the average haircuts on the specialist organization’s proprietary positions over the most recent twenty days, or through the use of an Exchange-approved value-at-risk (VaR) model, which would include a multiplier of between 3.0 and 4.0 depending on the accuracy of the model (*i.e.*, the number of exceptions to its calculated VaR amount).

The Exchange also proposed amending 104.21 to require that a specialist organization’s net liquid assets used to meet the proposed requirements in Rules 104.20 and .21 must be dedicated exclusively to specialist dealer activities, and must not

be used for any other purpose without the express written consent of the Exchange.

The Exchange proposed that Rule 104.22 (to be re-titled “Definitions and Model Approval Process”) be amended to specify certain qualitative requirements with respect to a VaR model a specialist organization uses to meet the add-on requirement in the proposed amendment to Rule 104.21. Under the proposed amendment, the VaR model would need, among other things, to: (1) Be integrated into the specialist organization’s internal risk management system; (2) be reviewed both periodically and annually; and (3) adequately capture specific risk. The proposed amendment also would require a specialist organization that has been granted approval by the Exchange to use a VaR model to continue to compute its net liquid asset requirement using the model, unless a change is approved upon application to the Exchange.

The Exchange proposed amending Rules 104.22 and 123E(f)(i) to eliminate certain of the requirements that arise when specialist organizations combine. The Exchange stated the increased requirements that apply after a combination would not be appropriate or necessary given the proposed amendments to Rules 104.20 and .21. However, the proposed amendments to Rule 123E(f)(i) would provide the Exchange with discretion to temporarily revise the requirements after a specialist organization combination.

The Exchange also proposed to eliminate Rules 104.30 (“Financing of Specialists”), 104.40 (“Reports on Form SPC”) and 104.50 (“Income Records”), which relate to the specialist organization financing transactions. The proposed elimination of Rule 104.30 would recognize that net liquid asset requirements must be met by assets the specialist organization holds free and clear of any liens. The elimination of Rule 104.30 would obviate the need for Rule 104.40. Finally, the recordkeeping requirements of Rule 104.50 also are no longer necessary in light of Exchange Rule 440 (“Books and Records”), which incorporates, by reference, Securities and Exchange Act Rules 17a-3 and 17a-4.

The Exchange also proposed several minor technical amendments to the rules for purposes of clarity and consistency.

III. Summary of Comments and NYSE’s Responses

The Commission received comments from two commenters regarding the

² 15 U.S.C. 78a et seq.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 52969 (Dec. 16, 2005), 70 FR 76337 (Dec. 23, 2005).

⁵ Mr. George Rutherford (“Rutherford”), sent three separate letters, dated January 13, 2006, March 7, 2006 and April 12, 2006. Rutherford’s subsequent letters re-iterated the arguments made in his first letter and did not raise any additional issues. Mr. Junius Peake (“Peake”), sent one letter dated April 18, 2006.

⁶ The NYSE responded to comments by letters dated February 28, 2006 and March 31, 2006.

proposed rule change.⁷ The Exchange responded directly to the comments made by Rutherford,⁸ who raised six distinct issues. Peake only commented on one issue, which was substantially the same as one of the issues raised by Rutherford. Consequently, the Exchange's response to Rutherford regarding that issue served to also address Peake's comments.

As noted previously, Rutherford raised six issues: 1) The Exchange should disclose in dollar amounts the anticipated impact the proposed rule amendments would have on the aggregate capitalization of specialist organizations; 2) the specialist organizations are inadequately capitalized at present; 3) the Exchange's analysis, set forth in the Proposing Release, fails to address a severely stressed market; 4) the existing specialist organization combination requirements are appropriate; 5) the proposed amendments are premature in light of the expansion of specialist organization dealer activity as a consequence of the Exchange's new "hybrid market" rules; and 6) the proposed reduced requirements would make it easier for a specialist organizations to leave the specialist business. The issue raised by Peake was substantially the same as the issue raised by Rutherford regarding the Exchange's new "hybrid market" rules.

A. Material Information

Rutherford stated that the Exchange failed to describe the impact of the proposed rules on specialist capitalization.⁹ The Exchange responded that specialist organizations, in the aggregate, are required to maintain capital of \$1.8 billion dollars, but, in fact, generally maintain capital of approximately \$2.3 billion.¹⁰ The Exchange stated that, under the proposed rules, specialist organizations would be required to maintain minimum capital of \$1.1 billion, but that it is anticipated they would maintain capital in excess of the requirement.

B. Capitalization of the Specialist System

Rutherford stated that the current capital requirements for specialist organizations are inadequate because they do not address potential market stresses or extreme events and, therefore, the proposed reduction in

requirements would be inappropriate.¹¹ The Exchange responded that the proposed requirements establish comprehensive and prudent capitalization requirements that address the specialist system in the context of contemporary market realities, including realities attendant to severe market downturns.¹² The Exchange stated further that the proposed capitalization levels are more than adequate to buttress the specialist system when considered in conjunction with: (1) Margining and financing arrangements currently available to specialist organizations; (2) the ability of specialist organizations to hedge risk; and (3) the access, in most instances, that specialist organizations have to the capital of their parent companies.

C. VaR Models

Rutherford stated that a VaR methodology is inappropriate for calculating the proposed capital requirement add-on because, while useful for day-to-day management purposes, it would not capture the potential impacts of severe market events.¹³ The Exchange responded by acknowledging the limits of VaR methodologies and noting that the proposed rules require, as an initial matter, that a specialist organization maintain capital equal to \$1,000,000 for 0.1% transaction dollar volume.¹⁴ The Exchange further responded that the VaR calculated add-on is determined by multiplying the VaR amount by, at least, three times. The Exchange stated that the transaction-based requirement and the VaR multiplier are designed to address extreme market events.

D. Specialist Organization Combination Requirements

Rutherford stated that the current specialist organization combination requirements are appropriate because they are intended to maintain the aggregate capitalization of the specialist organizations after a merger.¹⁵ The Exchange responded that the current requirements arbitrarily raise capital requirements without regard for the actual risks faced by the combined entity.¹⁶ The Exchange responded further that its proposed requirements would more closely align the capital

requirements of merged specialist organizations with the amount of risk they take on and the dollar value and volatility of their portfolios.

E. Hybrid Market

Both commenters expressed their belief that the proposed rules are premature in light of the expansion of specialist dealer activity under the Exchange's new "Hybrid Market" rules.¹⁷ The Exchange responded that any withdrawals of additional excess net liquid assets resulting from the proposed requirement would be gradually phased in, on a measured basis, over a nine-month period to allow for an orderly and carefully considered transition.¹⁸ The Exchange further responded that it considered the impact of other rules, policies, procedures, and systems on the proposed rules. In addition, the Exchange responded that it would, on an ongoing basis, continue to consider the impact of the Hybrid Market rules have on the proposed rules.

F. Specialist Organization Withdrawals

Finally, Rutherford stated that the proposed rules would make it easier for existing specialist organizations to exit the specialist business.¹⁹ The Exchange responded that it is unaware of any data to support this contention.²⁰ Further, the Exchange responded that the proposed rules may attract new specialist organizations.

The Commission believes that the Exchange has responded sufficiently to the issues raised by the Commenters.

IV. Discussion and Commission Findings

After careful review of the proposed rule changes, comments and the Exchange responses to the comments, the Commission finds that the proposed rule changes, as amended, are consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange in that they are designed to recognize contemporary approaches to managing risk and recent developments involving the structure of the Exchange.²¹

¹⁷ See Rutherford's January 13, 2006 and March 7, 2006 letters and Peake's April 18, 2006 letter. The Exchange's Hybrid Market rules were approved by the Commission in Exchange Act Release No. 53539 (March 22, 2006).

¹⁸ See Exchange letter dated February 28, 2006.

¹⁹ See Rutherford's January 13, 2006 letter.

²⁰ See Exchange letter dated February 28, 2006.

²¹ In approving this proposed rule change, the Commission notes that it has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ See *supra*, note 5.

⁸ See *supra*, note 6.

⁹ See Rutherford's January 13, 2006, March 7, 2006 and April 12, 2006 letters.

¹⁰ See Exchange letter dated March 31, 2006.

¹¹ See Rutherford's January 13, 2006, March 7, 2006 and April 12, 2006 letters.

¹² See Exchange's February 28, 2006 and March 31, 2006 letters.

¹³ See Rutherford's January 13, 2006, March 7, 2006 and April 12, 2006 letters.

¹⁴ See Exchange letter dated February 28, 2006.

¹⁵ See Rutherford's January 13, 2006 and March 7, 2006 letters.

¹⁶ See Exchange letter dated February 28, 2006.

In particular, the Commission believes that the proposed rule changes are consistent with Section 6(b)(5) of the Exchange Act,²² which requires that the rules of the exchange be designed, among other things, to remove impediments to and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. The Commission finds that amending Exchange Rules 104 and 123E is consistent with the requirements of Section 6(b)(5) because the amendments are designed to more closely align net liquid asset requirements with a specialist organization's risks.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,²³ that the proposed rule change (File No. SR-NYSE-2005-38), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6-12183 Filed 7-28-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54189; File No. SR-NYSEArca-2006-17]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Trading of the Index-Linked Securities of Barclays Bank PLC Linked to the Performance of the Dow Jones—AIG Commodity Index Total Return Pursuant to Unlisted Trading Privileges

July 21, 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 16, 2006, NYSE Arca, Inc. (the "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities" or the "Corporation"), 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. On July 20, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice and order to solicit comments on the proposed rule change, as amended, 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

Through NYSE Arca Equities, the Exchange proposes to amend its rules governing NYSE Arca, LLC (also referred to as the "NYSE Arca Marketplace"), the equities trading facility of NYSE Arca Equities. Pursuant to NYSE Arca Equities Rule 5.2(j)(6), the Exchange proposes to trade pursuant to unlisted trading privileges ("UTP") the Index-Linked Securities ("Securities") of Barclays Bank PLC ("Barclays"), which are linked to the performance of the Dow Jones—AIG Commodity Index Total Return ("Index"). The Exchange also proposes new Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6) to accommodate the trading of the Securities. The text of the proposed rule change is included below. Proposed new language is *italicized*.

* * * * *

Rule 5.2(j)(6)

Index-Linked Securities

Introductory Paragraph and Sections (a)–(k)—No change.

Commentary:

.01 *The provisions of this Commentary apply only to Index-Linked Securities listed and/or traded under this Rule where the price of such Index-Linked Securities is based in whole or part on the price of (i) a commodity or commodities; (ii) any futures contracts or other derivatives based on a commodity or commodities; or (iii) any index based on either (i) or (ii) above (an "Index") ("Commodity Index-Linked Securities"). Commodity Index-Linked Securities listed and/or traded under this Rule may have a term of up to 30 years.*

(a) An ETP Holder acting as a registered Market Maker in Commodity Index-Linked Securities is obligated to comply with Rule 7.26 pertaining to limitations on dealings when such

³ In Amendment No. 1, the Exchange revised the proposed rule text and amended the purpose section to provide (i) that the Securities have a term of 30 years; (ii) that the Information Bulletin will include a description of the Commission's no-action relief; and (iii) an amended description of the Exchange's surveillance procedures regarding the Securities. The changes in Amendment No. 1 have been incorporated into this Notice and Order.

Market Maker, or affiliate of such Market Maker, engages in Other Business Activities. For purposes of Commodity Index-Linked Securities, Other Business Activities shall include acting as a Market Maker or functioning in any capacity involving market-making responsibilities in the Index components, the commodities underlying the Index components, or options, futures or options on futures on the Index, or any other derivatives (collectively, "derivative instruments") based on the Index or based on any Index component or any physical commodity underlying an Index component. However, an approved person of an ETP Holder acting as a registered Market Maker in Commodity Index-Linked Securities that has established and obtained Corporation approval of procedures restricting the flow of material, non-public market information between itself and the ETP Holder pursuant to Rule 7.26, and any member, officer or employee associated therewith, may act in a market making capacity, other than as a Market Maker in the Commodity Index-Linked Securities on another market center, in the Index components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component.

(b) The ETP Holder acting as a registered Market Maker in Commodity Index-Linked Securities must file with the Corporation, in a manner prescribed by the Corporation, and keep current a list identifying all accounts for trading in the Index components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component, which the ETP Holder acting as registered Market Maker may have or over which it may exercise investment discretion. No ETP Holder acting as registered Market Maker in the Commodity Index-Linked Securities shall trade in the Index components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component, in an account in which an ETP Holder acting as a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Corporation as required by this Rule.

²² 15 U.S.C. 78f(b)(5).

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(c) In addition to the existing obligations under Corporation rules regarding the production of books and records (See, e.g. Rule 4.4), the ETP Holder acting as a registered Market Maker in Commodity Index-Linked Securities shall make available to the Corporation such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the Index components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component, as may be requested by the Corporation.

(d) In connection with trading in the Index components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component (including the Commodity Index-Linked Securities), the ETP Holder acting as a registered Market Maker in Commodity Index-Linked Securities shall not use any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the Index components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component.

* * * * *

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

Pursuant to NYSE Arca Equities Rule 5.2(j)(6), the Exchange proposes to trade pursuant to UTP the Securities of Barclays, which are linked to the performance of the Index. Barclays intends to issue the Securities under the name "iPathSM Exchange-Traded Notes." The Exchange also proposes new Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6) to accommodate the trading of the Securities. The New York Stock Exchange, Inc. ("NYSE") filed with the Commission a rule proposal for the original listing and trading of the Securities,⁴ and the proposal was approved on May 25, 2006.⁵

(a) The Securities and the Index

(i) The Securities

In August 2005, the Commission approved NYSE Arca Equities Rule 5.2(j)(6), which provides general standards for the listing and trading of "Index-Linked Securities."⁶ Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. Such securities may or may not provide for the repayment of the original principal investment amount. As permitted in NYSE Arca Equities Rule 5.2(j)(6), the Exchange is submitting this rule proposal to the Commission pursuant to Section 19(b)(2) of the Act,⁷ to obtain Commission approval to trade the Securities pursuant to UTP.

A description of the Securities and the Index is set forth in the NYSE Proposal.⁸ The Securities are a series of medium-term debt securities of Barclays that provide for a cash payment at maturity or upon earlier exchange at the holder's option, based on the performance of the Index, subject to the adjustments described below.

The Securities will not have a minimum principal amount that will be repaid and, accordingly, payment on the Securities prior to or at maturity may be

⁴ See Securities Exchange Act Release No. 53639 (April 12, 2006), 71 FR 20741 (April 21, 2006) (SR-NYSE-2006-16) (the "NYSE Proposal").

⁵ See Securities Exchange Act Release No. 53876 (May 25, 2006), 71 FR 32158 (June 2, 2006) (SR-NYSE-2006-16) (the "NYSE Order").

⁶ See Securities Exchange Act Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63).

⁷ 15 U.S.C. 78s(b)(2).

⁸ See supra note 4.

less than the original issue price of the Securities. In fact, the value of the Index must increase for the investor to receive at least the \$50 principal amount per Security at maturity or upon exchange or redemption. If the value of the Index decreases or does not increase sufficiently to offset the investor fee,⁹ the investor will receive less, and possibly significantly less, than the \$50 principal amount per Security. In addition, holders of the Securities will not receive any interest payments from the Securities. The Securities will have a term of 30 years and are not callable.¹⁰

Holders who have not previously redeemed their Securities will receive a cash payment at maturity equal to the principal amount of their Securities times the index factor¹¹ on the Final Valuation Date¹² minus the investor fee on the Final Valuation Date.

Prior to maturity, holders may, subject to certain restrictions, redeem their Securities on any Redemption Date¹³ during the term of the Securities provided that they present at least 50,000 Securities for redemption, or they act through a broker or other financial intermediaries (such as a bank or other financial institution not required to register as a broker-dealer to engage in securities transactions) that are willing to bundle their Securities for redemption with other investors' Securities. If a holder chooses to redeem

⁹ The investor fee is equal to 0.75% per year times the principal amount of a holder's Securities times the index factor, calculated on a daily basis in the following manner. The investor fee on the date of issuance of the Securities will equal zero. On each subsequent calendar day until maturity or early redemption, the investor fee will increase by an amount equal to 0.75% times the principal amount of a holder's Securities times the index factor on that day (or, if such day is not a trading day, the index factor on the immediately preceding trading day) divided by 365. The investor fee is the only fee holders will be charged in connection with their ownership of the Securities.

¹⁰ Telephone conversation between Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission and John Carey, Assistant General Counsel, NYSE Group, Inc. on July 12, 2006 ("July 12 Telephone Conference") (confirming the Securities are not callable).

¹¹ The "index factor" on any given day will be equal to the closing value of the Index on that day divided by the initial index level. The index factor on the Final Valuation Date will be equal to the final index level divided by the initial index level. The "initial index level" is the closing value of the Index on the date of issuance of the Securities (the "Trade Date") and the "final index level" is the closing value of the Index on the Final Valuation Date.

¹² The "Final Valuation Date" is the last Thursday before maturity of the Securities.

¹³ A "Redemption Date" is the third business day following a Valuation Date (other than the Final Valuation Date). A "Valuation Date" is each Thursday from the first Thursday after issuance of the Securities until the last Thursday before the Final Valuation Date inclusive (or, if such date is not a trading day, the next succeeding trading day).

such holder's Securities, the holder will receive a cash payment on the applicable Redemption Date equal to the principal amount of such holder's Securities times the index factor on the applicable Valuation Date minus the investor fee on the applicable Valuation Date. To redeem their Securities, holders must instruct their broker or other person through whom they hold their Securities to follow certain procedures as described in the NYSE Proposal.¹⁴

If an event of default occurs and the maturity of the Securities is accelerated, Barclays will pay the default amount in respect of the principal of the Securities at maturity. More information regarding default procedures, including a quotation period and an objection period, is set forth in the NYSE Proposal.

(ii) The Index

The Index, which was introduced in July 1998, is designed to be a diversified benchmark for commodities as an asset class. The Index reflects the returns that are potentially available through an unleveraged investment in the futures contracts on physical commodities traded on trading facilities in major industrialized countries comprising the Index plus the rate of interest that could be earned on cash collateral invested in specified Treasury Bills.¹⁵ The Index currently is composed of the prices of 19 exchange-traded futures contracts on physical commodities, namely aluminum, coffee, copper, corn, cotton, crude oil, gold, heating oil, hogs, live cattle, natural gas, nickel, silver, soybeans, soybean oil, sugar, unleaded gasoline, wheat, and zinc. Futures contracts on the Index are currently listed for trading on the Chicago Board of Trade ("CBOT"). The Index is a proprietary index that AIGI International Inc. developed and that Dow Jones & Company, Inc. ("Dow Jones"), in conjunction with AIG Financial Products Corp. ("AIG-FP"), calculates. More information regarding the operation, calculation methodology,

¹⁴ If holders elect to redeem their Securities, Barclays may request that Barclays Capital Inc. (a broker-dealer) purchase the Securities for the cash amount that would otherwise have been payable by Barclays upon redemption. In this case, Barclays will remain obligated to redeem the Securities if Barclays Capital Inc. fails to purchase the Securities. Any Securities purchased by Barclays Capital Inc. may remain outstanding.

¹⁵ These returns are calculated by using the 91-day U.S. Treasury Bill auction rate, designated as "High Rate" as published in the "Treasury Security Auction Results" report, published by the Bureau of the Public Debt currently available on its Web site (www.publicdebt.treas.gov/AI/AIGateway), which is generally published once per week on Monday.

weighting, and historical performance of the Index is set forth in the NYSE Proposal.

(b) Dissemination and Availability of Information

(i) The Intraday Indicative Value

According to the NYSE Proposal, an "Intraday Indicative Value" (or "IIV") meant to approximate the intrinsic economic value of the Securities will be calculated and published via the facilities of the Consolidated Tape Association every 15 seconds from 9:30 a.m. to 4 p.m. Eastern Time ("ET") on each day on which the Securities are traded on the NYSE.¹⁶ Additionally, Barclays or an affiliate will calculate and publish the closing IIV of the Securities on each trading day at <http://www.ipathetn.com>. In connection with the Securities, the term "IIV" refers to the value at a given time determined based on the following equation: IIV = Principal Amount per Unit (\$50) multiplied by (Current Index Level divided by Initial Index Level)¹⁷ minus Current Investor Fee.¹⁸

The IIV will not reflect price changes to the price of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and 4 p.m. ET. The value of the Securities may accordingly be influenced by non-concurrent trading hours between the Exchange and the various futures exchanges on which the futures contracts based on the Index commodities are traded.

While the market for futures trading for each of the Index commodities is open, the IIV can be expected to closely approximate the redemption value of the Securities. However, during NYSE Arca Marketplace trading hours when the futures contracts have ceased

¹⁶ The IIV calculation will be provided for reference purposes only. It is not intended as a price or quotation, or as an offer or solicitation for the purchase, sale, redemption or termination of the Securities, nor does it reflect hedging or transaction costs, credit considerations, market liquidity, or bid-offer spreads. Published Index levels from the index sponsors may occasionally be subject to delay or postponement. Any such delays or postponements will affect the Current Index Level (defined below) and therefore the IIV of the Securities. Index levels provided by the index sponsors will not necessarily reflect the depth and liquidity of the underlying commodities markets. For this reason and others, the actual trading price of the Securities may be different from their IIV.

¹⁷ The Current Index Level is the most recent published level of the Index as reported by Dow Jones and AIG-FP, whereas the Initial Index Level is the Index level on the trade date for the Securities.

¹⁸ The Current Investor Fee is the most recent daily calculation of the investor fee with respect to the Securities, determined as described above (which, during any trading day, will be the investor fee determined on the preceding calendar day).

trading, spreads and resulting premiums or discounts may widen, and therefore, increase the difference between the price of the Securities and their redemption value. The Exchange stated that the IIV should not be viewed as a real time update of the redemption value.

(ii) The Index

According to the NYSE Proposal, Dow Jones disseminates the updated Index value approximately every 15 seconds (assuming the Index value has changed within such 15 second interval) from 8 a.m. to 3 p.m. ET and publishes a daily Index value at approximately 4 p.m. ET, on each DJ-AIG Business Day¹⁹ on Reuters page AIGCII.²⁰ The Index value can still be retrieved after 3 p.m. ET until the end of the Exchange trading day. Its value is generally static after 3 p.m. ET, although it may change if settlement values for Index components become available after that time.

(c) UTP Trading Criteria

The Exchange will cease trading in the Securities during the listing market's trading hours if: (i) The listing market stops trading the Securities because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 or a halt because the IIV or the value of the underlying Index is no longer available; or (ii) the listing market delists the Securities. In the event that the Exchange is open for business on a day that is not a DJ-AIG Business Day, the Exchange will not permit trading of the Securities on that day. Additionally, the Exchange may cease trading the Securities if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(d) Trading Rules

The Exchange deems the Securities to be equity securities, thus rendering trading in the Securities subject to the Exchange's existing rules governing the trading of equity securities. Trading in

¹⁹ A DJ-AIG Business Day is a day on which the sum of the commodity index percentages (as set forth in the NYSE Proposal) for the Index commodities that are available to trade is greater than 50%.

²⁰ The Index's Oversight Committee (defined and described in more detail in the NYSE Proposal) may exclude any otherwise eligible contract from the Index if it determines that it has an inadequate trading window. The Index currently includes contracts traded on the London Metal Exchange ("LME"), which is located in London. During the hours where the LME is closed, Dow Jones uses the last price and uses the settlement price once it is available in order to publish the Index value through the end of the trading day. The Index value does not reflect any after-hours or overnight trading in contracts traded on the LME.

the Securities on the Exchange will occur from 4 a.m. to 8 p.m. ET in accordance with NYSE Arca Equities Rule 7.34(a).²¹ The Exchange has appropriate rules to facilitate transactions in the Securities during all trading sessions. The minimum trading increment for Securities on the Exchange will be \$0.01.

Further, the Exchange is proposing new Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6), which sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Securities to facilitate surveillance. Commentary .01(b)–(c) to NYSE Arca Equities Rule 5.2(j)(6) will require that the ETP Holder acting as a registered Market Maker in the Securities provide the Exchange with necessary information relating to its trading in the Index components, the commodities underlying the Index components, or options, futures or options on futures on the Index, or any other derivatives (collectively, “derivative instruments”) based on the Index or based on any Index component or any physical commodity underlying an Index component. Commentary .01(d) to NYSE Arca Equities Rule 5.2(j)(6) will prohibit the ETP Holder acting as a registered Market Maker in the Securities from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the Index components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component (including the Securities). In addition, Commentary .01(a) to NYSE Arca Equities Rule 5.2(j)(6) will prohibit the ETP Holder acting as a registered Market Maker in the Securities from being affiliated with a market maker in the Index

²¹ During all NYSE Arca Equities trading sessions, the Exchange represents that if the official Index Sponsor calculates an updated Index value, then such value will be updated and disseminated at least every 15 seconds during such trading session, and always will be so during the Exchange’s core trading session (although during this session, the Exchange may rely on the listing exchange to monitor such calculation and dissemination). The Exchange represents that the official Index Sponsor calculates and disseminates the Index value from 8 a.m. to 4 p.m. ET. Because this product is not in continuous distribution, an IIV is not required to be disseminated at least every 15 seconds in all trading sessions; however, because of the weekly redemption process for this product, such dissemination of the IIV is required during the Exchange’s core trading session. The Exchange may rely on the listing market to monitor such dissemination of the IIV during the Exchange’s core trading session. July 12 Telephone Conference.

components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Securities. Trading in the Securities may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Securities inadvisable. These may include: (i) The extent to which trading is not occurring in the Index components; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Securities will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange’s “circuit breaker” rule²² or by the halt or suspension of the trading of the Index components.²³

The Securities will be deemed “Eligible Listed Securities,” as defined in NYSE Arca Equities Rule 7.55, for purposes of the Intermarket Trading System (“ITS”) Plan and therefore will be subject to the trade through provisions of NYSE Arca Equities Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

(e) Surveillance

The Exchange’s surveillance procedures will incorporate and rely upon existing Exchange surveillance procedures governing equities. The Exchange believes that these procedures are adequate to monitor Exchange trading of the Securities in all trading sessions and to detect violations of Exchange rules, thereby deterring manipulation.

The Exchange’s current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange will be able to obtain information regarding trading in the Securities and the Index components

²² See NYSE Arca Equities Rule 7.12.

²³ See “UTP Trading Criteria” above for specific instances when the Exchange will cease trading the Securities.

through ETP Holders in connection with such ETP Holders’ proprietary or customer trades which they effect on any relevant market. In addition, the Exchange can obtain market surveillance information with respect to transactions occurring on the LME, including customer identity information, pursuant to a memorandum of understanding with the LME. The Exchange has access to transaction information, including customer identity information, with respect to all contracts traded on the New York Mercantile Exchange (“NYMEX”) pursuant to the Exchange’s information sharing agreement with NYMEX. All of the other trading venues on which current Index components are traded, such as CBOT, are members of the Intermarket Surveillance Group, and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action being required on the part of the Exchange.

(f) Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Securities. Specifically, the Information Bulletin will discuss the following: (i) The procedures for redemptions of Securities (and that Securities are not individually redeemable but are redeemable only in aggregations of at least 50,000 Securities); (ii) NYSE Arca Equities Rule 9.2(a),²⁴ which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Securities; (iii) how information regarding the IIV is disseminated; (iv) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Securities prior to or concurrently with the confirmation of a transaction (either in the initial distribution or during any

²⁴ The Exchange recently amended NYSE Arca Equities Rule 9.2(a) (“Diligence as to Accounts”) to provide that EPT Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the proposed rule amendment provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders shall make reasonable efforts to obtain information concerning the customer’s financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation. See Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR-PCX-2005-115).

subsequent distribution); and (v) trading information.

The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical commodities, and that the Commission has no jurisdiction over the trading of physical commodities such as aluminum, gold, crude oil, heating oil, corn and wheat, or the futures contracts on which the value of the Securities is based.

The Information Bulletin will also detail the terms of no-action positions taken by the Commission staff in connection with the Securities with respect to Section 11(d)(1) of the Act, Rule 10a-1 under the Act, Rule 200(g) of Regulation SHO and Rules 101 and 102 of Regulation M.

2. Statutory Basis

The Exchange believes that the basis for this proposed rule change is consistent with the requirements under Section 6(b)(5) of the Act²⁵ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

In addition, the Exchange believes that the proposal is consistent with Rule 12f-5 under the Act²⁶ because it deems the Securities to be equity securities, thus rendering the Securities subject to the Exchange's rules governing the trading of equity securities for the Securities.²⁷

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

Written comments on the proposed rule change were neither solicited nor received.

²⁵ 15 U.S.C. 78s(b)(5).

²⁶ 17 CFR 240.12f-5.

²⁷ July 12 Telephone Conference (the Exchange requested that the Commission delete the word "existing" to clarify that the Securities will be subject to all applicable Exchange rules governing the trading of equity securities for the Securities).

III. 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-NYSEArca-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-NYSEArca-2006-17. 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 offices 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-NYSEArca-2006-17 and should be submitted on or before August 21, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations

thereunder applicable to a national securities exchange.²⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁹ which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,³⁰ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.³¹ The Commission notes that it previously approved the listing and trading of the Securities on NYSE.³² The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,³³ which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. NYSE Arca Equities rules deem the Securities to be equity securities, thus trading in the Securities will be subject to the Exchange's rules governing the trading of equity securities and the specific rules set forth herein for this product class.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,³⁴ which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

In support of the portion of the proposed rule change regarding UTP of the Securities, the Exchange has made the following representations:

²⁸ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁹ 15 U.S.C. 78f(b)(5).

³⁰ 15 U.S.C. 78f(f).

³¹ Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

³² See NYSE Order, *supra* note 5.

³³ 17 CFR 240.12f-5.

³⁴ 15 U.S.C. 78k-1(a)(1)(C)(iii).

1. NYSE Arca Equities has appropriate rules to facilitate transactions in this type of security in all trading sessions.

2. NYSE Arca Equities surveillance procedures are adequate to properly monitor the trading of the Securities on the Exchange.

3. NYSE Arca Equities will distribute an Information Bulletin to its members prior to the commencement of trading of the Securities on the Exchange that explains the terms, characteristics, and risks of trading such securities.

4. NYSE Arca Equities will require a member with a customer who purchases newly issued Securities on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the Information Bulletin.

5. The Exchange will cease trading in the Securities if: (1) The primary market stops trading the securities because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 and/or a halt because an updated dissemination of the IIV or Index value at least every 15 seconds has ceased; or (2) if such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable; or (3) the primary market delists the Securities.

This approval order is conditioned on NYSE Arca Equities' adherence to these representations.

The Commission finds good cause for approving this proposed rule change, as amended, before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of these Securities on the NYSE is consistent with the Act.³⁵ The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Securities.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁶ that the proposed rule change (NYSEArca-2006-17), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁷

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6-12148 Filed 7-28-06; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

Harbert Mezzanine Partners II SBIC, L.P. (License No. 04/04-0298); Notice Seeking Exemption Under 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Harbert Mezzanine Partners II SBIC, L.P. One Riverchase Parkway South, Birmingham, Alabama, 35244, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings Which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2003)). Harbert Mezzanine Partners II SBIC, L.P. proposes to provide loans to APC Work Force Solutions, LLC (DBA Zero Chaos), 111 N. Orange Ave, Suite 1400, Orlando FL, 32801. The financing is contemplated for the acquisition of another staffing company.

The financing is brought within the purview of Sec. 107.730 (a) (1) of the Regulations because Harbinger Mezzanine Partners, L.P., an Associate of Harbert Mezzanine Partners II SBIC, L.P., currently owns greater than 10 percent of APC Work Force Solutions, LLC (DBA Zero Chaos), and therefore, APC Work Force Solutions, LLC (DBA Zero Chaos), is considered an Associate of Harbert Mezzanine Partners II SBIC, L.P. as defined in Sec. 105.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction, within 15 days, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: July 13, 2006.

Jaime Guzman-Fournier,

Associate Administrator for Investment.

[FR Doc. E6-12145 Filed 7-28-06; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10535]

California Disaster #CA-00037 Declaration of Economic Injury

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of California, dated 07/21/2006.

Incident: Ferguson Rockslide.

Incident Period: 04/29/2006 and continuing.

Effective Date: 07/21/2006.

EIDL Loan Application Deadline Date: 04/23/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Mariposa.

Contiguous Counties:

California, Madera, Merced, Stanislaus, Tuolumne.

The Interest Rate is: 4.000 percent.

The number assigned to this disaster for economic injury is 105350.

The State which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Number 59002)

Steven C. Preston,

Administrator.

[FR Doc. E6-12150 Filed 7-28-06; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10538]

Delaware Disaster #DE-00002

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for

³⁵ See NYSE Order, *supra* note 5.

³⁶ 15 U.S.C. 78s(b)(2).

³⁷ 17 CFR 200.30-3(a)(12).

the State of Delaware (FEMA-1654-DR), dated 07/05/2006.

Incident: Severe Storms and Flooding.
Incident Period: 06/23/2006 through 07/14/2006.

Effective Date: 07/05/2006.

Physical Loan Application Deadline Date: 09/05/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/05/2006, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Sussex.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.000
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10538.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6-12154 Filed 7-28-06; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10536]

Maryland Disaster #MD-00003

AGENCY: Small Business Administration.
ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Maryland (FEMA-1652-DR), dated 07/02/2006.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 06/22/2006 through 07/12/2006.

Effective Date: 07/02/2006.

Physical Loan Application Deadline Date: 08/31/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/02/2006, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Caroline, Dorchester.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.000
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10536.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6-12152 Filed 7-28-06; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10537]

Virginia Disaster #VA-00004

AGENCY: Small Business Administration.
ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Virginia (FEMA-1655-DR), dated 07/13/2006.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 06/23/2006 through 07/06/2006.

Effective Date: 7/13/2006.

Physical Loan Application Deadline Date: 09/11/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/13/2006, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Alexandria (City), Alleghany, Arlington, Bath, Dickenson, Fairfax, Highland, King George, Rockbridge.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.000
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10537.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6-12153 Filed 7-28-06; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration (SBA), National Small Business Development Center Advisory Board will host a public meeting via conference call on Tuesday, August 15, 2006 at 1 p.m. (EST). The purpose of this meeting is to discuss the upcoming ASBDC Conference in September, and to brief new members on their information binders and the regional information sent to them.

Anyone wishing to make an oral presentation to the Board must contact Erika Fischer, Senior Program Analyst,

U.S. Small Business Administration,
Office of Small Business Development
Centers, 409 3rd Street, SW.,
Washington, DC 20416, telephone (202)
205-7045 or fax (202) 481-0681.

Thomas Dwyer,

Committee Management Officer.

[FR Doc. E6-12146 Filed 7-28-06; 8:45 am]

BILLING CODE 8025-01-P

SOCIAL SECURITY ADMINISTRATION

**Agency Information Collection
Activities: Proposed Request and
Comment Request**

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written

comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202-395-6974.
(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-965-6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410-965-0454 or by writing to the address listed above.

1. *Employment Relationship Questionnaire—20 CFR 404.1007—0960-0040.* Form SSA-7160-F4 is used in developing the question of employer-employee relationships, except where the worker is an officer of a corporation. This form gathers the information needed for developing the employment relationship, and determining whether a beneficiary is self-employed or an employee. Respondents are beneficiaries questioning their status as employees and employers.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 16,000.
Frequency of Response: 1.
Average Burden Per Response: 25 minutes.

Estimated Annual Burden: 6,667 hours.

2. *State Supplementation Provisions: Agreement; Payments—20 CFR*

416.2095-416.2098, 416.2099-0960-0240. Section 1618 of the Social Security Act contains pass-along provisions of the Social Security amendments. These provisions require that States which supplement the Federal Supplemental Security Income (SSI) payments also pass along Federal cost-of-living increases to individuals who are eligible for State supplemental payments. If a State fails to keep payments at the required level, it becomes ineligible for Medicaid reimbursement under Title XIX of the Social Security Act. In order to make sure the States are keeping the payments, they submit their payment amounts to SSA. Seven of the participating States may use a total-expenditures method, in which they send their total expenditures to SSA four times per year to prove that they are maintaining the regulated cost-of-living increase. The remaining twenty three States send SSA one annual report which shows that they have maintained the cost-of-living increase as per the regulations. Respondents are State agencies administering supplemental programs.

Type of Request: Extension of an OMB-approved information collection.
Number of Respondents: 30.

Reporting method	Number of respondents	Frequency of response	Average burden per response	Estimated annual burden hours
Total Expenditures	7	4	60	28
Maintenance of Payment Levels	23	1	60	23
Total	30	.....	.....	51

Estimated Annual Burden: 51 hours.
3. *Vocational Rehabilitation Provider Claim—20 CFR 404.2108(b), 404.2117(c)(1) and (2), 404.2101(b) and (c), 404.2121(a), 416.2208(b), 416.2217(c)(1) and (2), 416.2201(b) and (c), 416.2221(a)—0960-0310.* SSA refers certain disability beneficiaries to State Vocational Rehabilitation (VR) agencies for vocational rehabilitation services. Under Social Security regulations, the State VR agencies must report certain information to SSA as follows:

(a) The State VR agencies use the SSA-199 to make claims for reimbursement of the costs incurred

from providing VR services for the beneficiaries. The information collected on the SSA-199 is used by SSA to determine whether or not, and how much, to pay the VR agencies under SSA's VR program (20 CFR 404.2108(b) and 416.2208(b).

(b) SSA requires the VR agencies to certify their adherence to cost containment policies and procedures to ensure that the costs we reimburse are in accordance with these cost containment policies (20 CFR 404.2117(c) and 416.2217(c).

(c) SSA requires the VR agencies to prepare causality statements for

validation review. This enables SSA to assess the appropriateness of its reimbursement policies, and when/ where changes should be considered to ensure that maximum benefits from VR services are secured at the appropriate level of cost to the trust/general funds.

Respondents are State VR agencies who offer Vocational and Employment services for SSA beneficiaries.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 80.

Estimated Annual Burden: 5,320 hours.

CFR sections	Number of respondents	Frequency of response	Total responses	Average burden per response	Estimated annual burden hours
(a) SSA-199, 404.2108(b) & 416.2208(b)	80	* 160	12,800	23	4,907
(b) 404.2117(c) & 416.2217(c)	80	** 1	80	60	80
(c) 404.2121(a) & 416.2221(a)	80	** 3	240	100	400
Total	80	.....	13,120	.....	5,387

* Each year.
** Per year.

4. *Medicare Part B Income-Related Premium—Life-Changing Event Form—0960—NEW.* As per the Medicare Modernization Act of 2003, beginning in January 2007 selected beneficiaries of Medicare Part B insurance will have to pay a new income-related monthly adjustment amount (IRMAA). The amount of the IRMAA is based on income tax return data obtained from the Internal Revenue Service. If affected

Medicare Part B beneficiaries believe that more recent tax data should be used because a life-changing event has occurred that significantly reduces their income, they can report these changes to SSA and ask for a new initial determination of their IRMAA. SSA believes that most respondents will go to a field office and do this in person; however some respondents may choose to contact SSA by mail and they can use

form SSA-44, the Medicare Part B Income-Related Premium—Life-Changing Event form. The respondents are Medicare Part B beneficiaries who want SSA to use more recent income data in determining the amount of their IRMAA.

Type of Request: New information collection.

Method of information collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden hours
Personal Interview	68,490	1	60	68,490
Form	7,610	1	90	11,415
Total	76,100	.....	.....	79,905

Total Burden Hours: 79,905 hours.

4. *Protection and Advocacy for Beneficiaries of Social Security (PABSS)—Program Performance Report—0960—NEW.*

Background

In August of 2004, SSA announced its intention to award grants to establish community-based protection and advocacy projects in every State and U.S. Territory, as authorized under section 1150 of the Social Security Act. Potential awardees were protection and advocacy organizations established under Title I of the Developmental Disabilities Assistance and Bill of Rights Act which submitted a timely application conforming to the

requirements in the notice. The projects funded under this grant are part of SSA's strategy to increase the number of beneficiaries who return to work and achieve self-sufficiency as the result of receiving advocacy or other services. The overall goal of the program is to provide information and advice about obtaining vocational rehabilitation and employment services and to provide advocacy or other services that a beneficiary with a disability may need to secure, maintain, or regain gainful employment.

Collection Activity

The PABSS Program Performance Report collects statistical information

from the various Protection and Advocacy (P&A) projects to manage program performance. SSA uses the information to evaluate the efficacy of the program and to ensure that those dollars appropriated for PABSS services are being spent on SSA beneficiaries. The project data will be valuable to SSA in its analysis of and future planning for the Social Security Disability Insurance (SSDI) and SSI programs. The respondents to this collection are the 57 designated P&A project system sites in each of the fifty States, the District of Columbia, and the U.S. Territories.

Type of Request: New information collection.

Title of collection	Number of annual	Respondents	Frequency of response	Average burden per response (hours)
PABSS Program Performance Report	57	2	1	114

5. *Pilot Program for Participating in Administrative Law Judge Hearings by Using Privately Owned Video Teleconferencing (VTC) Equipment.*

Background

On February 3, 2003, the Commissioner of Social Security published a final rule allowing SSA to conduct hearings before administrative law judges (ALJs) at which a party or parties to the hearing and/or a witness

or witnesses may appear before the ALJ by video teleconferencing (68 FR No. 22, 5210). In that final rule we noted that dialing into SSA's VTC network from private facilities, such as facilities owned by a law firm, could be possible at a future date. Appearances by video

teleconference are also central to the rules for the new disability determination process (final rule published March 31, 2006 71 FR No. 62, 16423). Pursuant to these rules, SSA is now preparing to pilot a program wherein private representatives and their clients may appear at ALJ hearings using privately owned video equipment.

The VTC Activity

SSA plans to expand its Video Teleconferencing program of Administrative Law Judge hearings by allowing these hearings to be conducted from private representative sites that

have been certified by the agency. Representatives who are interested in participating in the pilot program or the permanent program will need to provide some basic information about their location, the area they serve and their expected workload. Because private video sites are being used, the pilot guidelines provide for site inspections, certain on-the-record certifications and other claimant safeguards to help ensure that no claimants are disadvantaged by participating in their hearing from a private site. Respondents to this collection will be the claimant's

representatives who elect to participate in the pilot.

The pilot is structured to begin with 10 private video sites expanding to 30 private sites after a six month evaluation period. There will be a second evaluation period after the 30 sites have operated for a six month period. SSA will then make final decisions regarding operating procedures for a permanent program.

Type of Request: New Information Collection.

Total Burden Hours for all Collections: 717 burden hours (shown below).

PHASE-I

[10 sites for 6 months]

Collection activity	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden hours
Expression of Interest/Initial Contact	100	1	15	25
Certifications Made in the Opening Statement of the Hearing	10	100	10	167
Totals	110	.....	.....	192

PHASE-II

[30 sites for 6 months]

Collection activity	Number of respondents	Frequency of response	Average burden per response	Estimated annual burden hours
Expression of Interest/Initial Contact	100	1	15	25
Certifications Made in the Opening Statement of the Hearing	30	100	10	500
Totals	130	.....	.....	525

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410-965-0454, or by writing to the address listed above.

1. *Request for Reconsideration—Disability Cessation—20 CFR 404.909, 416.1409—0960-0349.* Form SSA-789-U4 is used by claimants to request reconsideration of a determination and to indicate whether or not they wish to appear at a disability hearing. This form can also be used to submit any additional information/evidence for use in the reconsidered determination and to indicate if an interpreter is needed for the hearing. SSA will use this information to either arrange for a hearing or to prepare a decision based on the evidence of record. The

respondents are applicants or claimants for Social Security benefits or Supplemental Security Income (SSI) payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 49,000.

Frequency of Response: 1.

Average Burden Per Response: 13 minutes.

Estimated Annual Burden: 10,617 hours.

2. *Psychiatric Review Technique—20 CFR 404.1520a, 416.920a—0960-0413.* Form SSA-2506-BK assists the State Disability Determination Services (DDSs) in evaluating mental impairments by helping to: organize and present the mental findings in a clear, concise and consistent manner; consider and evaluate all aspects of the mental impairment relevant to the individual's ability to perform work-related mental functions; and identify additional evidence needed to determine impairment severity. The respondents

are the 52 State DDSs administering the Title II and Title XVI programs.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 52.

Frequency of Response: 20,595.

Total Annual Responses: 1,070,940.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 267,735 hours.

3. *Request for Internet Services-Password Authentication—20 CFR 401.45—0960-0632.* Password Authentication is used to establish a password process for verifying the identity of individuals who choose to use the Internet and Automated Telephone Response for conducting business with SSA. Services are password protected when it is necessary due to the nature of the information being transmitted or because the requestor requires a higher level of protection. The password process allows requestors to establish their identities with SSA and create a

password which they can then use to access their own personal information. The respondents are individuals electing to do business with SSA through an electronic medium.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 1,630,771.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 271,795 hours.

4. *Function Report—Adult—Third Party—20 CFR 404.1512, 416.912—0960-0635.* The information collected on the SSA-3380-BK is needed to make determinations on SSI and Social Security Disability (SSDI) claims. This information is necessary for case development and adjudication, and is used by State DDS evaluators as an evidentiary source used in the disability evaluation process. The respondents are third parties familiar with the functional limitations (or lack thereof) of claimants who apply for SSDI benefits and SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 1,000,000.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 1,000,000 hours.

5. *Disability Hearing Officer's Decision—Title XVI Disabled Child (DC) Continuing Disability Review—20 CFR 404.913-.914, 404.917, 416.994a, 416.1413-.1414, 416.1417—0960-0657.* Form SSA-1209-BK is used by the disability hearing officer conducting the disability hearing to prepare and issue a written reconsidered determination—specifically for evaluating Title XVI childhood disability cases. The form provides the framework for addressing the crucial elements of the case in a sequential and logical fashion, and the completed form is the official document of the decision. Respondents are disability hearing officers in State DDSs.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 35,000.

Frequency of Response: 1.

Average Burden Per Response: 75 minutes.

Estimated Annual Burden: 43,750 hours.

6. *Representative Payment Policies Regulation—20 CFR 404.2011, 404.2025, 416.611, 416.625—0960-0679.* In cases where SSA determines that it is not in a beneficiary's best interest to receive payments directly as it may cause substantial harm, the beneficiaries may dispute this decision. If they do, they provide SSA with information which SSA will take into consideration when reevaluating the decision. Representative payees must also provide SSA with information regarding their relationship, responsibility, and how payments were used for the beneficiary. Respondents are beneficiaries and representative payees.

Type of Request: Revision of an OMB-approved information collection.

Estimated Annual Burden: 363 hours.

CFR section	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden hours
404.2011(a) (1), 416.611(a) (1)	250	1	15	63
404.2025, 416.625	3,000	1	6	300
Totals	3,250	.....	.....	363

7. *Statement of Reclamation Action—31 CFR 210—0960-NEW.* Form SSA-1713 collects information regarding whether, how and when a Canadian bank was able to return erroneous payments made after the death of a beneficiary who elected to have payments sent to Canada. The SSA-1713 is sent with the SSA-1712, an SSA-generated cover sheet which provides the Canadian bank with information regarding the deceased beneficiary. In this way, SSA can reclaim funds which were erroneously paid. The respondents are Canadian financial institutions to which Social Security payments have been made.

Type of Request: Existing Information Collection in Use Without an OMB Number.

Number of Respondents: 15.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 1 hour.

8. *Statement for Determining Continuing Eligibility, Supplemental Security Income Payment—20 CFR, Subpart D, 416.204—0960-0145.* SSA uses form SSA-8202-BK to conduct low- and middle-error-profile (LEP-MEP) telephone or face-to-face redetermination (RZ) interviews with SSI recipients and representative

payees. The information collected during the interview is used to determine whether SSI recipients have met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they have been, and are still receiving, the correct payment amount. Form SSA-8202-OCR-SM (Optical Character Recognition Self-Mailer) collects information similar to that collected on Form SSA-8202-BK. However, it is used exclusively in LEP RZ cases on a 6-year cycle.

Type of Request: Revision of an OMB-approved collection.

Forms	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden hours
SSA-8202-F6	1,000,000	1	21	350,000
SSA-8202-OCR-SM	700,000	1	11	128,333
Totals	1,700,000	.....	.....	478,333

9. *Statement for Determining Continuing Eligibility, Supplemental Security Income Payment(s)—20 CFR Subpart B, 416.204—0960—0416.* SSA uses the information collected on form SSA-8203-BK for high-error-profile (HEP) redeterminations of disability to

determine whether SSI recipients have met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they have been, and are still receiving, the correct payment amount. The information is normally completed in field offices by

personal contact (face-to-face or telephone interview) using the automated Modernized SSI Claim System (MSSIGS). The respondents are recipients of Title XVI benefits.
Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden hours
MISSIGS	109,012	1	20	36,337
MISSIGS/Signature Proxy	36,338	1	19	11,507
Paper	25,650	1	20	8,550
Totals	171,000	.....	.....	56,394

Dated: July 26, 2006.
Elizabeth A. Davidson,
Reports Clearance Officer, Social Security Administration.
 [FR Doc. E6-12255 Filed 7-28-06; 8:45 am]
BILLING CODE 4191-02-P

**DEPARTMENT OF TRANSPORTATION
 FEDERAL AVIATION
 ADMINISTRATION**

Notice of Availability of Draft Advisory Circulars, Other Policy Documents and Proposed Technical Standard Orders

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: This is a recurring Notice of Availability, and request for comments, on the draft advisory circulars (ACs), other policy documents, and proposed technical standard orders (TSOs) currently offered by the Aircraft Certification Service.

SUMMARY: The FAA's Aircraft Certification Service publishes proposed non-regulatory documents that are available for public comment on the Internet at http://www.faa.gov/aircraft/draft_docs/.

DATES: We must receive comments on or before the due date for each document as specified on the Web site.

ADDRESSES: Send comments on proposed documents to the Federal Aviation Administration at the address specified on the Web site for the document being commented on, to the attention of the individual and office identified as point of contact for the document.

FOR FURTHER INFORMATION CONTACT: See the individual or FAA office identified on the Web site for the specified document.

**SUPPLEMENTARY INFORMATION:
 Comments Invited**

When commenting on draft ACs, other policy documents or proposed TSOs, you should identify the document by its number. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date before issuing a final document. You can obtain a paper copy of the draft document or Proposed TSO by contacting the individual or FAA office responsible for the document as identified on the Web site. You will find the draft ACs, other policy documents and proposed TSOs on the "Aircraft Certification Draft Documents Open for Comment" Web site at http://www.faa.gov/aircraft/draft_docs/. For Internet retrieval assistance, contact the AIR Internet Content Program Manager at 202-267-8361.

Background

We do not publish an individual **Federal Register** Notice for each document we make available for public comment. Persons wishing to comment on our draft ACs, other policy documents and proposed TSOs can find them by using the FAA's Internet address listed above. This notice of availability and request for comments on documents produced by the Aircraft Certification Service will appear again in 30 days.

Issued in Washington, DC on July 25, 2006.

Terry Allen,
Acting Manager, Production and Airworthiness Division Aircraft Certification Service.
 [FR Doc. 06-6566 Filed 7-28-06; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF TRANSPORTATION
 Federal Highway Administration**

Notice of Final Federal Agency Actions on Proposed Highways in Texas

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of Limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(1)(1). The actions relate to various proposed highway projects in the State of Texas. Those actions grant licenses, permits, and approvals for the projects.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(1)(1). A claim seeking judicial review of the Federal agency actions on any of the listed highway projects will be barred unless the claim is filed on or before January 29, 2007. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Salvador Deocampo, District Engineer, Texas Division, Federal Highway Administration, 826 Federal Building Room 826 300 E. 8th Street Austin, Texas 78701, 8 a.m. to 5 p.m. Monday through Friday, 512-536-5950, salvador.deocampo@fhwa.dot.gov. Ms. Dianna Noble, P.E., Director Environmental Affairs Division, Texas Department of Transportation, 118 E. Riverside, Austin, Texas, 78704; 512-416-2734; e-mail: dnoble@dot.state.tx.us. Texas Department of Transportation normal

business hours are 8 a.m. to 5 p.m. (central time) Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Texas that are listed below. The actions by the Federal agencies on the projects, and the laws under which such actions were taken, are described in the documented environmental assessments (EAs), issued in connection with the projects, and in other documents in the FHWA project record for the project. The EA and other documents from the FHWA project record files for the listed projects are available by contacting the FHWA or TxDOT at the addresses provided above.

This notice applies to all Federal agency decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

I. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109].

II. Air: Clean Air Act (CAA), 42 U.S.C. 7401–7671(q).

III. Land: Section 4(f) of the Department of Transportation Act of 1966 (4f) [49 U.S.C. 303].

IV. Wildlife Endangered Species Act (ESA) [16 U.S.C. 1531–1544 and Section 1536], Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703–712].

V. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended (106)[16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 (ARPA) [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act (AHPA) [16 U.S.C. 469–469(c)].

VI. Social and Economic: Civil Rights Act of 1964 (Civil Rights) [42 U.S.C. 2000(d)–2000(d)(1)].

VII. Wetlands and Water Resources: Clean Water Act, 33 U.S.C. 1251–1337 (Section 404, Section 401, Section 319); Rivers and Harbors Act of 1899 (RHA), 33 U.S.C. 401–406.

VIII. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 11514 Protection and Enhancement of Environmental Quality.

The projects subject to this notice are:

1. *Project Location:* City of Dallas, Dallas County, Interstate Highway (IH)–30 and IH–35East (IH–35E). Project Reference Number: Texas Department of Transportation (TxDOT) CSJ: 0009–11–181, etc. Project Type: Widen and Reconstruct Roadway near downtown Dallas with a 2-Lane Reversible High

Occupancy Vehicle/Managed (HOV/M), 12 freeway lanes (6 in each direction), and frontage roads: 2 or 3 lanes in each direction. Project Length:

Approximately 11 miles. General Purpose: To improve safety and traffic operations and to reduce congestion along IH–30, IH–35E and the interchange of IH–30 and IH–35E near downtown Dallas. Final agency actions taken under: NEPA, FAHA, CAA, Section 4(f), Section 106, ESA, MBTA, ARPA, AHPA, Civil Rights Act, RHA, Section 401, E.O. 11990, and E.O. 11514. NEPA Document: Environmental Assessment (EA) & Section 4(f) evaluation/Finding Of No Significant Impact (FONSI) issued July 28, 2005. Document available at: <http://www.projectpegasus.org/>.

2. *Project Location:* City of Dallas, Dallas County, Spur 366 (Woodall Rogers) from IH–35E to Beckley Avenue/Singleton Boulevard. Project Reference Number: TxDOT CSJ: 0196–07–018. Project Type: Extension of existing roadway near the northern boundary of The City of Dallas's central business district. Project Length: Approximately one (1) mile. General Purpose: To reduce traffic congestion, improve mobility, improve design deficiencies, and improve system linkage. Final agency actions taken under: NEPA, FAHA, CAA, ESA, MBTA, ARPA, AHPA, Civil Rights Act, Section 404 [United States Army Corps of Engineers (USACE) Nationwide Permit Number (NWP)14], RHA, Section 401, E.O. 11990, and E.O. 11514. NEPA document: EA/FONSI issued July 20, 2005. Document available at: <http://www.projectpegasus.org/wre.htm>.

3. *Project Location:* Denton County, FM 2499, from FM 407 to FM 2181 (Swisher Road). Project Reference Number: TxDOT CSJ: 2681–01–009. Project Type: Construct a four lane divided urban arterial on new location. Project Length: Approximately four and seven tenths (4.7) miles. General Purpose: To reduce traffic congestion, increase people and goods-carrying capacity within the project area, and improve system linkage. Final agency actions taken under: NEPA, FAHA, CAA, Section 4(f), Section 106, ESA, MBTA, ARPA, AHPA, Civil Rights Act, Section 404 (USACE NWP14), Section 401, E.O. 11990, and E.O. 11514. NEPA Document: EA & Section 4(f) evaluation/FONSI issued June 6, 2005.

4. *Project Location:* City of Dallas, Dallas County, Loop 12, from W. Lawther Drive to east of Goforth Drive. Project Reference Number: TxDOT CSJ: 0353–05–084. Project Type: Raise existing three lanes in each direction roadway and bridges out of the 100 year

floodplain. Project Length: Approximately two and seven tenths miles (2.7). General Purpose: To improve bridge and roadway deficiencies. Final agency actions taken under: NEPA, FAHA, CAA, ESA, MBTA, ARPA, AHPA, Civil Rights Act, Section 404 (USACE NWP 3 and 25), Section 401, and E.O. 11514. NEPA Document: EA/FONSI issued November 29, 2005.

5. *Project Location:* State Highway (SH) 121 from 0.23 miles West of Business SH 121 to East of MacArthur Boulevard in the Counties of Dallas and Denton. Project Reference Number: TxDOT CSJ: 3547–01–001, etc. Project Type: The project will be for tolling of approximately two (2) miles of a 6 lane (3 in each direction) controlled access road with three lane frontage roads in each direction. The project will be constructed within existing right-of-way. Project Length: Approximately two (2) miles. General Purpose: The project will improve system linkage and mobility in the area in response to current and future traffic demand needs and development along SH 121. Final agency actions taken under: NEPA, FAHA, CAA, ESA, MBTA, ARPA, AHPA, Civil Rights Act, Section 401, E.O. 11990, and E.O. 11514. NEPA Document: EA/FONSI issued April 14, 2006. Document available at: <http://www.keepitmovingdallas.com>.

6. *Project Location:* State Highway (SH) 121 from east of MacArthur Boulevard to the Dallas North Tollway in the Counties of Denton and Collin. Project Reference Number: TxDOT CSJ: 0364–03–065, etc. Project Type: The project will be for tolling of 11 miles of a 6 lane (3 in each direction) controlled access road with 3 lanes of frontage roads in each direction. Project Length: Approximately 11 miles. General Purpose: The project will improve system linkage and mobility in the area in response to current and future traffic demand needs and development along SH 121. Final agency actions taken under: NEPA, FAHA, CAA, Section 106, ESA, MBTA, ARPA, AHPA, Civil Rights Act, Section 404 (USACE NWP14), Section 401, E.O. 11990, and E.O. 11514. NEPA Documents: Project was originally three NEPA documents done for sections of SH 121 with logical termini and were found to still be valid on on April 14, 2006. Actual EA/FONSIs were determined on April 13, 1990 (section from east of MacArthur Blvd. East to just east of IH 35E), November 11, 1991 (section from East of IH35E to FM 423) and on September 9, 2005 (section from FNM 243 to DNT). Document available at: <http://www.keepitmovingdallas.com>.

(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. 139(l)(1).

Issued on: July 21, 2006.

Salvador Deocampo,

District Engineer.

[FR Doc. 06-6578 Filed 7-28-06; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2005-22936]

Hours of Service of Drivers; Application for Exemption; Landstar System, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from Landstar System, Inc. (Landstar) for an exemption from the commercial motor vehicle (CMV) drivers' hours-of-service regulations for its drivers when transporting high-security cargo that requires constant attendance. The HOS regulation requires that CMV drivers using the sleeper-berth exception remain in the sleeper berth for at least 8 consecutive hours during one of the 2 rest periods used to accumulate the equivalent of 10 hours off duty. Landstar states that, for team-driver operations, this prevents the driver in the sleeper berth from attending to the cargo while the other driver takes a restroom break, and conflicts with requirements for all persons to exit the vehicle for a security inspection when entering certain military installations. FMCSA requests public comment on the Landstar application for exemption.

DATES: Comments must be received on or before August 30, 2006.

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2005-22936 by any of the following methods:

- *Web site:* <http://dmses.dot.gov/submit/>. Follow the instructions for submitting comments to the DOT Docket Management System (DMS) Web site.

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400

Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- *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.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket number for this notice. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading for further information.

Docket: To read background documents or comments received, go to <http://dms.dot.gov> at any time or 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. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477, Apr. 11, 2000). This statement is also available at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, MC-PSD, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Telephone: 202-366-4009. E-mail: MCPSD@fmcsa.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105-178, 112 Stat. 107, June 9, 1998; 49 U.S.C. 31315 and 31136(e)) provides authority to grant exemptions from motor carrier safety regulations. On December 8, 1998, the FMCSA's

predecessor published an interim final rule implementing sec. 4007 (63 FR 67600). On August 20, 2004, FMCSA published a final rule (69 FR 51589) that requires the Agency to publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity for public comment on the request and to inspect information relevant to the application, including any safety analyses that have been conducted.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the Agency grants the exemption, the notice must specify the person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is being granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may also be renewed (49 CFR 381.300(b)).

Request for Exemption

The hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers in 49 CFR part 395 apply to motor carriers and drivers operating CMVs in interstate commerce, as defined in 49 CFR 390.5. Landstar transports sensitive cargo for the U.S. Department of Defense (DOD). Landstar states this high-risk cargo must be attended at all times as required by the Federal Motor Carrier Safety Regulations (49 CFR 397.5) and DOD regulations.

Landstar states that, during team-driver operations, the sleeper-berth requirements for at least 8 consecutive hours sleeper-berth use (49 CFR 395.1(g)(ii)(A)(1)) would not allow the first operator (driving) to stop for a comfort break because the second operator (in the sleeper) would not be allowed to attend the vehicle without interrupting his or her 8 consecutive hours in the sleeper berth.

Landstar also states that security procedures at military installations require both drivers to exit the vehicle for a security inspection when the vehicle enters the installation. For team drivers using the sleeper-berth HOS exception, the second operator would have to interrupt his or her 8 hours of

sleeper-berth time to accommodate these military security procedures.

According to Landstar, both scenarios would interrupt the driver's 8 hours of consecutive sleeper berth use, making it operationally impossible for them to comply with FMCSA and DOD rules and regulations.

Landstar suggests that the sensitive military shipments should be considered as a national security risk. Landstar's concerns are: "Will operators comply with FMCSA and take a comfort break without waking their partner and risk leaving a high risk load unattended? Or will operators comply with DOD/SDDC rules and wake the second seat operator to monitor the load, while breaking his 8 hours of rest?" Landstar states that operators must choose between the two options. Landstar further states that, as the current rules are written, an operator transporting "security clearance, high risk freight" cannot comply with both the DOD and the FMCSA regulations.

A copy of the Landstar's exemption application is available for review in the docket.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on Landstar's application for exemption from the 49 CFR part 395 HOS requirements. The Agency will consider all comments received by close of business on August 30, 2006. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: July 21, 2006.

David H. Hugel,

Acting Administrator.

[FR Doc. E6-12161 Filed 7-28-06; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2005-24231]

Hours of Service of Drivers: Application for Exemption; FedEx Ground Package System, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from FedEx Ground Package System, Inc. (FedEx) requesting an exemption from the on-duty time definition under the Federal drivers hours-of-service (HOS) regulations for drivers who operate commercial motor vehicles (CMVs). If granted, the exemption would allow FedEx's home-delivery drivers to operate property-carrying CMVs to and from their residence, without being considered "on duty." FedEx states the subject property is normally a package or packages which were expected to be delivered during the workday but, for one reason or another, could not be delivered that day. Thus, the drivers would operate laden CMVs from the point where the final home delivery was made for that workday to their residence, and from their residence the following workday to a FedEx terminal. FedEx believes its drivers would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption. FMCSA requests public comment on the FedEx application for exemption.

DATES: Comments must be received on or before August 30, 2006.

ADDRESSES: You may submit comments identified by FMCSA Docket Number FMCSA-2005-24231 by any of the following methods:

- *Web Site:* <http://dmses.dot.gov/submit>. Follow the instructions for submitting comments to the DOT electronic docket site.
- *Fax:* 1-202-493-2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.
- *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.
- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the Docket Management System (DMS) to read background documents or comments received, go to <http://dms.dot.gov> at any time or 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. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477, Apr. 11, 2000). This statement is also available at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, MC-PSD, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Telephone: 202-366-4009. E-mail: MCPSD@fmcsa.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105-178, 112 Stat. 107, June 9, 1998), which amended 49 U.S.C. 31315 and 31136(e), provided authority to grant exemptions from motor carrier safety regulations. On December 8, 1998, FMCSA's predecessor published an interim final rule implementing section 4007 (63 FR 67600). On August 20, 2004, FMCSA issued a final rule (69 FR 51589) which requires FMCSA to publish a notice of each exemption request in the **Federal Register** (49 CFR 315(a)). The agency must provide an opportunity for public comment on the request and to inspect the information relevant to the application, including

any safety analyses that have been conducted.

The agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If the agency denies the request, it must state the reason for doing so. If the agency grants the exemption, the notice must specify the person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is being granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may also be renewed (49 CFR 381.300(b)).

Request for Exemption

FedEx requested an exemption to modify the hours-of-service (HOS) standard for determining whether the final "leg" of a FedEx driver's day, driving the commercial motor vehicle (CMV) from the point of the last delivery to the driver's residence, as well as the first leg of the following day driving the CMV from the residence to a FedEx terminal, is "on duty time" as defined in 49 CFR 395.2. FedEx is engaged in the delivery of packages by CMV in interstate commerce. In the morning FedEx drivers operate company CMVs from their residence to company terminals to begin their workday. Their FedEx truck is loaded with packages to be delivered, and the drivers then deliver packages to nearby residences. The drivers do not pick-up packages or take on additional cargo during the day. Following the final delivery of the day and a post-trip vehicle inspection, the drivers are relieved of all responsibility to FedEx and are free to pursue their own personal activities and to use the FedEx CMV to do so. The following morning the drivers are permitted to operate the FedEx vehicle from their residence to the FedEx terminal to begin a new workday.

The HOS rules define "on-duty time" as "all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work" (49 CFR 395.2). FMCSA permits time spent going to and from a residence in a CMV to be treated as "off-duty time" if two conditions are met. First, the driver must be relieved from work and all

responsibility for work while operating the CMV. Second, the CMV must be "unladen," or empty (49 CFR 395.8, Question 26, Regulatory Guidance). If both these conditions are met, the CMV is viewed as a personal conveyance, and the time spent may be treated as "off-duty time."

FedEx seeks exemption for itself and its 4,136 drivers from the requirement that the CMV be unladen in order for the time to be considered "off-duty time." FedEx states that at the end of the workday these CMVs occasionally contain a package or packages that could not be delivered that day. It may be that the package was misaddressed, or the addressee was not home. Delivery of the package is usually attempted again the following day.

FedEx believes that granting the exemption would not adversely affect its safety performance, and that it would be able to maintain a level of safety equivalent to, or greater than, the level achieved without the exemption.

A copy of the FedEx exemption application is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment on FedEx's application for exemption from the definition of "on-duty time" in 49 CFR 395.2, and the Guidance provided in Question 26 under 49 CFR 395.8, to the extent that the CMV must be unladen. The Agency will consider all comments received by close of business on August 30, 2006. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: July 21, 2006.

David H. Hugel,

Acting Administrator.

[FR Doc. E6-12162 Filed 7-28-06; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2005-22937]

Hours of Service of Drivers: Application for Exemption; Summit Helicopters, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from Summit Helicopters, Inc. (Summit) for an exemption from the commercial motor vehicle drivers' hours-of-service (HOS) requirements for their drivers who transport materials to and from job sites to assist in the company's aerial application of herbicides. The exemption, if granted, would enable Summit's drivers to conduct these operations, including transportation to and from the herbicides application sites, without having to comply with the HOS regulations. Summit believes that relief from the HOS regulations would permit their drivers to work longer periods of time and at the same time maintain a high level of safety. FMCSA requests public comment on the Summit Helicopters, Inc. application for exemption.

DATES: Comments must be received on or before August 30, 2006.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA-2005-22937 by any of the following methods:

- *Web site:* <http://dms.dot.gov/submit/>. Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1-202-493-2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.
- *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.
- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket number for this notice. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information

provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or 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. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477, Apr. 11, 2000). This statement is also available at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, MC-PSD, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Telephone: 202-366-4009. E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century [Pub. L. 105-178, 112 Stat. 107, June 9, 1998, 49 U.S.C. 31315 and 31136(e)] provided authority to grant exemptions from the motor carrier safety regulations. On December 8, 1998, FMCSA's predecessor published an interim final rule implementing sec. 4007 (63 FR 67600). On August 20, 2004, FMCSA published a final rule (69 FR 51589), which requires FMCSA to publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level

of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency's decision must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the Agency grants the exemption, the notice must specify the person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is being granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may also be renewed (49 CFR 381.300(b)).

Request for Exemption

Under 49 CFR part 395, the Federal hours of service (HOS) regulations for commercial motor vehicle (CMV) drivers generally apply to motor carriers and drivers operating CMVs in interstate commerce, as defined under 49 CFR 390.5.

In relation to the HOS regulations, Summit Helicopters, Inc. (Summit) states that its situation is unique in that its drivers operate in remote areas during the early morning and late evening hours. Due to this extended schedule, there are occasions when Summit's drivers cannot maintain their desired schedule and comply with the HOS requirements. To clarify this scenario, Summit provided an outline of a typical day's schedule, and identified when the problem with HOS compliance arises.

Summit is a private motor carrier comprised of approximately 25 drivers responsible for operating 21 tank trucks. All of their trucks are based in Cloverdale, Virginia. Their trucks are dispatched to various jobsites in the states of Alabama, Georgia, North Carolina, South Carolina, and Arkansas. These tank trucks will arrive at jobsites, and go to a "water source" to be loaded with water. They will subsequently add a herbicide from a box-truck to the water to create the mixture to be dispensed from a helicopter. The tank trucks, once at the jobsites, will normally travel no more than 20 miles between the tracts of land where the chemicals are dispersed. Once the morning jobs are complete, the drivers will drive a pick-up truck to a motel, where they will have an off-duty period of around 6 hours (usually from around 11 a.m. to 5 p.m.). The drivers will then repeat the same work process during a night shift.

The HOS compliance problem arises during the night shift. The drivers have already worked a day shift consisting of

several hours of driving and on-duty time, followed by approximately 6 hours spent in the motel. All of this time is counted towards their "running 14-hour clock" (49 CFR 395.3(a)(2)), and therefore the driver would not have the necessary available driving hours during the night shift.

Summit indicates that their drivers would operate only under the requested exemption while they are conducting the aerial operations. They believe that there would be no adverse affects on safety while their drivers are operating under the requested exemption for the following reasons: (1) They do the majority of their traveling on logging roads; (2) their drivers are allowed to sleep in the motel rooms during their time off-duty; (3) they will require their drivers to fill out a daily log book, even while operating under the exemption; and (4) during their 25 years of operation, they have never had an accident that could be related to fatigue.

Summit believes that an exemption will provide them the flexibility they need to complete their extended workday under safe operating conditions.

A copy of Summit's exemption application is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on Summit Helicopters, Inc.'s application for exemption from the 49 CFR part 395 HOS requirements. The Agency will consider all comments received by close of business on August 30, 2006. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: July 21, 2006.

David H. Hugel,

Acting Administrator.

[FR Doc. E6-12163 Filed 7-28-06; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION**Federal Transit Administration****[Docket No. FTA-2006-25365]****Formula Grants for Other Than Urbanized Areas Program (49 U.S.C. 5311): Notice of Program Guidance****AGENCY:** Federal Transit Administration (FTA), DOT.**ACTION:** Notice of proposed program guidance and request for comments.

SUMMARY: This Notice proposes guidance in the form of a revised program circular for the Federal Transit Administration's Formula Grants for Other Than Urbanized Areas Program (Section 5311) and seeks comments on the proposed circular. It also addresses comments FTA received with regard to its Section 5311 program in response to a **Federal Register** Notice entitled, "FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (70 FR 71950, November 30, 2005), in addition to comments received during several public listening sessions. The proposed circular will be available in Docket Number: FTA-2006-25365 at <http://dms.dot.gov>.

DATES: Comments should be submitted by September 29, 2006. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number [FTA-2006-25365] by any of the following methods:

1. *Web site:* <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.
2. *Fax:* 202-493-2251.
3. *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL-401, Washington, DC 20590-0001.
4. *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.

Instructions: You must include the agency name (Federal Transit Administration) and the Docket number (FTA-2006-25365) for this Notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments

received will be posted, without change, to <http://dms.dot.gov> including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>. Docket: For access to the docket to read background documents and 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:

Lorna Wilson, Office of Program Management, Federal Transit Administration, 400 Seventh Street, SW., Room 9114, Washington, DC 20590, phone: (202) 366-2053, fax: (202) 366-7951, or e-mail, lorna.wilson@dot.gov. Legal questions may be addressed to Richard L. Wong, Office of Chief Counsel, Federal Transit Administration, 400 Seventh Street, SW., Room 9316, Washington, DC 20590, phone: (202) 366-4011, fax: (202) 366-3809, or e-mail, Richard.Wong@dot.gov.

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I. Overview

This proposed circular revises the existing FTA Circular 9040.1E, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions," dated 10-01-98.

On November 30, 2005, FTA published a **Federal Register** Notice, "Transit Program Changes, Authorized Funding Levels and Implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (70 FR 71950, November 30, 2005), which described new programs and changes to or

extensions of existing programs contained in its new reauthorization legislation, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). In addition, FTA held public listening sessions in five locations around the country, a conference call with State administering agencies, and a meeting with representatives of the intercity bus industry.

In its November 30th **Federal Register** Notice, FTA requested public comment on several specific issues such as whether the State-based rural data module should serve as the basis for the new mandatory reporting requirements. Another issue was whether the per State minimum distribution of Rural Transportation Assistance Program (RTAP) funds (floor) should again be raised and whether the low density portion of the Section 5311 formula should be used as a basis for Section 5311 RTAP formula apportionments. FTA also sought comments on use of the national RTAP resource.

This Notice acknowledges comments received by FTA from the November 30th Notice and additional comments received during FTA's public outreach efforts. The Notice also seeks comments on the proposed revisions to the existing circular. The text of the proposed circular is available in its entirety in the docket.

Although the proposed circular addressed by this Notice contains summaries of cross-cutting provisions such as Charter Bus, Buy America, Title VI, and Equal Employment Opportunity (EEO) requirements, those subjects are addressed by separate dockets, therefore, the public should not submit comments on those topics to the docket for this circular. Persons seeking to view and provide comments to those dockets can do so through the Department of Transportation's Docket Management System (<http://dms.dot.gov>). Docket numbers for some of those cross-cutting proposals are as follows:

Charter Bus	Docket #22657
Buy America	Docket #23082
Title VI	Docket #23227
EEO	Docket #23227

FTA reserves the right to make changes to this circular in the future to update references to requirements contained in other revised or new guidance and regulations without further notice and comment on this circular.

II. Chapter-by-Chapter Analysis

A. Chapter I—Introduction and Background

This chapter is a general introduction to FTA that is proposed to be included in all new and revised program circulars for the orientation of readers new to the FTA programs. Chapter I also includes definitions.

B. Chapter II—Program Overview

This chapter replaces the former Chapter I, "General Overview," in Circular 9040.1E. It provides an overview of the Section 5311 program in terms of its statutory authority and program goals. It defines the role of States and FTA, and explains the program's relationship to other FTA-funded programs, as well as its coordination with other Federal programs. It contains the same information as the existing circular, with minor updates.

C. Chapter III—General Program Information

This chapter consolidates the former Chapters II "Apportionments" and III "Eligibility" in Circular 9040.1E. This revised chapter sets forth the basis for the apportionment of Section 5311 funds including, the availability of those funds and the transfer of funds. It also identifies eligible recipients and expenses, and the Federal-State matching ratio. The discussion of use of other Federal funds as match was expanded to clarify that Section 5310 funds used to purchase service from a Section 5311 subrecipient cannot be used to match Section 5311 program funds. Although this revised chapter retains much of the content of the original two chapters, it includes several changes required by SAFETEA-LU: A sliding scale that permits a higher Federal share for capital and operating costs for several States based on a formula used by the Federal Highway Administration; an expanded list of eligible capital expenses for crime prevention and security; and the eligibility of Mobility Management as a capital expense.

One commenter asked that FTA broaden project eligibility to include capital items eligible under Section 5309, such as park and ride lots, in order to respond to the varying needs of the States and the areas to be served by the Section 5311 program.

FTA agrees with this recommendation, and proposes to clarify that the definition of eligible capital activities in 49 U.S.C. 5302(a)(1) applies to the Section 5311 program, which would include park and ride lots.

The proposed circular provides additional guidance on some aspects of capital eligibility, and it details eligibility requirements specific to the program.

Other commenters asked whether Federal funds received from other than U.S. Department Of Transportation (DOT) sources (e.g., USDA) can be used as the local matching share. Another commenter noted that a 50% match is hard for small operators, and that a sliding scale should permit 80% for operating expenses under Section 5311.

Consistent with SAFETEA-LU's coordination goals, funds from other than U.S. DOT governmental sources (including other Federal funds) can be used provided that those funds are eligible to be used for transportation purposes. Federal lands funds (including Indian Reservation Roads funds) provided by the Federal Highway Administration (FHWA) are not included in the prohibition on the use of U.S. DOT funds as the local matching share. The statute does not allow for an 80% Federal share for operating assistance. The maximum share for operating assistance is 62.5% of the Federal share allowed to a State for capital assistance under the sliding scale approved by FHWA. Thus the sliding scale share for operating assistance ranges from 50.81% to 59.31%.

In addition to changes required by SAFETEA-LU, we propose to require compliance with FTA's, "Capital Leases" regulations, 49 CFR Part 639, for capital leases financed under the Section 5311 program. When FTA Circular 9040.1E was published in October 1, 1998, FTA's Capital Leases regulations had not been promulgated, but FTA's enabling legislation enacted in 1998 expanded cost evaluation regulations to be promulgated by FTA to all FTA assisted capital leases. Thus, FTA could only advise States to treat FTA Capital Leases regulations as "useful guidelines." By December 10, 1998, FTA did promulgate its Capital Lease regulations covering all FTA programs. Consequently, we propose requiring compliance with those regulations. However, we are seeking comments about the implications of doing so and are interested in how those regulations would affect State leasing practices.

D. Chapter IV—Program Development

This chapter renames the former Chapter IV "Program Management and Administrative Requirements," which is now the title of Chapter VI of the proposed circular. It makes minor updates to Chapter IV of the current

Circular 9040.1E, and adds a requirement that designated State agencies provide annual Certifications and Assurances to FTA, which was always assumed under the former circular but is now made explicit under the proposed circular.

One Native American tribe asked that FTA ensure a fair distribution of funds within a State that is inclusive of Indian communities. FTA agrees. The revised circular notes that SAFETEA-LU created a separate supplemental Tribal Transportation Program, but that language retained in SAFETEA-LU requires that States must continue to include tribes in the fair distribution of funds apportioned to States.

E. Chapter V—Locally Developed, Coordinated Public Transit—Human Services Transportation Plan

This chapter replaces the former Chapter V "Application Instructions," which is attached as Appendix A to the proposed circular. The new Chapter V describes the Locally Developed Coordinated Public Transit-Human Services Transportation Plan required for three other FTA programs and addresses the relationship to that planning process for Section 5311 subrecipients. Although Section 5311 projects are not specifically required by SAFETEA-LU to be derived from a local coordinated plan, FTA states in Chapter V the expectation that Section 5311 and 5307 recipients would be included as essential partners or participants in any coordinated planning activities.

One non-profit organization recommended that the planning requirement for the three related coordinated formula programs be integrated into and consistent with the metropolitan and State planning processes. It requested clarification on how the coordinated plan will be used to identify and integrate capital and operating needs funded through the Sections 5307, 5309, and 5311 programs, including flexible FHWA funding and fund transfers.

The proposed circulars for Sections 5310 (Elderly and Individuals with Disabilities), 5316 (Job Access and Reverse Commute—JARC), and 5317 (New Freedom) programs will include detailed guidance on the Locally Developed Coordinated Public Transit-Human Service Transportation Plan and its relationship to the metropolitan and State planning processes. Chapter V of this proposed circular states that rural transit providers are expected to be participants in the local planning process, and encourages the inclusion of rural intercity mobility needs and

intercity bus operators in the planning process in rural areas.

F. Chapter VI—Program Management and Administrative Requirements

This chapter retains the requirements that were in Chapter VI of Circular 9040.1E, but adds a National Transit Database (NTD) reporting requirement mandated by SAFETEA-LU.

One State commenter noted that the addition of the NTD requirement for Section 5311 sub-recipients will facilitate data capture and reporting for this program. Another agreed with FTA's stated intent to keep the NTD requirements for Section 5311 similar to the pilot voluntary State-based rural data module previously developed in cooperation with various State DOTs.

One non-profit organization representing private operators suggested that FTA convene a team of NTD consultants, rural public and private operators, and human service providers to design a practical and useful NTD questionnaire to meet the new reporting requirements. One State DOT noted that the data requested in the current NTD Rural General Public Transit Service form (RU-20) exceeds the data required in SAFETEA-LU.

Another non-profit organization representing public transit operators recognized that FTA now has several years of experience in collecting data from the volunteer pilot program and suggested that these data should form the base for any adjustments, noting the need for additional precision in the definitions of the data that are reported.

That same non-profit organization also suggested that FTA permit direct reporting of data from rural recipients of Section 5311 funds to the NTD, similar to the approach taken for urbanized and rural operators in reporting drug and alcohol regulation compliance data. The organization also suggested that the data be reported quarterly, recognizing the on-going differences in Federal, State and local fiscal years and to make the date consistent with whatever reporting period is necessary. Finally, the organization noted that some operators receive separate funding to serve both rural and urbanized areas, and that the NTD must recognize those situations so that the benefits of both funding sources are recognized.

FTA's revised program circular merely states the statutory requirement and defers to annual NTD reporting instructions for specific data required in a given year. Annual reporting instructions can be found on the NTD Website (<http://www.ntdprogram.com>)

For FY 2006, FTA will use the existing rural data module for the NTD

reporting requirement. FTA will consider implementing a Web-based data collection that mirrors other management information systems which could allow States to import data from their subrecipients into the existing NTD. However, due to timing and funding availability, FTA will not be able to implement such a change in 2006.

To ease the burden of gathering the information for 2006 reporting, FTA will send out a spreadsheet (in the format of the RU-20) so that subrecipients can fill in the data and submit the information electronically to the State. After the 2006 reports have been entered into the NTD, this information will be automatically uploaded in subsequent years. Another factor that will assist States in NTD reporting is information for the RU-30 will be automatically populated by data entered into the RU-20. Small urbanized transit agencies, that receive both Section 5307 and 5311 funds, will continue to report the 5307 service data as previously established and report the rural service data to the State DOT for entry into the NTD rural module. FTA will ensure that their service is not double counted. FTA will establish a workgroup that includes selected State DOTs to assist it in the review of existing definitions to the reporting criteria to avoid confusion in entering data. Administrative procedures already exist for adjusting reporting deadlines, as requested by some States to accommodate situations where local subrecipient fiscal years are not the same as the State fiscal year.

With regard to the categories of data, FTA believes that the seven data elements listed in SAFETEA-LU are illustrative and but not exhaustive. However, when the rural module was developed in 2002, one of the SAFETEA-LU data elements, fleet type, was not included. The existing rural module will be updated to include fleet type data elements at a later date. For FY 2006, all existing data elements included on the NTD rural module must be reported by the State for each individual subrecipient.

One State DOT requested that FTA simplify its Disadvantaged Business Enterprise (DBE) reporting requirements. The State DOT also recommended the elimination of the \$250,000 program participation threshold to reduce the paperwork burden on small rural operators. The request for simplification is beyond the scope of this circular. The \$250,000 threshold is not an FTA requirement, but instead was established by the U.S.

DOT in its DBE regulation at 49 CFR part 26.

G. Chapter VII—State Management Plan

This chapter consists of Circular 9040.1E's Chapter XI, which has been moved upward in the table of contents to be consistent with the general format for FTA's revised circulars. This chapter contains no significant revisions from the existing circular, except to require documentation of any consultation process for intercity bus (see below).

H. Chapter VIII—Intercity Bus

This chapter retains the same information from Chapter VII of Circular 9040.1E and adds an enhanced consultative process requirement, as mandated by SAFETEA-LU. While consultation between a State and intercity bus operators regarding the adequacy of intercity bus service within the State was encouraged under the previous Circular, SAFETEA-LU now makes consultation mandatory for any State certifying that intercity bus needs are adequately met.

Several commenters, including State DOTs and organizations representing private bus operators, asked that the revised circular establish specific guidelines that would define "meaningful consultation" and establish a clear process to determine "unmet needs" regarding the participation of local private operators in intercity bus programs funded under Section 5311(f).

The proposed circular adopts the definition of "consultation" contained in the FTA/FHWA Joint Planning Regulations (49 CFR part 613/23 CFR part 450) and establishes four minimum elements of the consultation process. The circular also provides guidance to States for designing effective processes. The proposed circular also requires that any State certifying that needs are adequately met must have conducted a Statewide assessment of intercity bus needs no more than four years prior to the certification.

One organization representing private bus operators noted that SAFETEA-LU did not define the term "intercity bus service," and requested that FTA (1) establish a proper working definition of that term so that private operators understand what intercity bus service may not be provided by a federally-funded transit agency; and (2) what rural service, accessibility and capital projects may be properly funded by FTA.

In its 9040.1E Circular, FTA defined intercity bus service as regularly scheduled bus service for the general public that operates with limited stops over fixed routes connecting two or

more urban areas not in close proximity, that has the capacity for transporting baggage carried by passengers, and that makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available. The circular also provided additional guidance regarding eligible activities and services. This definition and guidance are retained in the proposed circular.

With regard to the request that the revised circular clarify and define eligible rural and capital intercity bus activities, consistent with 49 U.S.C. 5311(f), the revised circular retains the language from Circular 9040.1E that specifies eligible intercity bus activities to include "planning and marketing for intercity bus transportation, capital grants for intercity bus shelters, joint-use stops and depots, operating grants through purchase-of-service agreements, user-side subsidies and demonstration projects, and coordination of rural connections between small transit operations and intercity bus carriers." FTA notes that consistent with the statutory heading of Section 5311, financial assistance under Section 5311(f) must be used to support intercity bus service in rural and small urban areas. Charter service is not eligible for FTA assistance.

I. Chapter IX—Rural Transportation Assistance Program (RTAP)

This chapter contains the renumbered Chapter VIII from Circular 9040.1E. Although it makes no significant substantive changes, it reflects the new funding source for the RTAP program as defined by SAFETEA-LU. Prior to SAFETEA-LU, the RTAP was funded from FTA's research budget. Under SAFETEA-LU, the RTAP is now funded by a 2% takedown from the Section 5311 program, with 85% going to the States for local projects, and 15% for national projects to supplement State projects, such as the maintenance of a national RTAP resource center. This funding method ensures a predictable source of annual funding on a year-to-year basis.

In their responses to the November 30th Apportionments Notice, a handful of DOTs from less-populated western States supported raising the per State minimum distribution of RTAP funds (floor), while a DOT from a heavily-populated western State prefers no change be made to the existing RTAP funding floor because ample funding provided by the new low-density tier will provide for the needs of such low density (and population) States. That State suggested retaining the \$65,000 floor for each State (\$10,000 for

territories), with the balance allocated based on the non-urbanized population in the 2000 Census.

An organization representing rural transit agencies noted that training in completing rural data reporting should be a priority for the RTAP, and made available at annual and bi-annual professional meetings. The organization also recommended that the minimum apportionment per state be increased for States such as North Dakota which serve many rural operators, over States like Alaska, Hawaii and Rhode Island which, according to the Community Transportation Association of America (CTAA) database, serve only 1 to 3 operators. In addition, one commenter asked that FTA to direct some RTAP funds to a Tribal Transportation Assistance Program.

For FY 2006 RTAP allocations, FTA used the existing administrative formula with a floor of \$65,000 (\$10,000 for territories) and the balance allocated based on the nonurbanized population in the 2000 Census. Given the lack of substantial support for raising the floor in the comments to the November 30 Notice, in the revised circular, FTA is not currently proposing to change the formula for allocating State RTAP funds.

Uses for national RTAP program funds are determined by FTA in consultation with a national RTAP program review board composed of State RTAP program managers and rural transit providers. Training to support data collection and support for tribal transit are among the priorities FTA is considering, outside the scope of this circular revision.

J. Chapter X—Other Provisions

This chapter combines Circular 9040.1E's Chapter IX "Civil Rights Requirements" and Chapter X "Other Provisions." While it incorporates the same text from those two existing chapters, albeit renumbered and reorganized, the revised chapter expands the public hearing and involvement requirement for capital project planning to conform with SAFETEA-LU. It adds standardized language on Real Property Acquisition and Relocation Assistance and it relieves the pre-award and post-deliver audit review requirement for procurements of 20 vehicles or less. It amends the Buy America provisions to reflect SAFETEA-LU changes regarding post-award requests and the right of an adversely affected party to seek FTA review, and adds a new section on safety and security.

Several State DOTs asked that the revised circular provide better guidance regarding FTA's policy on charter

service, particularly for Section 5311 subrecipients that provide rural demand-responsive service. They noted particular difficulties in interpreting and applying the charter service prohibition to demand-responsive providers, since all of their service is in response to specific customer requests, and therefore can easily resemble charter service. It is also difficult for demand response operators to provide an annual event "route" as part of their public transportation services because they do not publish route schedules.

FTA believes that it would be improper to provide additional charter service guidance at this time. Consistent with Section 3032(d) of SAFETEA-LU, FTA has initiated a negotiated rulemaking seeking comment on FTA's Charter Bus regulation. FTA sponsored Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC) meetings beginning in May 2006, and the CBNRAC will develop, through negotiated rulemaking procedures, recommendations for improving the regulation regarding the prohibition of FTA grant recipients from providing charter bus service. The CBNRAC will prepare a report, consisting of consensus recommendations for the regulatory text of a draft notice of proposed rulemaking (NPRM). This report may also include suggestions for the NPRM preamble, regulatory evaluation, or other supplemental documents. Interested parties may comment on the Charter Service NPRM once it is published in the **Federal Register**.

K. Appendices

Exhibits A-G of Circular 9040.1E have been relabeled and reorganized as Appendices A-H of the revised circular. The new Appendix A contains revised application instructions that were formerly contained in Chapter V of Circular 9040.1E. Appendix B retains the Sample Selection of Projects that was formerly Exhibit A, but it has been amended to recognize the transfer of funds from the Section 5310, 5316, and 5317 programs. Appendix C retains Section 5311 budget information from the former Exhibit B, adding new codes for the Section 5310, 5316, and 5317 programs. Appendix D is new, reflecting the use of flexible funds under SAFETEA-LU. The next three appendices have been retained without significant change: Appendix E retains the sample intercity bus certification from the former Exhibit E with the addition of evidence of consultation; Appendix F reserves the Section 5333(b) labor protection warranty from the former Exhibit F; and Appendix G

retains the Capital Cost of Contracting percentage breakdowns from the former Exhibit G. The revised circular adds a new Appendix H, listing contact information for FTA's Regional Offices.

Issued in Washington, DC, this 24th day of July, 2006.

Sandra K. Bushue,

Deputy Administrator.

[FR Doc. E6-12137 Filed 7-28-06; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket Number: FTA-2005-23227]

Notice of Correction

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice correcting the comment period on FTA's Proposed Title VI Circular.

SUMMARY: On July 14, 2006, the Federal Transit Administration (FTA) published a notice of proposed Circular in the *Federal Register* (See FR Volume 71, No 135., pp. 40178 to 40187). This notice erroneously stated that comments must be received by August 14, 2006. FTA intends to establish a 60-day comment period. Therefore, comments should be submitted by September 14, 2006. Late comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FTA-05-23227 by any of the following methods: Web Site: <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site; Fax: 202-493-2251; Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL-401, Washington, DC 20590-0001; 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.

Instructions: You must include the agency name (Federal Transit Administration) and the docket number (FTA-05-23227). You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed, stamped postcard. Note that all comments received will be posted without change to the Department's Docket Management System (DMS) Web site located at <http://dms.dot.gov>. This means that if

your comment includes any personal identifying information, such information will be made available to users of DMS.

FOR FURTHER INFORMATION CONTACT:

David Schneider, Office of Civil Rights, 400 Seventh Street, SW., Washington, DC, 20590, (202) 366-4018 or at David.Schneider@fta.dot.gov.

Issued on: July 24, 2006.

Sandra K. Bushue,

Deputy Administrator.

[FR Doc.E6-12165 Filed 7-28-06; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388 (Sub-No. 100)]

CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 1 in STB Finance Docket No. 33388 (Sub-No. 100); Notice of Filing of Petition for Clarification or in the Alternative for Supplemental Order; and Issuance of Procedural Schedule.

SUMMARY: On January 20, 2006, Bridgewater Resources, Inc. (BRI) and ECDC Environmental, L.L.C. (ECDC), referred to collectively as the petitioners, filed with the Surface Transportation Board (Board) a joint petition for clarification (petition) as to the limits of the North Jersey Shared Assets Area (NJSAA), established as part of the Conrail control transaction, approved by the Board in *CSX Corp. et al.—Control—Conrail Inc. et al.*, 3 S.T.B. 196 (1998) (*Decision No. 89*).¹ In particular, petitioners seek a determination that BRI's waste transfer facility (BRI facility) is within the NJSAA and/or can be switched by Conrail under the agreements pertaining to the NJSAA. If the Board finds that the BRI facility is not located within the

¹ In *Decision No. 89*, the Board approved the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (Conrail), and the division of that carrier's assets by (1) CSX Corporation (CSXC) and CSX Transportation, Inc. (CSXT) (collectively CSX), and (2) Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR) (collectively, NS). Control of Conrail was effected by CSX and NS on August 22, 1998.

NJSAA, petitioners seek in the alternative a supplemental order that would enable Conrail to provide switching service, which NS currently provides, between the BRI facility and CSXT's Manville Yard.

By separate motions filed on February 9, 2006, NS seeks dismissal of the petition, and a protective order to quash discovery, or in the alternative, to stay all discovery pending a decision by the Board on NS's motion to dismiss. Also on February 9, 2006, Conrail requested that all discovery related to this matter be quashed, or in the alternative, stayed pending a decision by the Board on NS's motion to dismiss. On March 1, 2006, petitioners filed replies to both of NS's procedural motions. For the reasons discussed below, NS's motion to dismiss BRI's petition for clarification is denied and a schedule to allow BRI to pursue limited discovery regarding the parties' intent involving the boundaries of the NJSAA is established. BRI's alternative request for a supplemental order is denied.

DATES: The effective date of this decision is July 31, 2006. Petitioners have until August 30, 2006 to complete discovery, as prescribed by this decision. Upon completion of discovery, petitioners have until September 29, 2006 to supplement the petition based on additional information provided by NS and Conrail in response to petitioners' discovery request, unless the Board provides otherwise in connection with any motions to compel. Any person who wishes to file comments respecting this petition as supplemented must do so by October 19, 2006. Petitioners will have until October 30, 2006 to reply to those comments.

Any motions to compel that may be necessary regarding discovery requests must be filed by August 21, 2006. Replies to motions to compel will be due 3 business days later.

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's Web site at <http://www.stb.dot.gov> at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an IBM-compatible floppy disk with any textual submission in any version of either Microsoft Word or WordPerfect) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of each filing in this proceeding must be sent

(and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each of the following: (1) Christopher A. Mills, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036; (2) Kendra A. Ericson, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036; (3) John V. Edwards, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191; (4) Richard A. Allen, Zuckert, Scoutt & Rasenberger, LLP, 888 Seventeenth Street, NW., Washington, DC 20006; and (5) Shannon M. Moyer, Zuckert, Scoutt & Rasenberger, LLP, 888 Seventeenth Street, NW., Washington, DC 20006. Any reply should also be served (one copy each) on each commenting party, and may be served by e-mail, but only if service by email is acceptable to the recipient.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565-1655. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: In *Decision No. 89*, Conrail's rail operating properties were divided into two categories: Allocated Assets and Retained Assets. The latter were retained by Conrail for operation for the benefit of both CSX and NS and consist primarily of three Shared Assets Areas (SAAs), one of which is the NJSAA. Under the Shared Assets Agreements, Conrail has the right to perform switching service within the SAAs.

BRI owns and operates a fully permitted solid waste transfer station near Manville/Port Reading Jct., in Bridgewater Township, Somerset County, NJ. Non-toxic municipal solid waste (MSW), construction and demolition debris, and non-hazardous soils are transported to the BRI facility from various locations in northern New Jersey and Staten Island. These waste materials are processed at the BRI facility and shipped to disposal sites in other states, with approximately 2,500 cars of MSW moved annually.

ECDC is a subsidiary of Allied Waste Industries. ECDC arranges for the transportation of containerized shipments of MSW from collection stations at various points, including the BRI facility, to landfills in other states. ECDC pays the freight charges for most rail shipments from the BRI facility to such landfills.

Presently, NS and CSX provide rail service for these MSW shipments, pursuant to a transportation contract, under which NS acts as the switching carrier, switching loaded and empty railcars between the BRI facility and

CSXT's nearby Manville Yard, in Manville, NJ. The BRI facility is located north of NS's Lehigh Line and is served by a private spur, the Royce Spur, which connects to a track known as the Royce Running Track. BRI manages the loading of railcars and coordinates the movement of cars between its facility and Manville Yard. CSXT performs the line-haul transportation between Manville Yard and the landfill in South Carolina. ECDC pays a single, through fare for these rail transportation services.

Petitioners assert that NS service has deteriorated over the past 6 months, citing NS's failure to switch the facility on several occasions when service should have been provided. On some of these occasions, the petitioners state that BRI requested and received service from Conrail when an NS crew was unavailable. Petitioners argue that both the BRI facility and Manville Yard are located within the NJSAA, and that, therefore, Conrail should be found to be allowed to provide switch service between these points, pursuant to the NJSAA Operating Agreement approved by the Board in *Decision No. 89*.

In the alternative, should the Board find that the BRI facility is located outside the NJSAA, petitioners request that the Board issue a supplemental order, allowing Conrail to perform switching service between the BRI facility and CSXT's Manville Yard.

Petition For Clarification. Petitioners request that the Board clarify whether the BRI facility is within the NJSAA and/or can be switched by Conrail under the agreements pertaining to the NJSAA that were approved by the Board in *Decision No. 89*.

Petitioners contend that the NJSAA extends southwest of "CP-Port Reading Jct.," where CSXT's Trenton Line and NS's Lehigh Line come together. Petitioners assert that a "CP," or control point, includes everything within the approach circuits for the interlocking(s) at the location involved, including all track, signals, turnouts and electronic circuitry between the approach signals for the interlocking. Therefore, petitioners contend that the CP at Port Reading Junction, and thus the boundary of the NJSAA, extends west along the Lehigh Line to the approach signal and related circuits of the interlocking for the junction where the Trenton and Lehigh Lines converge. If the boundaries of the NJSAA are defined in that way, petitioners state that, at least a portion, if not all, of the Royce Spur track that serves the BRI facility would also be located within the NJSAA, and that the right-of-way for the

spur would abut the Conrail property in the NJSAA.

In its motion to dismiss, NS argues that petitioners' claim that the BRI facility is within the NJSAA is clearly refuted by the unambiguous provisions of the transaction agreement among NS, CSXT, and Conrail that was approved in *Decision No. 89*. NS relies on schedules and maps included in the transaction agreement that identify the portion of the Lehigh Line, running from CP Port Reading Jct. eastward to Oak Island Yard, as among the lines allocated to Conrail's NJSAA. According to NS, the transaction agreement further shows that the portion of the Lehigh Line, running from CP Port Reading Jct. westward to Allentown, PA, is allocated to Pennsylvania Lines, LLC (or PRR) (now NS). NS states that the maps show that the Royce Running Track that connects to the Royce Spur (which serves the BRI facility) is a NS line and is not in the NJSAA, and further that the Royce Running Track joins the NS portion of the line west of its connection to the NJSAA.

NS states that Port Reading Jct. is the point where Conrail's portion of the Lehigh Line terminates, where NS's portion of the Lehigh Line begins, and where the Lehigh Line meets CSXT's Trenton Line. The designation, "CP-Port Reading Jct.," signifies that the switches at that point and the signals controlling access to the interlocking are controlled by the Conrail North Jersey Train Dispatcher. However, NS argues, the boundaries of an interlocking do not define the ownership of the various tracks within the interlocking and do not determine the use of equipment and personnel over those various tracks by those other railroads.

NS asserts that the SAAs, as governed by the Shared Assets Agreements, are not broad geographic areas encompassing non-railroad as well as railroad property but consist only of railroad property. NS argues that, since under the Shared Assets Agreements Conrail may only operate over SAA tracks, Conrail may not operate to, or provide switching services for, a facility if it can do so only by operating over non-SAA tracks of NS or CSXT, such as the tracks that serve the BRI facility.

NS has presented strong evidence, based on the transaction agreement, to support its claim that the BRI facility is located outside the NJSAA. Nevertheless, it is appropriate for the Board to allow for limited discovery for BRI to obtain evidence to further develop the record as to what the parties intended in their original transaction agreement before resolving the issues that are presented here. The Board notes

that Conrail's past switching service of the BRI facility is not controlling in determining whether the BRI facility is within the NJSAA.

Therefore, NS's motion to dismiss the petition for clarification will be denied, and the Board will allow for limited discovery, a supplement to the petition, and the filing of comments by all interested persons, as described below.

Petition For Supplemental Order. In the alternative, should the Board find that the BRI facility is located outside the NJSAA, petitioners request a supplemental order that would allow Conrail to perform switching service between the BRI facility and CSXT's Manville Yard.

Under 49 U.S.C. 11327, the Board has continuing authority to enter supplemental orders to modify decisions entered in merger and control proceedings under 49 U.S.C. 11323. Citing what they consider to be NS's failure to provide adequate service, petitioners argue that the public interest favors a change in the carriers authorized to serve the BRI facility by including Conrail in that authorization.

In seeking a supplemental order that would authorize Conrail to provide its switching service outside the NJSAA, petitioners essentially request what the Board explicitly denied in *Decision No. 89*: "The ICC and the Board have consistently declined to attempt to equalize the rail transportation options of shippers who receive merger benefits with all those who do not. * * * [T]his is not the kind of harm that the agency rectifies under its conditioning power." 3 S.T.B. at 269–270. As the Board has dismissed similar claims seeking additional relief in previous Conrail decisions, it will decline to issue a supplemental order here. *See, e.g., CSX Corp. et al.—Control—Conrail Inc. et al.*, 4 S.T.B. 107 (1999). Therefore, petitioners' request for a supplemental order is denied.

Discovery. The Board will allow for limited discovery pertaining to the parties' intent in defining the NJSAA boundaries in the original transaction agreement. The Board is particularly interested in what the parties meant by the use of the term "CP," or control point, in defining the SAAs. Therefore, the NS and Conrail motions for protective order are denied to the extent needed to permit the limited discovery.

Procedural Schedule. The Board has arranged to publish this decision in the **Federal Register** on July 31, 2006, to provide notice of this proceeding to all interested persons, and to provide an opportunity for public participation.

Petition Available to Interested Persons. Interested persons may view

the petition (and/or other related filings) on the Board's Web site at <http://www.stb.dot.gov>, at the "Filings" button.

Any person wishing to obtain a paper copy of the petition may request a copy in writing or by phone from petitioners' representatives (1) Christopher A. Mills, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036; and (2) Kendra A. Ericson, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Comments and Replies. Any person who wishes to file comments regarding the petition as supplemented must file such comments by October 19, 2006. Petitioners will have until October 30, 2006, to reply to any comments filed by interested persons.

Decision by the Board. The Board will act as promptly as possible to issue its decision on the merits of the petition as supplemented.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. NS's motion to dismiss the petition for clarification is denied. Petitioners are permitted to pursue limited discovery pertaining to the parties' intent in defining the NJSAA's boundaries in the original transaction agreement.

2. Petitioners' request in the alternative for a supplemental order is denied.

3. Limited discovery, as described in this decision, must be completed by August 30, 2006.

4. Petitioners' supplement to the petition is due by September 29, 2006.

5. Comments of interested persons on the petition as supplemented are due by October 19, 2006.

6. Petitioners' reply is due by October 30, 2006.

7. This decision is effective on its service date.

Decided: July 24, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E6–12182 Filed 7–28–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Thrift Financial Report: Schedules SC, SO, LD, CF, SI, SQ, and HC

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on proposed changes to the Thrift Financial Report (TFR), Schedule SC—Consolidated Statement of Condition, Schedule SO—Consolidated Statement of Operations, Schedule LD—Loan Data, Schedule CF—Consolidated Cash Flow Information, Schedule SI—Supplemental Information, Schedule SQ—Consolidated Supplemental Questions, and Schedule HC—Thrift Holding Company. The proposed changes are to become effective with the March 31, 2007, report.

At the end of the comment period, OTS will analyze the comments and recommendations received to determine if it should modify the proposed revisions prior to giving its final approval. OTS will then submit the revisions to the Office of Management and Budget (OMB) for review and approval.

DATES: Submit written comments on or before September 29, 2006.

ADDRESSES: Send comments to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send facsimile transmissions to FAX number (202) 906–6518; send e-mails to infocollection.comments@ots.treas.gov; or hand deliver comments to the Guard's Desk, east lobby entrance, 1700 G Street, NW., on business days between 9 a.m. and 4 p.m.. All comments should refer to "TFR Revisions—March 2007, OMB No. 1550–0023." OTS will post comments and the related index on the OTS Internet Site at <http://www.ots.treas.gov>. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by

appointment. To make an appointment, call (202) 906-5922, send an e-mail to publicinfo@ots.treas.gov, or send a facsimile transmission to (202) 906-7755.

FOR FURTHER INFORMATION: You can access sample copies of the proposed March 2007 TFR form on OTS's Web site at <http://www.ots.treas.gov> or you may request them by electronic mail from tfr.instructions@ots.treas.gov. You can request additional information about this proposed information collection from James Caton, Director, Financial Monitoring and Analysis Division, (202) 906-5680, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Title: Thrift Financial Report.

OMB Number: 1550-0023.

Form Number: OTS 1313.

Abstract: All OTS-regulated savings associations must comply with the information collections described in this notice. OTS collects this information each calendar quarter, or less frequently if so stated. OTS uses this information to monitor the condition, performance, and risk profile of individual institutions and systemic risk among groups of institutions and the industry as a whole. Except for selected items, these information collections are not given confidential treatment.

Current Action: OTS last revised the form and content of the TFR in a manner that significantly affected a substantial percentage of institutions in March 2004. Revisions since March 2004 focused on specific activities and were primarily made in response to changes in generally accepted accounting principles (GAAP). These focused revisions meant that the new or revised TFR items were minor or applicable to only a small percentage of institutions.

During the past year OTS has evaluated its ongoing information needs. OTS recognizes that the TFR imposes reporting requirements, which are a component of the regulatory burden facing institutions. Another contributor to this regulatory burden is the examination process, particularly on-site examinations during which institution staff spend time and effort responding to inquiries and requests for information designed to assist examiners in evaluating the condition and risk profile of the institution. The amount of attention that examiners direct to risk areas of the institution under examination is, in large part, determined from TFR data. These data, and analytical reports including the Uniform Thrift Performance Report,

assist examiners in scoping and making their preliminary assessments of risks during the planning phase of the examination.

A risk-focused review of the information from an institution's TFR allows examiners to make preliminary risk assessments prior to onsite work. The degree of perceived risk determines the extent of the examination procedures that examiners initially plan for each risk area. If the outcome of these procedures reveals a higher level of risk in a particular area, the examiner adjusts the examination scope and procedures accordingly.

TFR data are also a vital source of information for the monitoring and regulatory activities of OTS. Among their benefits, these activities aid in determining whether the frequency of an institution's examination cycle should remain at maximum allowed time intervals, thereby lessening overall regulatory burden. More risk-focused TFR data enhance the ability of OTS to assess whether an institution is experiencing changes in its risk profile that warrant immediate follow-up, which may include accelerating the timing of an on-site examination.

In developing this proposal, OTS considered a range of potential information needs, particularly in the areas of credit risk, liquidity, and liabilities, and identified those additions to the TFR that are most critical and relevant to OTS in fulfilling its supervisory responsibilities. At the same time, OTS has identified certain existing TFR line items that are no longer sufficiently critical or useful to warrant their continued collection. OTS recognizes that the reporting burden that would result from the addition to the TFR of the new items discussed in this proposal would not be fully offset by the proposed elimination of, or establishment of reporting thresholds for, a limited number of other TFR items, thereby resulting in a net increase in reporting burden. Nevertheless, when viewing these proposed revisions to the TFR within a larger context, they help to enhance the on- and off-site supervision capabilities of OTS, which assist with controlling the overall regulatory burden on institutions.

Thus, OTS is requesting comment on the following proposed revisions to the TFR, which would take effect as of March 31, 2007. This proposal would eliminate ten line items from the TFR, revise six existing items, add 16 new items, and eliminate confidential treatment of Schedule HC data. For each of the proposed revisions of existing items or proposed new items, OTS is particularly interested in comments

from institutions on whether the information that is proposed to be collected is readily available from existing institution records. OTS also invites comment on whether there are particular proposed revisions for which the new data would be of limited relevance for purposes of assessing risks in a specific segment of the savings association industry. In such cases, OTS requests comments on what criteria, e.g., an asset size threshold or some other measure, we should establish for identifying the specific segment of the savings association industry that we should be required to report the proposed information. Finally, OTS seeks comment on whether, for a particular proposed revision, there is an alternative set of information that could satisfy OTS data needs and be less burdensome for institutions to report than the new or revised items that OTS has proposed. OTS will consider all of the comments it receives as it formulates a final set of revisions to the TFR for implementation in March 2007.

In addition to the revisions proposed in this notice, OTS expects to join the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Board), and the Office of the Comptroller of the Currency (OCC), Treasury, in publishing a proposal and request for comments to revise certain deposit information collected in the Call Report and the TFR. These revisions—on Schedule DI for TFR filers—would be proposed to facilitate calculation of the deposit insurance assessment pursuant to the Federal Deposit Insurance Reform Act of 2005 and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (collectively, the Reform Act), and pursuant to amendments to 12 CFR Part 327 proposed by the FDIC in the **Federal Register**, Vol. 71, No. 96, Thursday, May 18, 2006, page 28790.

A. Burden-Reducing Revisions

1. Eliminating SC745, Other Mortgage-Collateralized Securities Issued;
2. Eliminating CF340, Mortgage Loans—Cash Repayment of Principal;
3. Eliminating CF350, Mortgage Loans—Debits Less Credits Other Than Repayment of Principal;
4. Eliminating CF420, New Deposits Received Less Deposits Withdrawn;
5. Eliminating CF435, Deposits Acquired, Net of Dispositions in Bulk Transactions;
6. Eliminating consolidated supplemental question SQ100, "Did you acquire any assets through merger with another depository institution?";

7. Eliminating consolidated supplemental question SQ110, "Did you include in your balance sheet for the first time assets and/or liabilities acquired as a result of a branch or other bulk deposit purchase?";

8. Eliminating consolidated supplemental question SQ130, "Has there been a change in control?";

9. Eliminating consolidated supplemental question SQ160, "Has there been a merger accounted for under the purchase method?"; and

10. Eliminating consolidated supplemental question SQ170, "If you restated your balance sheet for the first time this quarter as a result of applying push-down accounting, enter the date of reorganization."

A. Revisions of Existing Items

1. Revising the instructions to SC740, Mortgage-Collateralized Securities Issued—CMOs (Including REMICs), to report total mortgage collateralized securities issued;

2. Revising the instructions to SO141, Interest Income on Mortgage Loans, to exclude prepayment penalties, late fees, and assumption fees from the line total;

3. Revising the instructions to SO160, Interest Income on Commercial Loans and Leases, to exclude prepayment penalties, late fees, and assumption fees from the line total;

4. Revising the instructions to SO171, Interest Income on Consumer Loans and Leases, to exclude prepayment penalties, late fees, and assumption fees from the line total;

5. Revising the instructions to SO410, Loan Servicing Fees, to exclude from the reported amount (a) amortization of loan servicing assets or liabilities and valuation adjustments for classes of loan servicing accounted for using the amortization method, and (b) fair value adjustments for classes of servicing carried at fair value; and

6. Revising the language for question HC840 from "Is the holding company or any of its subsidiaries regulated by a foreign financial services regulator?" to "Is the holding company or any of its affiliates conducting operations outside of the U.S. through a foreign branch or subsidiary?"

B. New Items

1. Adding a line, SO142, Prepayment Fees, Late Fees, and Assumption Fees for Mortgage Loans;

2. Adding a line, SO162, Prepayment Fees, Late Fees, and Assumption Fees for Commercial Loans;

3. Adding a line, SO172, Prepayment Fees, Late Fees, and Assumption Fees for Consumer Loans;

4. Adding a line, SO411, Servicing Amortization and Valuation Adjustments;

5. Adding a line, LD510, 1–4 Dwelling Units Construction-to-Permanent Loans;

6. Adding a line, LD520, Owner-Occupied Multifamily Permanent Loans;

7. Adding a line, LD530, Owner-Occupied Nonresidential Property (Except Land) Permanent Loans;

8. Adding a line, LD610, 1–4 Dwelling Option ARM Loans;

9. Adding a line, LD620, 1–4 Dwelling ARM Loans with Negative Amortization;

10. Adding a line, LD650, Total Capitalized Negative Amortization;

11. Adding a line, CF226, Mortgage Loans Disbursed—Permanent Loans—Home Equity and Junior Liens;

12. Adding a line, CF281, Loans and Participations Purchased—Secured by 1–4 Dwelling Units—Purchased from Entities Other Than Federally-Insured Depository Institutions or Their Subsidiaries;

13. Adding a line, CF282, Loans and Participations Purchased—Secured by 1–4 Dwelling Units—Home Equity and Junior Liens;

14. Adding a line, CF311, Loans and Participations Sold—Secured by 1–4 Dwelling Units—Home Equity and Junior Liens;

15. Adding a line, SI376, Assets Recorded on Schedule SC Under a Fair Value Option; and

16. Adding a line, SI377, Liabilities Recorded on Schedule SC Under a Fair Value Option.

C. Eliminating Confidential Treatment of Schedule HC Data

The specific wording of the captions for the new and revised TFR items discussed in this proposal and the numbering of these items in the report is preliminary.

Discussion of Proposed Revisions

A. Burden-Reducing Revisions

1. Other Mortgage-Collateralized Securities Issued

OTS proposes to eliminate TFR line SC745, Other Mortgage-Collateralized Securities Issued. For the five quarters through December 2005, no data were reported in this line. These data will be included in a redefined TFR line SC740, Mortgage-Collateralized Securities Issued.

The following three line items are proposed for elimination as several thrifts indicated these data were particularly burdensome to report and these data are not critical to supervisory efforts.

2. Cash Repayment of Principal

OTS proposes to eliminate TFR line CF340, Mortgage Loans-Cash Repayment of Principal.

3. Mortgage Loans—Debits Less Credits Other Than Repayment of Principal

OTS proposes to eliminate TFR line CF350, Mortgage Loans-Debits Less Credits Other Than Repayment of Principal.

4. New Deposits Received Less Deposits Withdrawn

OTS proposes to eliminate TFR line CF420, New Deposits Received Less Deposits Withdrawn.

The following six line items are proposed for elimination as OTS can gather these data through other means such as through our Application Tracking System.

5. Deposits Acquired, Net of Dispositions in Bulk Transactions

OTS proposes to eliminate TFR line CF435, Deposits Acquired, Net of Dispositions in Bulk Transactions.

6. Assets Acquired Through Merger With Another Depository Institution

OTS proposes to eliminate consolidated supplemental question SQ100, "Did you acquire any assets through merger with another depository institution?"

7. Assets and/or Liabilities Acquired as Result of Branch or Other Bulk Deposit Purchase

OTS proposes to eliminate consolidated supplemental question SQ110, "Did you include in your balance sheet for the first time assets and/or liabilities acquired as a result of a branch or other bulk deposit purchase?"

8. Change In Control

OTS proposes to eliminate consolidated supplemental question SQ130, "Has there been a change in control?"

9. Merger Accounted for Under the Purchase Method

OTS proposes to eliminate consolidated supplemental question SQ160, "Has there been a merger accounted for under the purchase method?"

10. Balance Sheet Restatement as Result of Applying Push-Down Accounting

OTS proposes to eliminate consolidated supplemental question SQ170, "If you restated your balance sheet for the first time this quarter as a result of applying push-down

accounting, enter the date of reorganization.”

B. Revisions of Existing Items

1. Mortgage-Collateralized Securities Issued—CMOs (Including REMICs)

OTS proposes to revise the instructions to TFR line SC740 to include all mortgage-collateralized securities issued by the reporting institution. SC740 would be renamed as “Mortgage-Collateralized Securities Issued”. This change will incorporate the data from the elimination of SC745, Other Mortgage-Collateralized Securities Issued.

2. Interest Income on Mortgage Loans

OTS proposes to revise the instructions to TFR line SO141, Interest Income on Mortgage Loans, to exclude prepayment penalties, late fees, and assumption fees from the line total. The excluded data would be reported in the proposed new line item, SO142, Prepayment Fees, Late Fees, and Assumption Fees for Mortgage Loans.

3. Interest Income on Commercial Loans and Leases

OTS proposes to revise the instructions to TFR line SO160, Interest Income on Commercial Loans and Leases, to exclude prepayment penalties, late fees, and assumption fees from the line total. The excluded data would be reported in the proposed new line item, SO162, Prepayment Fees, Late Fees, and Assumption Fees for Commercial Loans and Leases.

4. Interest Income on Consumer Loans and Leases

OTS proposes to revise the instructions to TFR line SO171, Interest Income on Consumer Loans and Leases, to exclude prepayment penalties, late fees, and assumption fees from the line total. The excluded data would be reported in the proposed new line item, SO172, Prepayment Fees, Late Fees, and Assumption Fees for Consumer Loans and Leases.

5. Loan Servicing Fees

OTS proposes to revise the instructions to TFR line SO410 to require reporting of total servicing income and expense exclusive of (a) amortization of servicing assets and liabilities, and valuation adjustments, for classes of servicing accounted for using the amortization method; and (b) fair value adjustments for classes of servicing classes carried at fair value. Excluding these data will provide a better measure of core servicing income in SO410. The excluded data would be collected through the addition of

SO411, Servicing Amortization and Valuation Adjustments, noted below; and

6. Holding Company or Affiliates Conducting Operations Outside of the U.S. Through a Foreign Branch or Subsidiary

OTS proposes to revise the question asked in TFR line HC840, “Is the holding company or any of its subsidiaries regulated by a foreign financial services regulator?” to “Is the holding company or any of its affiliates conducting operations outside of the U.S. through a foreign branch or subsidiary?” This line is being revised to more fully identify holding companies with foreign operations, including parallel banking operations. A parallel banking organization exists when at least one U.S. bank and one foreign financial institution are controlled either directly or indirectly by the same person or group of persons who are closely associated in their business dealings or otherwise acting together, but are not subject to consolidated supervision by a single home country supervisor. A foreign financial institution includes a holding company of the foreign bank and any U.S. or foreign affiliates of the foreign bank.

C. New Items

1. SO142, Prepayment Fees, Late Fees, and Assumption Fees for Mortgage Loans

OTS proposes to add TFR line SO142, Prepayment Fees, Late Fees, and Assumption Fees for Mortgage Loans, to collect data as a memorandum item to total interest income on mortgage loans to monitor changes in the volume of prepayment fees, late fees, and assumption fees relative to total interest income on mortgage loans. Beginning in 2006, pursuant to several institutions’ requests and consistent with GAAP, prepayment fees, late fees, and assumption fees were included in interest income. Adding memorandum items SO142, SO162, and SO172 for these fees will allow for analysis of loan yields and the impact of these fees on interest income during interest rate and prepayment cycles.

2. SO162, Prepayment Fees, Late Fees, and Assumption Fees for Commercial Loans

OTS proposes to add TFR line SO162, Prepayment Fees, Late Fees, and Assumption Fees for Commercial Loans, to collect data as a memorandum item to total interest income on commercial loans to monitor changes in the volume

of prepayment fees, late fees, and assumption fees relative to total interest income on commercial loans.

3. SO172, Prepayment Fees, Late Fees, and Assumption Fees for Consumer Loans

OTS proposes to add TFR line SO172, Prepayment Fees, Late Fees, and Assumption Fees for Consumer Loans, to collect data as a memorandum item to total interest income on consumer loans to monitor changes in the volume of prepayment fees, late fees, and assumption fees relative to total interest income on consumer loans.

4. SO411, Servicing Amortization and Valuation Adjustments

OTS proposes to add TFR line SO411, Servicing Amortization and Valuation Adjustments, to collect these data separately from SO410, Loan Servicing Fees, as noted under revisions to SO410. Separating amortization of servicing assets and liabilities and servicing valuation adjustments for classes of servicing assets and liabilities accounted for using the amortization method, and fair value adjustments for classes of servicing assets and liabilities accounted for using the fair value method, will allow for analysis of core income in SO410 and the volatility the adjustments in SO411 add to servicing income.

5. LD510, 1–4 Dwelling Units Construction-to-Permanent Loans

OTS proposes to add TFR line LD510, 1–4 Dwelling Units Construction-to-Permanent Loans, to collect data as a memorandum item to SC230, Construction Loans—Total for Residential 1–4 Dwelling Units. Several savings associations requested this change. Some analysts consider construction loans made to the eventual homeowner to pose less credit risk than other construction loans. Adding this line will allow OTS to monitor the activity for such loans and monitor the overall construction loan credit performance of thrifts engaging in such lending.

6. LD520, Owner-Occupied Multifamily Permanent Loans

OTS proposes to add TFR line LD520, Owner-Occupied Multifamily Permanent Loans, to collect data as a memorandum item to SC256, Permanent Loans—Total for Multifamily (5 or more) Dwelling Units. Planned TFR lines LD520 and LD530 will enable OTS to improve monitoring of commercial real estate (CRE) loan portfolios. The risk profiles of loans captured in these two line items are generally less

influenced by the condition of the broader CRE markets than other forms of CRE lending.

7. LD530, Owner-Occupied Nonresidential Property (Except Land) Permanent Loans

OTS proposes to add TFR line LD530, Owner-Occupied Nonresidential Property (Except Land) Permanent Loans, to collect data as a memorandum item to SC260, Permanent Loans—Nonresidential Property (Except Land).

8. LD610, 1–4 Dwelling Option ARM Loans

OTS proposes to add TFR line LD610, 1–4 Dwelling Option ARM Loans. The data will provide OTS with information to monitor the volume of option ARM loans within 1–4 dwelling unit mortgage loan portfolios.

9. LD620, 1–4 Dwelling ARM Loans with Negative Amortization

OTS proposes to add TFR line LD620, 1–4 Dwelling ARM Loans with Negative Amortization. The data will be used to monitor the volume of ARM loans with negative amortization features within 1–4 dwelling unit mortgage loan portfolios.

10. LD650, Total Capitalized Negative Amortization

OTS proposes to add TFR line LD650, Total Capitalized Negative Amortization. The data will allow OTS to monitor the amount of capitalized negative amortization.

11. CF226, Mortgage Loans Disbursed—Permanent Loans—Home Equity and Junior Liens Disbursed—Permanent Loans—Home Equity and Junior Liens

OTS proposes to add TFR line CF226, Mortgage Loans Disbursed—Permanent Loans—Home Equity and Junior Liens. Aggregate home equity loans have increased strongly in recent years. Among OTS-regulated thrifts, such loans have increased over 70 percent to \$91.6 billion in the first quarter of 2006 from \$53.5 billion two years earlier. The proposed line items CF226, CF281, and C311 will provide OTS with data to monitor the activity of these loans.

12. CF281, Loans and Participations Purchased—Secured by 1–4 Dwelling Units—Purchased from Entities Other Than Federally-Insured Depository Institutions or Their Subsidiaries

OTS proposes to add TFR line CF281, Loans and Participations Purchased—Secured by 1–4 Dwelling Units—Purchased from Entities Other Than Federally-Insured Depository Institutions or Their Subsidiaries.

Aggregate thrift industry loan purchases from third party originators are strong, totaling \$356 billion in 2005, or 35.2 percent of total 1–4 dwelling unit mortgage loans originated and purchased. The addition of this line item will provide OTS with information regarding the source of these purchases.

13. CF282, Loans and Participations Purchased—Secured by 1–4 Dwelling Units—Home Equity and Junior Liens

OTS proposes to add TFR line CF282, Loans and Participations Purchased—Secured by 1–4 Dwelling Units—Home Equity and Junior Liens. Industry holdings of home equity loans have increased significantly since 2004, rising over 70 percent to \$91.6 billion in the first quarter of 2006 from \$53.5 billion two years earlier. The growing volumes and importance of such loans to savings associations warrants the collection of additional data to monitor them.

14. CF311, Loans and Participations Sold—Secured by 1–4 Dwelling Units—Home Equity and Junior Liens

OTS proposes to add TFR line CF311, Loans and Participations Sold—Secured by 1–4 Dwelling Units—Home Equity and Junior Liens.

15. SI376, Assets Recorded On Schedule SC Under a Fair Value Option

OTS proposes to add TFR line SI376, Assets Recorded On Schedule SC Under a Fair Value Option. Two outstanding and one proposed Statements of Financial Accounting Standards (FAS) include options for entities to elect to measure certain assets and liabilities at fair value, with changes in fair value reported in income. These outstanding and proposed standards comprise FAS 155, Accounting for Certain Hybrid Financial Instruments—an Amendment of FASB (Financial Accounting Standards Board) Statements No. 133 and 140; FAS 156, Accounting for Servicing of Financial Assets—an Amendment of FASB Statement No. 140; and an exposure draft, The Fair Value Option for Financial Assets and Financial Liabilities—Including an Amendment of FASB Statement No. 115 (the fair value option (FVO) exposure draft).

FAS 155 allows entities to elect fair value accounting for certain hybrid financial instruments that were previously required to be bifurcated pursuant to FAS 133 with the embedded derivative accounted for separately from the host contract. FAS 156 requires institutions to initially measure servicing assets and liabilities at fair value, then to establish classes of

servicing assets for subsequent accounting for which they may elect amortization method (pre-FAS 156 method) or fair-value accounting. The FVO exposure draft proposes to allow companies to irrevocably elect fair value as the measurement attribute for certain financial assets and financial liabilities, with changes in fair value recognized in earnings as those changes occur.

FAS 155 and FAS 156 are effective for fiscal years beginning after December 15, 2006, though they may be adopted early in certain circumstances, and the FVO exposure draft is proposed to be effective for fiscal years beginning after December 15, 2006. Under the FVO exposure draft, as of the date of initial adoption, an entity would also be permitted to elect the fair value option for any existing financial asset or financial liability within the scope of the proposed Statement, with the difference between the fair value and its prior carrying amount recorded through retained earnings. OTS anticipates that relatively few institutions will elect fair value options, and therefore propose to collect minimal data. Institutions adopting fair value options may be asked to provide more detailed information separate from the TFR directly to supervisory staff.

16. SI377, Liabilities Recorded on Schedule SC Under a Fair Value Option

OTS proposes to add TFR line SI377, Liabilities Recorded On Schedule SC Under a Fair Value Option as described in FAS 155, FAS 156, and in the FVO exposure draft. FAS 155 allows entities to elect fair value accounting for certain hybrid financial instruments that were previously bifurcated pursuant to FAS 133 with the embedded derivative accounted for separately. FAS 156 requires institutions to initially measure servicing assets and liabilities at fair value, then to establish classes of servicing assets for subsequent accounting for which they may elect amortization method (current method) or fair value accounting. The FVO exposure draft proposes to allow companies to irrevocably elect fair value as the measurement attribute for certain financial assets and financial liabilities, with changes in fair value recognized in earnings as those changes occur.

FAS 155 and FAS 156 are effective for fiscal years beginning after December 15, 2006, though they may be adopted early in certain circumstances, and the proposed standard is also scheduled to be effective for fiscal years beginning after December 15, 2006. Under FASB's proposed fair value option standard, as of the date of initial adoption, an entity would also be permitted to elect the fair

value option for any existing financial asset or financial liability within the scope of the proposed statement, with the difference between the fair value and its prior carrying amount recorded through retained earnings.

D. Eliminating Confidential Treatment of Schedule HC Data

OTS is requesting comments on the continued confidential treatment of data filed by individual thrift holding companies on Schedule HC. OTS presently does not publicly release Schedule HC data filed by holding companies. However, many public requests are received for these data. In addition, some rating agencies have indicated thrift holding company debt ratings suffer due to the lack of publicly available data. One option under consideration by OTS would permit holding companies filing these data to opt to maintain the confidentiality on a case-by-case basis.

Request for Comments: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number.

In this notice, OTS is soliciting comments concerning the following information collection.

Statutory Requirement: 12 U.S.C. 1464(v) imposes reporting requirements for savings associations.

Type of Review: Revision of currently approved collections.

Affected Public: Business or for profit.
Estimated Number of Respondents and Recordkeepers: 856.

Estimated Burden Hours per Respondent: 36.5 hours average for quarterly schedules and 1.9 hours average for schedules required only annually plus recordkeeping of an average of one hour per quarter.

Estimated Frequency of Response: Quarterly.

Estimated Total Annual Burden: 130,026 hours.

OTS is proposing to revise the TFR, which is currently an approved collection of information. The effect on reporting burden of the proposed revisions to the TFR requirements will vary from institution to institution depending on the institution's asset size and its involvement with the types of activities or transactions to which the proposed changes apply. This proposal would eliminate ten line items from the TFR, revise six existing items, add 16 new items, and eliminate confidential treatment of Schedule HC data.

OTS estimates that the implementation of these reporting revisions will result in a nominal increase in the current reporting burden imposed by the TFR on all savings associations.

As part of the approval process, we invite comments addressing one or more of the following points:

a. Whether the proposed revisions to the TFR collections of information are necessary for the proper performance of the agency's functions, including

whether the information has practical utility;

b. The accuracy of the agency's estimate of the burden of the collection of information;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques, the Internet, or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

OTS will summarize the comments received and include them in the request for OMB approval. All comments will become a matter of public record.

Clearance Officer: Marilyn K. Burton, (202) 906-6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Desk Officer for OTS, FAX: (202) 395-6974, U.S. Office of Management and Budget, 725-17th Street, NW., Room 10235, Washington, DC 20503.

Dated: July 26, 2006.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E6-12251 Filed 7-28-06; 8:45 am]

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Corrections

Federal Register

Vol. 71, No. 146

Monday, July 31, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HOMELAND SECURITY**Transportation Security Administration**

[Docket No. TSA-2006-25335]

RIN 1652-AZ08

Privacy Act of 1974: System of Records; National Finance Center (NFC) Payroll Personnel System*Correction*

In notice document E6-11235 beginning on page 40530 in the issue of Monday, July 17, 2006, make the following correction:

On page 40532, in the third column, in the signature block, the signature date "Issued in Arlington, Virginia." should read "Issued in Arlington, Virginia, July 11, 2006".

[FR Doc. Z6-11235 Filed 7-28-06; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration**

[Docket No. FMCSA-2005-23459]

Hours of Service of Drivers: National Ready Mixed Concrete Association Application for Exemption*Correction*

In notice document E6-11289 beginning on page 40778 in the issue of Tuesday, July 18, 2006 make the following correction:

On page 40780, in the first column, in the signature block, the signature title "Acting Administration" should read "Acting Administrator".

[FR Doc. Z6-11289 Filed 7-28-06; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

**Monday,
July 31, 2006**

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

**Promoting Transmission Investment
Through Pricing Reform; Final Rule**

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM06-4-000; Order No. 679]

Promoting Transmission Investment Through Pricing Reform

Issued July 20, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: In this Final Rule, pursuant to the requirements of the Transmission Infrastructure Investment provisions in section 1241 of the Energy Policy Act of 2005, which adds a new section 219 to the Federal Power Act, the Federal Energy Regulatory Commission (Commission) is amending its regulations to establish incentive-based (including performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefiting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion. This Final Rule is intended to encourage transmission infrastructure investment.

DATES: *Effective Date:* This Final Rule will become effective September 29, 2006.

FOR FURTHER INFORMATION CONTACT: Jeffrey Hitchings (Technical Information), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, 202-502-6042.

Sebastian Tiger (Technical Information), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, 202-502-6079.

Andre Goodson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, 202-502-8560.

Tina Ham (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, 202-502-6224.

Martin Kirkwood (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, 202-502-8125.

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

I. Introduction

1. Pursuant to the directives in section 1241 of the Energy Policy Act of 2005 (EPA Act 2005)¹ which added a new section 219 to the Federal Power Act (FPA), in this Final Rule the Commission provides incentives for transmission infrastructure investment that will help ensure the reliability of the bulk power transmission system in the United States and reduce the cost of delivered power to customers by reducing transmission congestion. The Rule does not grant outright any incentives to any public utility, but rather identifies specific incentives that the Commission will allow when justified in the context of individual declaratory orders or section 205 filings by public utilities under the FPA. A number of these incentives reflect departures from what the Commission has permitted in the past and a willingness to consider much greater flexibility with respect to the nature and timing of rate recovery for needed transmission infrastructure. While the Commission in recent years has permitted higher rates of return and deviations from past ratemaking practices in a few individual transmission infrastructure cases,² we here determine generically that these types of ratemaking options and others should be considered on a broader basis for those applicants that can demonstrate that their infrastructure proposals meet section 219 requirements.

2. In reaching our determinations in this Final Rule, we have considered comments that reflect widely divergent views with respect to whether and when utilities should receive incentives and what they must demonstrate in order to receive particular incentives. As noted, the Rule does not grant incentives to any public utility but instead permits an applicant to tailor its proposed incentives to the type of transmission investments being made and to demonstrate that its proposal meets the requirements of section 219. Further, under the Rule, the Commission will

permit incentives only if the incentive package as a whole results in a just and reasonable rate. For example, an incentive rate of return sought by an applicant must be within a range of reasonable returns and the rate proposal as a whole must be within the zone of reasonableness before it will be approved.

3. An important component of this Rule is the willingness to provide procedural flexibility, including the use of expedited declaratory orders on permitted ratemaking treatments, to help with financing and up-front regulatory certainty for project investments. We are particularly attuned to the need for flexibility to support long-distance interstate projects that significantly reduce the cost of delivered power by reducing transmission congestion on the interstate grid.

4. The Final Rule provides incentive-based rate treatments to any public utility transmitting electric energy in interstate commerce that meets the requirements of section 219 and this Final Rule. The Commission will not limit an applicant's ability to seek incentive-based rate treatments based on corporate structure or ownership. In addition, the Final Rule provides additional incentives, to the extent within our jurisdiction,³ to any transmitting utility or electric utility transmitting electric energy in interstate commerce that joins a Transmission Organization.⁴ Finally, as explained below, to the extent our jurisdiction allows, we encourage public power entities to take advantage of the incentive-based rate treatments outlined in the Final Rule.

5. Some commenters have argued that few or no incentives are needed to

³ With regard to non-public utilities, although the Commission's regulatory authority is bound by statute, such entities could be covered by a public utility's incentive rate proposal by a separate agreement between the public utility and a non-public utility. See *Bonneville Power Administration, et al. v. FERC*, 422 F.3d 408 (9th Cir. 2005).

⁴ Transmission Organization is defined in 18 CFR 35.35(a)(2) of this Final Rule as "a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities." Electric Utility is defined in section 3(22) of the FPA as "any person or State agency (including any municipality) which sells electric energy; such term includes the Tennessee Valley Authority, but does not include any Federal power marketing agency." 16 U.S.C. 796(22). Transmitting Utility is defined in section 3(23) of the FPA as "any electric utility, qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale." 16 U.S.C. 796(23).

encourage new transmission investment. We reject these comments as fundamentally inconsistent with section 219. Section 219 reflects Congress' determination that the Commission's traditional ratemaking policies may not be sufficient to encourage new transmission infrastructure. Although section 219 does not permit approval of rates that are inconsistent with section 205 or 206, section 219 nonetheless constitutes a clear directive that "the Commission *shall* establish, by rule, incentive-based * * * rate treatments * * * for the purpose of benefiting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion" (emphasis added). We therefore cannot simply rely on existing ratemaking policy to faithfully implement section 219. This Final Rule therefore identifies a non-exclusive list of ratemaking reforms and requires applicants to tailor their proposals to fit the facts of their particular case.

6. We do agree, however, with the position of certain wholesale customers and state commissions that the Commission should not provide incentives that only serve to increase rates without providing any real incentives to construct new transmission infrastructure. Section 219(a) states that transmission incentives should be "*benefiting consumers* by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion" (emphasis added). The purpose of our Rule is to benefit customers by providing real incentives to encourage new infrastructure, not simply increasing rates in a manner that has no correlation to encouraging new investment. The Final Rule, therefore, makes clear that not every incentive identified herein will be necessary or appropriate for every new transmission investment. To provide guidance in this regard to potential applicants, we discuss below why certain incentives may, as a general matter, be better tailored to certain types of investments than others.

II. Background

7. Section 219 of the FPA requires the Commission to establish, by rule, incentive-based (including performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefiting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion. Section 219(b) requires that the rule:

¹ Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594, 315 and 1283 (2005).

² See *Western Area Power*, 99 FERC ¶ 61,306, *reh'g denied*, 100 FERC ¶ 61,331 (2002) (*Western*), *aff'd sub nom. Public Utilities Commission of the State of California v. FERC*, 367 F.3d 925 (D.C. Cir. 2004); *Michigan Electric Transmission Co., LLC*, 105 FERC ¶ 61,214 (2003) (*METC*); *American Transmission Company, L.L.C.*, 105 FERC ¶ 61,388 (2003) (*American Transmission*); *ITC Holdings Corp.*, 102 FERC ¶ 61,182, *reh'g denied*, 104 FERC ¶ 61,033 (2003) (*ITC Holdings*).

1. Promote reliable and economically efficient transmission and generation of electricity by promoting capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy in interstate commerce, regardless of the ownership of the facilities;

2. Provide a return on equity that attracts new investment in transmission facilities (including related transmission technologies);

3. Encourage deployment of transmission technologies and other measures to increase the capacity and efficiency of existing transmission facilities and improve the operation of the facilities; and

4. Allow the recovery of all prudently incurred costs necessary to comply with mandatory reliability standards issued pursuant to section 215 of the FPA, and all prudently incurred costs related to transmission infrastructure development, pursuant to section 216 of the FPA (transmission national interest corridors).

8. Section 219(c) requires that the Rule provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization and to ensure that any recoverable costs associated with joining may be recovered through transmission rates charged by the utility or through the transmission rates charged by the Transmission Organization that provides transmission service to the utility. Finally, section 219(d) provides that all rates approved under the Rule are subject to the requirements of sections 205 and 206 of the FPA,⁵ which require that all rates, charges, terms and conditions be just and reasonable and not unduly discriminatory or preferential.

9. Congress directed the Commission to issue a Final Rule establishing incentive-based rate treatments for transmission construction within one year of enactment of EPAct 2005, or by August 8, 2006. The Commission issued a Notice of Proposed Rulemaking (NOPR) on November 18, 2005 seeking comment on the Commission's proposal to comply with section 219.⁶ In the NOPR, the Commission proposed to amend Part 35 of Chapter I, Title 18 of the *Code of Federal Regulations* by eliminating paragraph 35.34(e) under Subpart F and adding paragraph 35.35 under Subpart G. The Commission received several hundred pages of

comments. A list of the commenters appears in Appendix B. As explained below, based on the comments filed, the Commission clarifies and adopts the proposed regulations in the NOPR.

III. Overview

A. The Need for New Transmission Facilities

1. Background

10. As indicated in the NOPR, investment in transmission facilities in real dollar terms declined significantly between 1975 and 1998. Although the amount of investment has increased somewhat in the past few years, data for the most recent year available, 2003, shows investment levels still below the 1975 level in real dollars.⁷ This decline in transmission investment in real dollars has occurred while the electric load using the nation's grid more than doubled.⁸ Further, the record shows that the growth rate in transmission mileage since 1999 is not sufficient to meet the expected 50 percent growth in consumer demand for electricity over the next two decades.⁹

2. Comments

11. Many commenters agree that there is a significant need for new investment in transmission facilities. EEI states that, although increases in transmission investment are predicted over the 2004 to 2008 period, the industry still has not reached the optimal level of investment.¹⁰ International Transmission notes that growth in transmission capacity has lagged behind the growth in peak demand over the last three decades and this trend is projected to continue through at least 2012.¹¹

⁷ EEI Survey of Transmission Investment: Historical and Planned Capital Expenditures (1999–2008) at 3 (2005).

⁸ Barriers to Transmission Investment, Presentation by Brendan Kirby (U.S. Department of Energy, Oak Ridge National Laboratory), April 22, 2005 Technical Conference, Transmission Independence and Investment, Docket No. AD05–5–000 (April 22, 2005 Technical Conference).

⁹ Energy Policy Act of 2005: Hearings before the House Subcommittee on Energy and Commerce, 109th Congress, First Sess. (2005) (Prepared statement of Thomas R. Kuhn, President of EEI).

¹⁰ 2004 State of the Markets Report, Federal Energy Regulatory Commission, Staff Report by the Office of Market Oversight and Investigations, June 2005, at p 27.

¹¹ See Eric Hirst, U.S. Transmission Capacity: Present Status and Future Prospects, a study prepared for EEI and the U.S. Department of Energy Office of Electric Transmission and Distribution, June 2004 (Hirst) and Keeping Energy Flowing: Ensuring a Strong Transmission System to Support Consumer Needs for Cost-Effectiveness, Security and Reliability, a report of the Consumer Energy Council of America, Transmission Infrastructure Forum, January 2005. See also Affidavit of Jon E. Jipping, Exhibit A to the Reply Comments of International Transmission (the transmission

International Transmission cites to studies estimating the cost of power interruptions and fluctuations to range from between \$29 billion and \$135 billion annually,¹² the cost of the August 2003 Northeast-Midwest blackout to be between \$4 billion and \$10 billion,¹³ congestion costs of \$4.8 billion in the ISO/RTO markets of California, New York, New England, the Midwest and PJM for 1999 to 2002,¹⁴ and increases in PJM congestion costs, from \$499 million in 2003 to \$808 million in 2004.¹⁵

12. Many transmission users and state commissions also agree that there is a need for additional investment in transmission infrastructure.¹⁶

13. However, some commenters dispute the need for new transmission investment. They assert the Commission has overlooked that investment in transmission has increased in recent years.¹⁷ They also contend that investment in transmission by utilities in RTOs and ISOs has been significant, citing to the approximately \$2 billion of approved spending in PJM since 2000. E.ON U.S. asserts that wide-spread system shortages have rarely occurred during the past 40 or more years, and that there does not appear to be any trend line that would suggest that it is becoming a serious problem now.

3. Commission Determination

14. The issue of whether there is a need for new transmission investment that is sufficient to justify transmission incentives was put to rest by section 219. Section 219 mandates that the Commission “establish, by rule, incentive-based (including performance-based) rate treatments” and, in doing so, “promote reliable and economically efficient transmission and generation of electricity by *promoting capital investment* in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy in interstate commerce” (emphasis added). If this were not enough, the legislative

system purchased in Michigan was 2.5 to 7 years behind schedule in maintenance on key transmission facilities).

¹² Kristina LaCommare and Joseph Eto, Understanding the Cost of Power Interruptions to U.S. Electricity Consumers, Lawrence Berkeley National Laboratory (September 2004) at xiv.

¹³ See Final Report on the August 14, 2003 Blackout in the United States and Canada by the U.S.-Canada Power System Outage Task Force (April 2004) at 1.

¹⁴ See Hirst at 8.

¹⁵ See 2004 PJM State of the Market Report at 37 (March 8, 2005).

¹⁶ E.g., TDU Systems, APPA, and Maryland Commission.

¹⁷ E.g., NASUCA and Connecticut DPUC.

⁵ 16 U.S.C. 824(d) and 824(e) (2000).

⁶ *Promoting Transmission Investment Through Pricing Reform*, 70 FR 71409 (Nov. 29, 2005), FERC Stats. & Regs., Proposed Regs. ¶ 32,593 (2005).

mandate of section 219 is supported by abundant evidence, as discussed above, including the fact that transmission investment in real dollars terms is lower today than it was in 1975 when the load was significantly smaller and that, even with the transmission additions of recent years, the industry still incurs significant congestion costs due to inadequate transmission.

B. The Need for Incentives

1. Background

15. In section 219(a) of the FPA, Congress directed the Commission to establish incentive-based rate treatments to foster investment in transmission facilities.

2. Comments

16. Several commenters argue that incentive-based rates are not necessary to encourage transmission construction or that incentives will not accomplish the intended goal.¹⁸ Others assert that reliance on incentives may increase the price of electricity without any real benefit.¹⁹

17. Commenters urge the Commission to limit the scope of any incentive-based treatments or to adopt mechanisms to ensure that they have their intended effect. For example, the New Mexico AG and TAPS assert that the Commission may implement an incentive-based mechanism by penalizing utilities or RTOs that fail to make investments necessary to ensure the reliability of the transmission grid. The Delaware Commission contends that providing incentives without assessing penalties for failure to meet obligations violates the just and reasonable standard. NASUCA states that it is unfair to provide incentives that increase utility profits but do not hold applicants accountable for performance. The Missouri Commission proposes that the Commission implement a process that determines performance-based return on equity. Other commenters recommend that the Commission make approval of any incentives conditional on the applicant showing a need for the incentive or that the facility would not have been built absent the incentive.

18. In contrast, a number of commenters, including EEI and a large number of utility and Transco commenters, argue that incentives are needed to foster investment in transmission facilities. EEI asserts that incentives are needed to stimulate

planning and investment in national interest electric transmission corridors. NU states that the many risk factors associated with transmission investments, such as considerable time delays, negative public opinion of transmission construction, state siting uncertainties and recovery of project costs, justify incentives.

3. Commission Determination

19. Here again, the fundamental issue raised by certain commenters—whether transmission incentives are necessary to encourage new infrastructure—was put to rest by the plain language of section 219(a), which requires the Commission issue a rule that adopts “incentive-based * * * rate treatments.” Certain commenters urge the Commission to adopt “penalties” in this rulemaking for entities that do not build sufficient transmission. We decline to do so here.

20. Other commenters do not oppose incentives outright, but rather are concerned with the extent to which incentives may increase rates to consumers. Those concerns are premature. The Final Rule does not grant incentive-based rate treatments or authorize any entity to recover incentives in its rates. Rather, it informs potential applicants of incentives that the Commission is willing to allow when justified. Before adopting any incentive-based rate treatments for a particular company, the Commission will need to determine that the applicant has justified its specific incentive request. In addition, although the Commission intends to provide flexible procedural mechanisms by which an applicant may obtain an early determination of which incentives it may receive (e.g., through an expedited declaratory order proceeding), before recovering any incentives in its rates, specific rates must be approved under section 205 of the FPA.

C. Summary of the Nature and Applicability of Incentives Adopted by the Final Rule

21. The incentives adopted by this Final Rule are properly understood only in the context of the traditional regulatory principles they seek to further. The longstanding rule is that utility rate regulation must adequately balance both consumer and investor interests. It is not enough to ensure that investors are properly compensated, and it is not enough to ensure that consumers are protected against excessive rates. Our policies must ensure both outcomes and, in doing so, strike the appropriate balance between these twin objectives. In striking that balance, the courts have recognized that

there is no single formula for establishing a just and reasonable rate. Rather, the test is whether the “end result” is just and reasonable.²⁰

22. The traditional policies that we re-examine here reflect both fundamental precepts: the need to balance investor and consumer interests and the recognition that there is no single formula for doing so. For example, in ensuring that rates produce adequate returns for investors, we do not set a single return on equity for all public utilities, nor do we presume that there is only one return on equity that is appropriate for any individual utility. Rather, our precedents require the establishment of a range of returns and we select an ROE within that range that reflects the facts and circumstances of a particular case. Similarly, our policies regarding the recovery of Construction Work in Progress (CWIP) seek to balance investor and consumer interests by allowing, in the typical case, 50 percent of CWIP in rate base. This policy balances investor and consumer interests in the ordinary case by permitting investors recovery of some construction costs on a current basis while also protecting consumers against full rate recovery before a particular facility is placed into service.

23. Our procedural regulations respecting rate recovery also seek to balance investor and consumer interests. For example, we allow public utilities to determine, as a general matter, the timing and frequency of when to seek a rate increase, which ensures that investors can file a rate increase when current rates are no longer adequate (e.g., when the utility is undergoing a large construction program). However, we also typically require a utility seeking a rate increase to expose all of its costs to review and therefore do not generally permit “single issue” rate filings (selective rate adjustment).

24. Section 219 requires the Commission to re-examine these and other policies to determine whether they continue to strike the appropriate balance in encouraging new transmission investment given the significant need for new transmission infrastructure in the Nation. We do so in recognition of the unique and substantial challenges faced by large new transmission projects. Siting major new transmission lines is extraordinarily difficult, given the environmental and land use concerns associated with obtaining and permitting new rights-of-way. The

¹⁸ E.g., APPA, TAPS, NECOE, E.ON U.S., NARUC, and New Jersey Board.

¹⁹ E.g., Connecticut DPUC, NASUCA, NECPUC, Delaware Commission, Missouri Commission, and New Mexico AG.

²⁰ See *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602–03 (1944).

experience of American Electric Power Corp. in taking 16 years to complete construction of a new high-voltage transmission line from Wyoming County, West Virginia to Jackson Ferry, Virginia represents an extreme example, but it is illustrative of the significant risks and challenges associated with siting large new transmission projects.²¹

25. These challenges and risks are underscored by the fact that, in many instances, new transmission projects will not be financed and constructed in the traditional manner. New transmission is needed to connect new generation sources and to reduce congestion. However, because there is a competitive market for new generation facilities, these new generation resources may be constructed anywhere in a region that is economic with respect to fuel sources or other siting considerations (e.g., proximity to wind currents), not simply on a "local" basis within each utility's service territory. To integrate this new generation into the regional power grid, new regional high voltage transmission facilities will often be necessary and, importantly, no single utility will be "obligated" to build such facilities. Indeed, many of these projects may be too large for a single load serving entity to finance. Thus, for the Nation to be able to integrate the next generation of resources, we must encourage investors to take the risks associated with constructing large new transmission projects that can integrate new generation and otherwise reduce congestion and increase reliability. Our policies also must encourage all other needed transmission investments, whether they are regional or local, designed to improve reliability or to lower the delivered cost of power.

26. To address the substantial challenges and risks in constructing new transmission, the Final Rule identifies instances where our regulatory policies may no longer strike the appropriate balance in encouraging new investment. The Final Rule identifies several policies that should be adjusted, where appropriate on the facts of a particular case, to encourage new transmission investment or otherwise remove impediments to such investment. Although each reform adopted by the Final Rule constitutes an "incentive" as that term is used by section 219, this label has caused some confusion in the comments. It is true that our reforms adopted in the Final

Rule provide "incentives" to construct new transmission, but they do not constitute an "incentive" in the sense of a "bonus" for good behavior. Rather, as we explain below, each will be applied in a manner that is rationally tailored to the risks and challenges faced in constructing new transmission. Not every incentive will be available for every new investment. Rather, each applicant must demonstrate that there is a nexus between the incentive sought and the investment being made. Our reforms therefore continue to meet the just and reasonable standard by achieving the proper balance between consumer and investor interests on the facts of a particular case and considering the fact that our traditional policies have not adequately encouraged the construction of new transmission.

27. A few examples will illustrate this point. The Final Rule permits higher returns on equity for certain transmission investments. This may be appropriate in several contexts, such as where the risks of a particular project exceed the normal risks undertaken by a utility (and hence are not reflected in a traditional discounted cash flow (DCF) analysis) and where necessary to encourage creation of a Transco or participation in a Transmission Organization. However, this does not mean that every new transmission investment should receive a higher return than otherwise would be the case. For example, routine investments to meet existing reliability standards may not always, for the reasons discussed below, qualify for an incentive-based ROE.

28. The Final Rule also adopts incentives that are designed to reduce the risks of new investments. For example, the Final Rule provides that the Commission will provide assurance of recovery of abandoned plant costs if the project is abandoned for reasons outside the control of the public utility. Although this qualifies as an "incentive" under section 219, it is perhaps more properly characterized as reducing a regulatory barrier—the potential lack of recovery of costs—to infrastructure development. Moreover, this reform adequately balances consumer and investor interests because it is available only when a project is abandoned for reasons beyond the control of the public utility.

29. Our Final Rule also adopts certain reforms that affect the timing of recovery of new transmission investments. Given the long lead time required to construct new transmission, and the associated cash flow difficulties faced by many entities wishing to invest in new transmission, the Final Rule

provides that, where appropriate, the Commission will allow for the recovery of 100 percent of CWIP in rate base. Here again, we seek to remove an impediment—inadequate cash flow—that our current regulations can present to those investing in new transmission. We also will permit, where appropriate, the recovery of the costs of new transmission through a single issue rate filing without requiring the public utility to re-open all its transmission rates to review. We do not, however, suggest that such selective rate adjustments will be appropriate in all cases, as discussed in more detail below. Rather, as with each incentive adopted by the Final Rule, an applicant must show that there is a nexus between its proposal to make a single issue rate adjustment and the facts of its particular case.

D. Effective Date and Duration of Effectiveness For Incentives

1. Background

30. Congress directed the Commission to issue a rule establishing incentive-based rate treatments no later than one year after enactment of EPAct 2005, or by August 8, 2006.

2. Comments

31. Certain commenters urge the Commission to apply the rule to investments made before August 8, 2005 while others ask the Commission to apply the rule to investments made after August 8, 2005.²² Certain commenters argue that the Commission should not approve incentives for facilities that are pending at the time the Final Rule becomes effective, while others request that the Commission not allow incentives for investment in facilities that an applicant already has committed to build or for Transcos that already exist.²³

32. Several commenters argue that, once the incentives have been granted, the Commission should not eliminate them, or should do so only under very limited circumstances.²⁴ In contrast, others argue that the Commission should grant incentives for a specific time period or retain the flexibility to change or review any incentives if it is found the incentives provide no customer benefit.²⁵ The California Oversight Board requests that any

²² E.g., Progress, NEMA, and PG&E.

²³ E.g., PG&E, Connecticut DPUC, NASUCA, TDU Systems and TANC.

²⁴ E.g., Progress, NEMA, EEI, Trans-Elect, and National Grid.

²⁵ E.g., TANC, Snohomish, Municipal Commenters, and TDU Systems.

²¹ Although new section 216 of the FPA improves the siting process for certain new projects, it does not eliminate all risks faced by such projects nor does it address the risks faced by other projects that do not reside in a national interest transmission corridor.

authorized incentives be subject to refund.

33. KKR explains that, under certain circumstances, investors in transmission assets may need favorable rate treatment for a sufficient period of time to ensure an appropriate return on their capital, *i.e.*, for a 15 to 30-year period.²⁶ KKR recommends that public utilities requesting incentive treatment for an extended period into the future propose criteria that can be used to evaluate that entity's performance during periodic evaluations. KKR notes that applicants may not always be able to meet certain proposed metrics due to circumstances beyond their control. For example, a transmission owner should not lose its incentive rate treatments if it does not succeed in meeting desired reductions in congestion because the applicant may not have complete control of the factors affecting congestion, such as generation additions, changes in load location and operation of neighboring systems, and RTO policies. KKR emphasizes that the Commission should retain the flexibility to assess an applicant's proposal as the facts and circumstances will vary case-by-case. Finally, KKR recommends that applicants be required to file a report on their performance every several years and that the Commission may initiate a proceeding to review incentives only if the criteria are not met. KKR explains that frequent reviews run the risk of distorting results due to the "lumpiness" of capital investment and the long time periods to make capital additions and for capital additions to have effects. Further, KKR states that frequent reviews will make long-term investments more uncertain and, hence, less likely. In supplemental comments, KKR asserts that higher ROEs are of material value for Transcos only when long-term. KKR cites International Transmission as an example, noting that it is only able to invest in excess of every dollar it earns back into its system due to the certainty afforded it by its rate compact, which is long-term, formula-based, and includes a reasonable ROE. The certainty and long-term horizon of International Transmission's rates give debt and equity investors in International Transmission comfort that they will ultimately receive an adequate return on their capital.

3. Commission Determination

34. Section 219 of the FPA became effective on August 8, 2005. Codification of section 219 on that date and the requirement for a rule authorizing investment incentives

provided notice to the industry that Congress intended that the Commission provide incentive-based rate treatments promptly. Thus, the Final Rule will become effective 60 days after publication in the **Federal Register**. However, we clarify that any investment made in, or costs incurred for, transmission infrastructure after August 8, 2005 that ensures reliability or lowers the cost of delivered power by reducing transmission congestion will be eligible for incentive-based rate treatments under this Rule. Applicants seeking incentive-based rate treatments for investments made or costs incurred after August 8, 2005 will need to satisfy the requirements of this Rule to obtain and recover any incentives and will need to make an appropriate filing under section 205.

35. The fact that a proposed expansion was in a utility's expansion plan as of August 8, 2005 does not disqualify the project for incentive treatment. Inclusion of a facility in a plan does not mean that a project can or will get built. Even where a project already has been planned or announced, the granting of incentives may help in securing financing for the project or may bring the project to completion sooner than originally anticipated. Congress's directive that the Commission issue a rule within one year of enactment of EPAct 2005 shows that Congress intended for the Commission to take steps to bring new transmission on line expeditiously.

36. With respect to the issue of how long an incentive-based proposal should remain in effect, the Commission recognizes that it may be necessary to authorize incentives that may extend over several years in order to support investment in long-term transmission. It can be important to investors making long-term investments in long-lived facilities to be assured that a ratemaking proposal adopted prior to construction of those facilities will not later be altered in a manner that undermines the basis for the financing of those facilities. The Commission will therefore allow applicants to propose specific time periods by which their incentive-based proposals will not be "re-opened" in a manner incompatible with the nature of the initial approvals. However, to ensure that ratepayers are also adequately protected, we will require any applicants seeking such a fixed term for its plan to explain how ratepayers can be assured that such a plan is delivering the benefits that formed the basis for the Commission's initial approval of it. For example, an applicant may propose periodic progress assessments with appropriate

metrics to measure how well the project is progressing and whether the proposed investment in new transmission is improving reliability or reducing congestion. Such metrics would provide the Commission a means to determine whether and how the applicant is providing the anticipated benefits and thus that the approved incentives need not be revisited. Because the scope and size of each project will differ, any applicant seeking incentive-based rate treatments may propose metrics for its project as well as the frequency for review of those metrics.²⁷ An applicant may include its proposed metrics and any timetable for review in its section 205 rate filing seeking recovery of incentives.²⁸ Where such metrics are found to be needed and are approved by the Commission, an applicant would be required to submit information filings to the Commission consistent with the approved metrics and timetable. We clarify, however, that the metrics reviews will not be opportunities to re-argue the issues addressed in proceedings granting the incentive-based rates; they are for the purpose of measuring whether the plan is being implemented as initially approved.

IV. Discussion

A. Standard for Approval of Incentive-Based Rate Treatments

1. The Final Rule Applies to the Recovery of Costs Incurred to Ensure Reliability or to Reduce Transmission Congestion, or Both.

a. Background

37. Proposed § 35.35(d)(1) specifies that the Commission will authorize incentive-based rate treatments for investment by public utilities, including Transcos, in new transmission capacity that reduces the cost of delivered power by reducing congestion or promotes reliability, as demonstrated in an application to the Commission.

b. Comments

38. Many commenters urge the Commission to be flexible in applying the incentives.²⁹ Southern and the Nevada Companies assert the Commission should not require that facilities both improve regional reliability and reduce congestion to be eligible for an incentive ROE. They

²⁷ The information may include, as well as supplement, information provided in FERC-730, discussed in section V below.

²⁸ An applicant has the option to include metrics proposals in a declaratory order proceeding, but would also need to include them in the subsequent section 205 rate filing.

²⁹ *E.g.*, FirstEnergy, Southern, Nevada Companies, AEP.

²⁶ See also National Grid and EEL.

argue that the guiding factor should be to provide incentives that improve regional reliability and/or reduce transmission congestion. AEP urges the Commission to adopt a functional approach to determine whether a project qualifies for incentives. For example, AEP suggests that projects that connect newer technology generation or renewables be eligible for incentives. Upper Great Plains contends that incentives should be available for projects that support the development of new electric generation in recognition of the expected growth in electric consumption and the need for additional investment to keep pace.

39. Several commenters urge the Commission to establish criteria for transmission projects to demonstrate that they achieve Congress' goals before projects receive an incentive.³⁰ The New York Commission asks the Commission to convene a technical conference to develop the criteria.

40. The Maryland Commission supports incentives that are forward-looking and targeted to support electric reliability, competitive markets and diversity in fuel sources, including renewable resources, in the short and long term.

c. Commission Determination

41. The purpose of section 219 of the FPA is to benefit consumers by promoting transmission capital investments that result in reliable and economically efficient transmission and generation. Congress did not enact section 219 in isolation. Section 219 is a part of a larger statutory framework in which Congress directed the Commission to take steps to address reliability of the bulk power system as well as to remedy the adverse effects of transmission congestion. For example, in new section 215 of the FPA Congress enacted a regulatory regime under which the Commission will, for the first time in its history, approve and enforce mandatory reliability standards for the nation's power grid.³¹ In new section 216, Congress directed the Secretary of Energy to identify areas of the nation in which transmission congestion adversely affects consumers (national interest electric transmission corridors) and gave the Commission certain permitting authority to ensure timely construction of transmission facilities to remedy transmission congestion in

those corridors. In section 1223 of EPAct 2005, Congress directed the Commission to encourage the deployment of advanced transmission technologies that increase the capacity, efficiency and reliability of an existing or new transmission facility. In enacting these provisions of EPAct, Congress made clear that it was equally concerned with reliability as well as the adverse impacts of transmission congestion and that the Commission should take steps to address both issues. New FPA section 219, which is complementary to these other EPAct provisions, directs the Commission to provide rate incentives for the purpose of ensuring reliability and reducing transmission congestion. However, nowhere in section 219 does the language say that the Commission may provide incentives only to applicants that propose to both improve reliability and reduce congestion. In fact, we believe it would be contrary to the intent of the new provisions, taken together, to limit incentives this way.

42. Consistent with the overall goals of Congress in EPAct 2005, and in particular its focus on reliability improvements and relief of transmission congestion, we interpret section 219 to promote capital investment in a wide range of infrastructure investments that can have either reliability or congestion benefits rather than investments that have both reliability and congestion benefits. The alternative to this reading would be to apply section 219 in a manner that would deny incentive-based rate treatments to a transmission facility that significantly enhances reliability but does not reduce the cost of delivered power by reducing transmission congestion. This would be contrary to a fundamental goal of EPAct 2005 to improve reliability of the interstate transmission grid. We do not consider such an interpretation to be reasonable. In any event, we expect there will be few transmission projects that provide one type of benefit but not the other.

43. Commenters seeking a narrow reading of section 219 are primarily concerned with the impact of any incentive-based rate treatment on an applicant's rates. These concerns are premature. Before the Commission will permit any applicant to recover incentives in its rates, the Commission will evaluate the rate impact under section 205 or 206 of the FPA. Interested parties may raise any rate concerns at that time. Further, our case-by-case approach ensures that the incentives granted will be tailored to particular circumstances. Finally, except for the rebuttable presumptions addressed

below, we will not at this time establish more detailed criteria an applicant must meet to be eligible for incentive-based rate treatments. Establishing criteria now would limit the flexibility of the Rule or improperly pre-judge which projects are acceptable for incentives. The Commission will, on a case-by-case basis, require each applicant to justify the incentives it requests. Because these proceedings will provide ample opportunity for parties to comment on any incentive proposal, we do not see the need for a technical conference or detailed criteria now. This notwithstanding, we provide certain guidance, as described below, regarding the types of projects that may be particularly well suited to certain incentives and others that may not.

2. Other Criteria For Approval of Incentives

a. Comments

44. Numerous commenters seek additional conditions to be considered in the grant of incentives. Some argue that the number of incentives should be limited while others recommend additional criteria that an applicant must satisfy³² or that the incentives be limited to certain types of facilities. For example, TDU Systems assert that the Final Rule should specifically identify other incentives that will be considered under § 35.35(d)(viii) and specify the parameters for eligibility for the incentives. EEL, however, contends the Commission should allow individual companies to propose any incentives on a case-by-case basis because the individual companies are in a better position to understand the efficacy of particular incentive mechanisms. Similarly, National Grid requests clarification that the incentives are not mutually exclusive and transmission owners should be free to propose customized rate packages that include one or more of the incentives in combination.

45. With regard to additional conditions, some commenters argue, for example, that the Commission should authorize incentives only for proposals that recognize regional differences, that are the product of an open and inclusive regional transmission planning process, increase network capacity, or that respond to specific reliability or congestion concerns. TANC argues that the Commission should limit qualification for the incentives to those transmission projects that are 200 kW and above. NÉCOE argues that incentives should be provided to

³⁰ E.g., AEP and New York Commission.

³¹ See Order No. 672, Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards, 71 FR 8662 (Feb. 17, 2006), FERC Stats. & Regs. ¶ 31,204 (2006).

³² E.g., East Texas, TANC, and TAPS.

utilities that conform to good utility practice and minimize total costs. Also, NCOE asserts that, when more than one incentive is requested, the Commission should require the applicant to demonstrate why a single, appropriately targeted incentive is insufficient. Several commenters urge the Commission to grant incentives for existing facilities and for maintenance of existing facilities.³³ The Southern Companies state that the Commission should grant incentives to proposals that resolve a significant inter or intra-regional constraint, or preclude or mitigate anticipated constraints that may or may not arise. Progress asserts that incentives should be granted to encourage installation of new software to better manage flowgates and calculate Available Transfer Capability values on existing transmission facilities. The Steel Manufacturers state that a utility does not deserve special rate treatment to maintain or upgrade its facility to comply with mandated reliability standards.

46. Several commenters urge the Commission to condition any incentive-based rate treatment on the applicant, among other things, divesting the subject facility to a Transco, demonstrating that the subject facility solves congestion constraints on a regional basis or results in significant new transfer capacity, complying with the 1992 and 1994 Policy Statements, showing that the facilities would not have been built absent the incentives, or showing that the facilities were not already necessary to meet NERC reliability criteria or normal load growth.³⁴ PJM proposes a tiered procedure to determine whether incentives are warranted. TDU Systems recommend that incentives should be denied to public utilities that have refused to provide requested relief from transmission congestion in the form of transmission upgrades or otherwise, until such congestion is remedied without the incentive rates.

47. Several commenters request that the Commission allow states to play a role in the approval or recovery of incentives because states may hinder recovery of incentives in bundled rates.³⁵ National Grid asserts that the Commission and states should have an alignment of interests on transmission investment and, therefore, there is no

basis to believe that the rule will warrant shifts in states' roles.

b. Commission Determination

48. Congress has determined that there is a need for incentives, and has directed the Commission to issue a rule to provide them. Most of the prerequisites and preconditions raised in the comments reflect a desire to limit or circumscribe the nature or applicability of incentives that may be granted under the rule. We have considered these comments and do not believe that any of them should be adopted at this time. Some of them are consistent with our overall policy goals (such as the emphasis on regional planning) and, to that extent, we explain how we will factor those considerations into an analysis of a proposed incentive. However, some are inconsistent with the policy goals of section 219 because they will only serve to discourage transmission investment. Therefore, unless adopted in other sections of this rule, we will not require applicants to satisfy the requirements proposed in the comments. For example, we reject arguments that an applicant must show that, but for the incentives, the expansion would not occur. Those arguments are based on commenters' conclusions that the Commission's prior issuances (*i.e.*, *Removing Obstacles* order, the 1992 Policy Statement, or the innovative rate proposal in Order No. 2000) required an applicant to show need prior to receiving incentives. However, the Final Rule is based on a clear directive from Congress that does not require an applicant to show that it would not build the facilities but for the incentives. This notwithstanding, we do require applicants to show some nexus between the incentives being requested and the investment being made, *i.e.*, to demonstrate that the incentives are rationally related to the investments being proposed.

49. We also consider our procedures for the approval of incentives to be comprehensive and, therefore, will not attempt to establish gradations regarding either approval requirements or the amount of incentive approved, as recommended by TANC, PJM, Industrial Consumers and others. Section 219 does not mandate higher returns for projects that are part of independent regional planning processes, nor does it require higher standards of review for projects that do not result from independent planning processes. As long as the project ensures reliability or reduces the cost of delivered power by reducing congestion, regardless of where it is located on the nationwide transmission

grid, the project is eligible for incentive ratemaking.

50. We will not impose size limits on eligible transmission projects. Projects below 200 kV can have a significant impact on reliability or reduce congestion, and therefore would qualify for incentive treatment. We will also not condition approval of incentives on market power findings. Our regulations and penalties on market power and market behavior are sufficient inducements to ensure markets are not manipulated and, therefore, additional provisions are not necessary.

51. We will not deny incentives to public utilities that have not built transmission upgrades requested by transmission customers. The scope of this Rule is restricted to implementing the requirements of section 219; the appropriate means to address this issue is to file a complaint in a separate proceeding.

52. While the promotion of renewable energy projects supports other policy and regulatory objectives, we will not adopt separate rate-based incentives for renewable energy projects. Congress directed the Commission to issue a rule to ensure reliability or to reduce the cost of delivered power by reducing transmission congestion regardless of the nature of the energy carried over the new transmission facilities. We believe that, by providing incentives applicable to all transmission facilities, the Final Rule provides incentives for transmission to serve renewable resources and, therefore, additional incentives are not necessary.

53. Because section 219 provides a new directive to the Commission to permit greater incentives and does not on its face require an individual showing of need by incentive applicants, we will not require compliance with the 1992 or 1994 Transmission Policy Statements as a precondition for approval of incentives.

54. With regard to state review, the Commission recognizes that incentives for many utilities are incorporated into rates that must receive state commission approval and that many decisions on siting and permitting of new facilities are under the jurisdiction of state and local government authorities. Because of this, we will carefully consider the views of any state bodies having jurisdiction over these matters. We also will, as discussed below, adopt a rebuttable presumption that projects approved by an appropriate state commission or siting authority are eligible for incentives under section 219. We believe that, in these ways, we will appropriately coordinate our consideration of incentives with the

³³ *E.g.*, FirstEnergy, PSEG, AEP, EEI, Duquesne and MidAmerican.

³⁴ *E.g.*, TDU Systems, APPA, TAPS, NRECA, NARUC, NASUCA, Connecticut DPUC, New Jersey Board, WPS.

³⁵ *E.g.*, CREPC, KCPL, Steel Manufacturers, Montana-Dakota, MidAmerican, and EEI.

views of responsible state agencies. We will not, however, adopt any further requirements regarding state approval, such as the requirement that an applicant receive state approval of any proposed incentives. While state approval is desirable it is not required by section 219. However, if state approval of a particular plan is required, we expect that any applicant will seek that approval in due course.

55. Finally, we reiterate that an applicant may request any combination of the incentives listed in the Final Rule. Applicants also may request incentives that are not listed in the Final Rule. The Commission will not use the Final Rule to identify each and every incentive an applicant may request. However, this in no way relieves the applicant of fully supporting its rate request and demonstrating that its request for incentives satisfies section 219 and the requirements of this Final Rule. If an interested party believes a particular incentive is not warranted, it may raise its concerns when an applicant proposes that incentive in a declaratory order or in a section 205 rate application.

56. Because section 219 makes clear that the Final Rule should promote capital investment in the operation and maintenance of all facilities for the transmission of electric energy in interstate commerce, new investment in existing facilities will be eligible for incentive-based rate treatments.³⁶ The reliability benefits of operation and maintenance capital spending are obvious, and we expect applicants incurring this type of capital spending will be able to demonstrate reliability benefits and thereby be eligible for incentive treatment.

3. Rebuttable Presumptions

57. As we discussed above, we will not adopt the variety of preconditions recommended by the commenters. However, we are nonetheless required to make findings that a particular investment falls within the scope of section 219. In making that finding, we have chosen to rely on existing processes to the extent practicable in determining whether a particular facility is needed to maintain reliability or reduce congestion. We describe these processes below and find that, if an applicant satisfies them, its project will be afforded a rebuttable presumption that it qualifies for transmission incentives. Other applicants not meeting these criteria may nonetheless demonstrate that their project is needed

to maintain reliability or reduce congestion by presenting us a factual record that would support such findings. Once we determine that the project is eligible for incentives, we would, as described below, consider whether the particular incentives being proposed are appropriate for the particular investments being made.

58. The first rebuttable presumption we will adopt relates to regional planning. Although we will not require participation in regional planning processes as a precondition for obtaining incentives, as section 219 does not require such a precondition, we believe that regional planning processes can provide an efficient and comprehensive forum through which those seeking to make transmission investments can have their projects evaluated to see if they meet the requirements of section 219. Regional planning processes can help determine whether a given project is needed, whether it is the better solution, and whether it is the most cost-effective option in light of other alternatives (*e.g.*, generation, transmission and demand response). It does so by looking at a variety of options across a large geographic footprint; thus, regional planning can allow for a broad assessment of loop flows and impacts on neighboring systems. Regional Planning also can serve as a forum in which states can readily participate.³⁷ This benefit of a regional planning process is difficult to duplicate on a utility-by-utility basis. It may prove difficult for applicants, on an individual basis, to timely gain access to all the information that might be required to make a showing that the project ensures reliability and/or reduces the cost of delivered power by reducing congestion. The Commission expressly recognized the value of regional planning when it proposed to amend the *pro forma* Open Access Transmission Tariff of jurisdictional public utilities to require regional planning to ensure that transmission is planned and constructed on a nondiscriminatory basis to support reliable and economic service to all eligible customers in a region.³⁸

³⁷ State representation in stakeholder committee is a feature of the Midwest ISO, *i.e.*, the Organization of MISO States (MISO States or OMS).

³⁸ *Preventing Undue Discrimination and Preference in Transmission Service*, Notice of Proposed Rulemaking, 71 FR 32,636 (June 6, 2006), FERC Stats. & Regs., Regs. Preambles ¶ 32,603 at P 36 (2006) (OATT Reform NOPR):

We conclude that the inadequacy of the existing obligation to conduct joint and regional transmission system planning, coupled with the lack of transparency surrounding system planning generally, require reform of the *pro forma* OATT to

Consistent with our actions in that NOPR and our belief that power markets are regional in nature and that the transmission systems supporting those markets must be supported by regional planning, we will create a rebuttable presumption for projects that result from regional planning. Thus, the Commission will rebuttably presume that transmission projects that result from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission satisfy the requirements of this Rule.³⁹ In addition, the Commission will adopt the following other rebuttable presumptions. We will also attach a rebuttable presumption that an applicant has met the requirements of section 219 if a proposed project is located in a National Interest Electric Transmission Corridor or where a project has received construction approval from an appropriate state commission or state siting authority.

4. Applicants Seeking Incentive-Based Rates Will Not Be Required To File a Cost-Benefit Analysis

a. Background

59. The NOPR explained that no cost-benefit analysis would be required to obtain incentives because customers will be protected by the Commission's review of applications pursuant to sections 205, 206 and 219 of the FPA, which require that all rates be just and reasonable and not unduly discriminatory or preferential.⁴⁰

b. Comments

60. Certain commenters argue that judicial precedent requires that incentive rates be supported by a showing of a quantifiable relationship between the incentive and the result the incentive is intended to achieve⁴¹ They also argue that the level of the incentive must be calibrated to a level that it is no more than needed to achieve the outcome that the incentive is supposed to produce.⁴² They further argue that

ensure that transmission infrastructure is constructed on a nondiscriminatory basis and is otherwise sufficient to support reliable and economic service to all eligible customers.

³⁹ An applicant may wish to file a request for incentive treatment for a project which is undergoing consideration in a regional planning process. The Commission will consider such requests, but may make any requested rate treatment contingent upon the project being approved under the regional planning process. As discussed elsewhere in this Final Rule, different types of projects and the circumstances under which they are undertaken may warrant different rate treatments and incentives.

⁴⁰ NOPR at P 16.

⁴¹ *E.g.*, NEECOE, PSE&G, and WPC Companies.

⁴² *E.g.*, NEECOE.

³⁶ In addition, the Final Rule makes available incentives for joining a Transmission Organization.

section 219 does not require significant changes to the Commission's existing rules and ratemaking policies governing incentive rates, such as its 1992 Policy Statement⁴³ and Order No. 2000,⁴⁴ in which the Commission required that applications for incentives be supported with cost-benefit analyses. They contend that the Commission's existing rules and policies already satisfy the Commission's obligations under the FPA, even as amended by section 219, and should be retained.⁴⁵

61. Several commenters state that, without a cost-benefit analysis, the Commission has no basis for concluding that a particular incentive provides customers with a net benefit or will be just and reasonable.⁴⁶ The New York Commission suggests that criteria for a cost-benefit analysis be established through a separate technical conference or rulemaking.

62. PJM argues that the Commission should provide incentives for transmission owners' participation in robust regional transmission planning that identifies both the costs and economic benefits of a given project. PJM proposes that such a process should support a rebuttable presumption that the decision to build is prudent and warrants an ROE incentive.

63. East Texas states that utilities engaged in meeting reliability standards, constructing projects across designated corridors and joining qualified Transmission Organizations should be allowed the incentive rates on the simple showing that they seek to recover no more than their prudently incurred costs. SMUD states that, under section 219, an incentive is appropriate only when it results in lower power costs to consumers. The Oklahoma Commission states that the Commission should give direction as to the showing by applicants that is acceptable in lieu of the cost-benefit analysis.

⁴³ *Incentive Ratemaking for Interstate Natural Gas Pipelines, Oil Pipelines, and Electric Utilities: Policy Statement on Incentive Regulation*, 61 FERC ¶ 61,168 at 61,590 (1992).

⁴⁴ *Regional Transmission Organizations*, Order No. 2000, 65 FR 809 (Jan. 6, 2000), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶31,089 (1999), *order on reh'g*, Order No. 2000–A, 65 FR 12,088 (Mar. 8, 2000), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶31,092 (2000), *aff'd sub nom. Public Utility District, No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

⁴⁵ *E.g.*, TDU Systems, NRECA, NECOE, and SMUD.

⁴⁶ *E.g.*, NRECA, NARUC, TAPS, East Texas, Connecticut AG, Industrial Customers, NECPUC, California Oversight Board, MISO States, DTE Energy, Wyoming Consumer Advocate, and New York Commission.

64. Other commenters argue that a cost-benefit analysis is unnecessary.⁴⁷ National Grid states that the Commission already recognized generically the benefits of using ROE adders as an incentive for needed transmission investment in the *Removing Obstacles* order.⁴⁸ FirstEnergy asserts that consumers benefit by strengthening the transmission grid and by encouraging new investment in transmission and that the benefits of these factors potentially far exceed the costs. International Transmission asserts that requiring a cost-benefit analysis could delay needed transmission upgrades.

c. Commission Determination

65. We reaffirm the NOPR's determination not to require applicants for incentive-based rate treatments to provide cost-benefit analyses. The courts have long recognized that a primary purpose of the FPA, and its counterpart the Natural Gas Act, is to encourage the orderly development of plentiful supplies of electricity and natural gas at reasonable prices.⁴⁹ To carry out this purpose, the Commission may consider non-cost factors as well as cost factors.⁵⁰ Moreover, Congress's enactment of section 219 reflects its determination that incentives generally can spur transmission investment which will, in turn, provide the benefits of a robust transmission system identified by the commenters. The Commission will consider the justness and reasonableness of any proposal for incentive rate treatment in individual proceedings.

5. Procedural Requirements for Obtaining Incentive-Based Rate Treatments

a. Background

66. Section 35.35(c) in the NOPR proposed that all rates approved under the rule would be subject to sections 205 and 206 of the FPA. Section 35.35(d) in the NOPR proposed certain options by which an applicant may seek incentive-based rate treatments. The NOPR proposed that applicants must explain whether the proposed facilities

⁴⁷ *E.g.*, National Grid.

⁴⁸ *Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States*, 94 FERC ¶ 61,272, *reh'g denied*, 95 FERC ¶ 61,225, *order on reh'g*, 96 FERC ¶ 61,155, *further order on reh'g*, 97 FERC ¶ 61,024 (2001).

⁴⁹ *See, e.g., Pub. Utilities Comm'n of the State of California v. FERC*, 367 F.3d 925, 929 (D.C. Cir. 2004) (*CPUC v. FERC*), *citing NAACP v. FPC*, 425 U.S. 662, 670 (1976).

⁵⁰ *Id.*, *citing Permian Basin Area Rate Cases*, 390 U.S. 747, 791, 815 (1968); *Maine Public Utilities Commission v. FERC*, No. 05–1001, slip op. at 19 (D.C. Cir., June 30, 2006).

are part of an independent regional planning process. The Commission also sought comment on whether the Final Rule should establish a definition of "independent regional planning process" or if the Commission should consider this issue on a case-by-case basis.

b. Comments

67. Most transmission owners request that the Commission implement a streamlined process to review and approve incentive-based rate treatments. For example, some suggest that the Commission adopt a pre-approval procedure that provides a preliminary determination of a project's rate treatment, similar to the expedited pre-approval in the Path 15 upgrade in California,⁵¹ to promote timely construction of additional needed transmission facilities.⁵²

68. A number of commenters urge the Commission not to require transmission owners to make section 205 filings to implement incentive-based rates. They argue that such proceedings may result in unreasonable delay and uncertainty and thereby discourage, if not preclude, incentive-based rate proposals.⁵³ Many of these parties urge the Commission automatically to approve incentives once the facilities or investment have been shown to ensure reliability or reduce congestion.⁵⁴ Other commenters suggest that the Commission create a category of incentives that would not require any review under section 205 and then hold paper hearings only for those incentives that do not fall within the designated category of incentives.⁵⁵ Other commenters request that the Commission establish a rebuttable presumption that each incentive is just and reasonable or allow transmission owners to self-certify that they meet the criteria of section 219.⁵⁶ Others similarly ask that there be a presumption that facilities included in a regional planning process are eligible for incentives.⁵⁷ Another group of commenters argue that projects need not be part of an independent regional planning process to receive an incentive

⁵¹ *See Western supra* note 2.

⁵² *E.g.*, Mid-American, Nevada Companies, PacifiCorp, and Northwestern.

⁵³ *E.g.*, United Illuminating, Vectren, NSTAR, and EEI.

⁵⁴ *E.g.*, Nevada Companies and MidAmerican.

⁵⁵ *E.g.*, EEI, NU, New England TOs, NYSEG, and RGE.

⁵⁶ *E.g.*, Southern and FirstEnergy.

⁵⁷ *E.g.*, BG&E, PEPCO, KCPL, National Grid, PJM, PJM TOs, United Illuminating and Vectren.

because other regional processes will also provide the same benefits.⁵⁸

69. EEI argues that public utilities should be permitted to make limited section 205 filings to specifically address recovery of incentives in rates, regardless of the form of rate.

70. National Grid requests clarification that the Commission will continue to accept incentive and rate reforms that are tailored to the specific needs of the transmission owner, so that transmission owners can be allowed more traditional rate treatment, such as accruing the allowance for funds used during construction, capitalization of pre-commercial costs and a 30-year depreciation.

71. BG&E requests clarification that, once the Commission approves an incentive-based ROE for a particular regional planning process, any entity within that planning process will be authorized to receive the approved incentive-based ROE without being required to individually apply for, or rejustify, the incentive.

72. Some commenters argue that the Commission must review all elements of an applicant's cost of service before authorizing any incentives.⁵⁹ The Steel Manufacturers assert that applicants must justify each incentive they request under sections 205, 206, and 219 and that those applications seeking more than one incentive must demonstrate that the overall package results in rates that satisfy the same criteria.

73. TAPS asserts that, when an applicant files a facility-specific incentive filing the load divisor and depreciation reserve should be updated, in the circumstance that existing rate inputs are known; and, if they are not known because they are part of a "black box" settlement, they should be imputed. TAPS suggests ways in which this can be done.

74. Snohomish argues that applicants should be required to submit a schedule of lower-cost alternatives, including potential non-wires solutions, and to explain why these alternatives were not chosen. The Oklahoma Commission recommends that state commissions make the determination as to whether the cost of the project, including the cost of the incentive, is more beneficial for ratepayers than if a generation facility were built closer to avoid the cost of transmission.

75. Finally, several commenters urge the Commission to adopt a generic definition of independent regional planning as well as guidelines and

minimum criteria for acceptable independent regional planning processes.⁶⁰ Other commenters ask the Commission to be flexible in determining what constitutes a satisfactory "regional planning process," and to take into consideration any differences among regions on a case-by-case basis.⁶¹

c. Commission Determination

76. Our goal is to provide procedural options that offer applicants flexibility to address their construction and investment opportunities while at the same time ensuring that the resulting rates are just and reasonable and not unduly discriminatory or preferential. The Commission offers two ways to accomplish this. An applicant may obtain these rulings: (1) Through a combination of a petition for a declaratory order and a subsequent section 205 filing or (2) by filing only a section 205 filing. For both of these options, the applicant must demonstrate that the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion consistent with the requirements of section 219, that there is a nexus between the incentive sought and the investment being made, and that the resulting rates are just and reasonable.

77. The Commission has found that the first option—petition for declaratory order followed by a section 205 filing—to be a valuable tool. In certain instances, it is valuable for an applicant to obtain an order indicating it qualifies for incentive-based rates prior to making a formal section 205 filing and prior to commencing siting, permitting and construction activities because such orders facilitate financing and investment in new facilities.⁶² To provide applicants with as much flexibility as possible, the Commission will permit applicants to seek a declaratory order prior to construction of the facilities to request a finding that the facilities qualify for incentive-based rate treatments. The petitioner would have to demonstrate that its proposal will either ensure reliability or reduce the cost of delivered power by reducing transmission congestion. The petitioner may rely on one of the rebuttable presumptions outlined above or make an independent demonstration. The

applicant may also use the petition to justify which incentives it seeks to implement. We clarify that any declaratory order will only rule on whether the applicant's proposal qualifies for incentive-based rate treatment and, if requested, which incentives the applicant may adopt. The applicant must seek to put the rates into effect through a separate single-issue or comprehensive section 205 filing. The Commission's expectation is that, based on past practice, a declaratory order finding that the applicant is eligible for incentive-based rate treatments would be sufficient for the applicant to obtain funding or otherwise acquire financing for the project. The Commission will seek to process petitions for declaratory order quickly. While we cannot guarantee Commission action within 60 days of the request (as is statutorily required for section 205 filings), we will strive to meet that standard.

78. If an applicant obtains a declaratory order finding that the proposal qualifies for incentive-based rate treatment, the subsequent section 205 proceeding would be limited to a review of the applicant's rates and would not include a review of whether the applicant's facility qualifies to receive incentive-based rate treatments. If the petition addresses the applicant's incentives or finds that the required nexus has been demonstrated, the applicant would not be required to rejustify those findings in the section 205 filing. Therefore, if an interested party believes a petitioner's proposal does not qualify for incentive-based rate treatments or that the incentives requested are not justified, the party must raise its objections when the petition is filed and not wait to raise them in the subsequent section 205 proceeding. If an applicant obtains a declaratory order and the proposal changes from the facts on which the declaratory order was issued, the applicant may seek another declaratory order or wait to seek approval of the changes in the subsequent section 205 filing. In that event, interested parties may challenge the changes in the section 205 proceeding.

79. The second option involves filing only a section 205 filing (either "single-issue" or comprehensive) to request all of the required approvals. Prior to recovering any incentive-based rate treatments in rates, an applicant must demonstrate that the rates in which the applicant seeks to recover any incentives are just and reasonable and not unduly discriminatory. However, the applicant will have the option of filing a comprehensive section 205 rate case in which all of the utility's rates

⁶⁰ E.g., PJM TOs, APPA, International Transmission, MidAmerican, Pacificorp, National Grid, Kentucky Commission, PJM, OMS, NRECA and Semantic.

⁶¹ E.g., Consumer Energy Council, Ameren, SDG&E, Southern Companies, NorthWestern and PEPSCO, Dairyland, and Vectren.

⁶² See *Western supra* note 2.

⁵⁸ E.g., EEI, Progress, Nevada Companies and FirstEnergy.

⁵⁹ E.g., Dairyland, TDU Systems, and NASUCA.

would be reviewed in conjunction with the proposed recovery of the incentive-based rate treatments or filing a single-issue section 205 rate filing in which only the impact of the incentive-based rate treatment for the facility granted the incentive will be addressed. As explained below in section IV.B.7 (the discussion of single-issue section 205 proceedings), the Commission believes there is a sufficient need for timely investment in transmission infrastructure to justify, in certain circumstances, a departure from our past practice by allowing an applicant to seek to recover any incentive in a single-issue section 205 rate proceeding. Single issue section 205 proceedings, as well as the declaratory order procedural option discussed above, can remove obstacles to new investments by allowing for timely cost recovery. Single issue filings also can support new investment by allowing applicants to compare the returns of such investments with the risks of the project itself, as opposed to having to compare those returns to both the risks of the project being pursued and the risks associated with re-opening all their rates, which is ordinarily a time-consuming, expensive, litigious and uncertain process. Additionally, in further facilitating these goals, the Commission does not intend to routinely convene trial-type, evidentiary hearings to review either a comprehensive or a single-issue section 205 filing but will attempt to render a decision based on the paper submissions whenever possible.

80. We clarify that no incentives will be granted on a final basis without a section 205 filing. Therefore, an RTO member will not automatically receive incentives granted to another RTO member. However, when evaluating applications for incentive-based rate treatments filed by an RTO member, the Commission will take into account incentives granted to other RTO members, particularly in cases where investments being made by that other RTO member pursuant to a regional plan also lead to the need for expansions by the applicant in its own footprint.

81. We will not specify the rate calculations for section 205 proceedings, as requested by TAPS. These issues are appropriately addressed in individual section 205 proceedings.

82. The Commission will require applicants to justify each of the incentive-based rate treatments it proposes by showing how the proposed

incentive satisfies section 219.⁶³ For example, an applicant will be required to show how the granting of the incentive will promote reliable and economically efficient transmission and generation of electricity, attract new investment, or increase capacity and efficiency of existing transmission facilities or improve their operation. The Commission, as set forth above, provides several vehicles for making this showing, including reliance on a Commission accepted regional planning process. We also will require the applicant to show that there is a nexus between the incentives being proposed and the investment being made.

83. With respect to procedures applicable to joining Transmission Organizations in § 35.35(e), we clarify that applicants also may file a petition for declaratory order as to whether the applicant qualifies for incentives under section 219(c) and then submit a comprehensive or single-issue section 205 filing to obtain approval of the rates, or simply file a comprehensive or single-issue section 205 case to obtain all necessary approvals.

B. Incentives Available To All Jurisdictional Public Utilities

84. In the NOPR, the Commission proposed eight incentive-based rate treatments for transmission infrastructure investments for all public utilities, including Transcos. As discussed below, the Commission will adopt these in the Final Rule.

1. ROE Sufficient To Attract Capital

a. ROE

i. Background

85. The Commission proposed to consider granting an incentive-based ROE to all public utilities (*i.e.*, traditional public utilities and Transcos) that build new transmission facilities that benefit consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion thereby fulfilling the requirements of section 219. As proposed, to receive an incentive-based ROE, a public utility must submit a request in an application under section 205 of the FPA and must support the ROE request by demonstrating how the new facilities will improve regional reliability and reduce transmission congestion. In addition, the application must explain whether the facilities are part of an independent regional planning process,

such as that administered by an RTO or ISO or another independent regional planning process recognized by the Commission and how the proposed ROE was derived and why it is appropriate to encourage new investment. (NOPR at P 22) Recognizing that the Commission had approved higher ROEs (referred to in the NOPR as an "adder") for certain projects that were designed to increase transfer capability or reduce congestion, the Commission sought comments on the appropriateness of a higher ROE as a mechanism for increasing investment in new capacity.

ii. Comments

86. Numerous Commenters⁶⁴ express general support for the proposal to grant incentive-based ROEs to encourage transmission investment stating that it is the most direct and effective means of attracting needed capital to improve the nation's transmission infrastructure. Southern Companies assert that allowing an incentive ROE only "within the zone of reasonableness" is inconsistent with Congress's mandate in section 219 that the Commission provide incentive ROEs for transmission investment. NSTAR and Vectren state that an incentive need not be cost-based; an incentive is justified under the statute as just and reasonable if it serves the statutory purpose of improving reliability or reducing the overall cost of delivered power.

87. Other commenters oppose the Commission's proposal to grant incentive-based ROEs for investment in new transmission facilities. For example, APPA states that an ROE adder is basically a bonus payment to reward transmission providers for doing the job for which they are already getting paid an adequate ROE under current Commission standards and relevant FPA requirements. Connecticut DPUC argues ROE adders are not a useful policy tool for improving transmission and the Commission's standard rate review process of assessing the firm's risk-adjusted cost of capital assures a completely adequate ROE without any adders. TDU Systems and New Mexico AG contend that ROE adders will fail the judicial mandate that rates be just and reasonable. CREPC maintains that a blanket ROE increase generally runs counter to the Commission's goal of encouraging transmission investment because it will either unnecessarily increase the cost of electricity to end-users or render an otherwise economic transmission

⁶³ An applicant would not be required to demonstrate that, but for the incentive, the project would not be completed. Section 219 does not require such a condition.

⁶⁴ *E.g.*, National Grid, FirstEnergy, EEL, KCPL, Xcel, Kentucky Commission, Nevada Companies, Progress, and Southern Companies.

project uneconomic in comparison to its alternatives. The California Commission states that the Commission's reliance on incentives granted to Trans-Elect with respect to financing the critical Path 15 upgrade in California several years ago is misleading since the special consideration accorded to Trans-Elect was a direct consequence of the unique, emergency energy crisis facing California and the Western United States in 2001.

88. Some commenters⁶⁵ assert that the Commission must consider the certainty of rate recovery for investment in new transmission facilities and associated lower risk—providing the basis for a lower ROE—before granting incentive-based ROEs. Others, however, such as MidAmerican and PacifiCorp, state that the Commission should consider ROE adders or other forms of enhanced returns if a project investment entails levels of risk to investors and consumers that a traditional rate of return would not cover or otherwise lacks the economic or commercial incentives necessary to attract needed capital. PJM recommends the Commission establish an equity return range based on a generic analysis of investor expectations concerning transmission investment as opposed to an analysis of a vertically integrated company or, as an alternative, recognize the overall risk of each project, such as the risk of delayed recovery at the state level.

89. TAPS states that any incentive-based adjustment to transmission returns should take the form of an equivalent adjustment to total return (*i.e.*, return on both debt and equity), rather than making the value of the adjustment vary with the transmitter's capital structure. TDU Systems state that if the Commission allows ROE adders, it should consider applying the adders to the overall rate of return as an alternative to estimating equity returns using public utility returns as a proxy.

90. MISO States argues that the Commission should make clear that proposed ROE incentives are on investments in new transmission, as contrasted with all of a public utility's transmission investment. TAPS claims that increasing the ROE for existing facilities does nothing to encourage investment in new transmission facilities. TDU Systems recommends limiting ROE adders to the portion of rate base related to the new investment.

⁶⁵ *E.g.*, NRECA, CREPC, AWEA, the Delaware Commission, New Mexico AG, NY Association, the New York Commission, the California Commission and SMUD.

iii. Commission Determination

91. Consistent with the proposal in the NOPR, the Commission will allow, when justified, an incentive-based ROE to all public utilities (*i.e.*, traditional public utilities and Transcos) for new investments in transmission facilities that benefit consumers by ensuring reliability or reducing the cost of delivered power by reducing transmission congestion. By including this provision in the Final Rule, we meet the requirement of section 219 to provide an ROE that attracts new investment in transmission facilities (including related transmission technologies). Public utilities making investments in transmission infrastructure have made clear, both in their applications for new projects and in their comments on this Rule, that the ROE incentives encourage investment. We expect that an incentive ROE will make transmission projects more attractive, and therefore more likely, when transmission projects must compete for capital in vertically-integrated utilities as well as in transmission and delivery utilities. Accordingly, the Commission will approve an ROE at the upper end of the zone of reasonableness for new infrastructure investments that meet the requirements of section 219 as discussed elsewhere in this Final Rule.

92. Concerns of blanket ROE increases and ROEs that exceed the DCF determined ROE are misplaced. The NOPR's use of the term "adder" may have contributed some confusion regarding the Commission's proposal. The Commission, as discussed later in this section, will continue to use the DCF analysis for ROE determinations. That analysis can result in a range of returns (*e.g.*, 9 percent to 13 percent), any of which falling within the range are just and reasonable. This analysis, undertaken in individual rate applications, assesses representative proxy companies and the impact of other factors, including risk, on the zone of reasonableness for ROE. Thus, contrary to certain comments, our justification for a higher ROE is not based on a risk assessment; the risk assessment is part of the traditional DCF analysis.

93. Under the Rule adopted herein, the Commission will provide ROEs at the upper end of the zone of reasonableness for transmission investments that meet the requirements of section 219 as discussed elsewhere in this Final Rule. Incentive-based ROEs, like other incentives offered in this Rule, are to be filed with the Commission for approval before rates

that reflect such incentives can be charged. Accordingly, because the approved ROE, including the impact of an incentive, will be within the zone of reasonableness, we consider this provision consistent with section 205 of the FPA. We will not create specific ROE adders (*e.g.*, 100 basis points); the Commission has always considered a range of returns in determining the appropriate ROE and we see no reason to depart from this practice. Though some commenters assert that the incentive need not be cost-based and therefore can justifiably be above the upper-end of the zone of reasonableness, we believe a return within the zone will be adequate to attract new investment and consistent with the intent of Congress in section 219. The Commission will determine the level of the ROE on a case-by-case basis when an application for an incentive-based ROE is filed with the Commission. This is consistent with the approach the Commission has employed to date, which has been found to be just and reasonable.⁶⁶

94. The foregoing does not mean, however, that we will grant incentive-based ROEs to every new investment that increases reliability or reduces congestion. The purpose of section 219 was, as described above, to require the Commission to re-examine whether its current policies are adequate to encourage new investment and strike the appropriate balance between the investor and consumer interests. In many instances, an incentive-based ROE is appropriate because our traditional policies are not sufficient to encourage new investment. For example, a large new interstate transmission project that reduces congestion or increases reliability can face substantial risks that the ordinary transmission investment does not. Further, such projects will often be undertaken only at the election of investors, given that no single entity is "required" to undertake them, and thus an incentive-based ROE is appropriate to encourage proactive behavior. Other projects also may present special risks or considerations that merit an incentive-based ROE. By contrast, there are certain projects that may not merit such an incentive. For example, routine investments made to comply with existing reliability standards may not always qualify for an incentive-based ROE. These are the types of investments that have, as a general matter, been adequately addressed through traditional ratemaking because there is an

⁶⁶ *Public Utilities Commission of the State of California v. FERC*, 367 F.3d 925 (D.C. Cir. 2004).

obligation to construct them and high assurance of recovery of the related costs. For these and other reasons, traditional ROE determinations may continue to be appropriate for these investments. This does not mean that other incentives may not be appropriate for such investments (such as 100 percent CWIP recovery) or that other reliability investments (e.g., substantial new investments to meet new standards) would not qualify for incentive-based ROE determinations.

95. We decline to apply incentives to total return, including debt, as requested by TAPS. Section 219 directs the Commission to focus on ROE, not total return; and this focus is proper. In a competitive market for debt financing, any incentives added to the actual costs of debt will flow to equity investors without actually increasing the returns of debt capital providers. Unlike debt investors who do not propose new investment or make direct investment decisions, equity investors make investment decisions directly or by giving management their proxy. Thus the opportunity for a higher ROE will directly and more transparently influence the actions of those in the position to make initial investment decisions.

96. With regard to questions about whether the opportunity to earn an incentive-based ROE applies to all of a public utility's transmission investment, we clarify that it applies to new transmission investment including investment that results in the enlargement of or improved operation and maintenance of all facilities, consistent with section 219 as discussed elsewhere in this Final Rule.

b. Alternatives to DCF Analysis

i. Background

97. While the Commission has typically utilized a DCF analysis, the NOPR (at P 20) sought comment on whether it should consider alternatives to the DCF analysis as a way to provide incentives for investment in new transmission capacity.

ii. Comments

98. A number of commenters⁶⁷ do not support a departure from the DCF method that the Commission currently uses to determine allowed ROE. APPA, for example, states that the DCF approach is generally analytically sound and has produced consistent, predictable results over time, eliminating some of the subjectivity and

randomness in equity forecasts that might occur if the Commission were to change methods on a case-by-case basis. The New York Commission supports the use of a DCF analysis as an appropriate means to determine an ROE that reflects commensurate risks and thus would attract new investments.

99. A number of commenters,⁶⁸ request that the Commission adopt additional methodologies, such as risk premium, comparable earnings, Fama-French, and/or capital asset pricing, to use along with the current DCF analysis because a multiple model approach will result in a more representative ROE range. These commenters contend that the Commission should make clear that it will consider and use alternative methods of calculating ROEs. They argue that the Commission's final determination of a just and reasonable ROE should be based on a combination of the results from those alternative methods of calculating ROEs, not on the result from any single method, because each method has its own set of theoretical deficiencies and a range of methods ensures all applicable variables are considered.

100. Other Commenters⁶⁹ ask that the Commission consider changes to how it determines proxy groups in the DCF analysis, by permitting adjustments for leveraging effects, or adopting modified or expanded proxy groups, as appropriate on a case-by-case basis, and by looking more to companies in the primary or sole business of providing electric delivery service or by isolating those activities from the other activities of public utilities included in proxy groups. EEI recommends that the Commission should use after-tax weighted average cost of capital to adjust for leverage differences among sample companies and recommends applying DCF results to the market value of equity rather than to the book value of equity.

101. NSTAR and New England TOs assert that any changes to the Commission's ROE methodology should not be considered an incentive because updating the ROE methodology including appropriate recognition of risk is not an incentive, but rather is necessary to assure that the ROEs received by transmission-owning utilities are compensatory and fair under current market conditions and recover their cost of capital.

⁶⁸ E.g., AEP, Ameren, EEI, California Commission, KCPL, PacifiCorp, PEPSCO, PJM TOs, Progress Energy, NSTAR, SDG&E, SCE, Southern Companies, Trans-Elect, Vectren and WPS.

⁶⁹ E.g., PEPSCO, APPA, PJM, AEP, FirstEnergy, and Ameren.

iii. Commission Determination

102. While commenters note that every alternative method has a theoretical deficiency and there is a benefit to introducing more information into the analysis process, we do not see any basis to conclude that the alternative methods would encourage more transmission investment than continued reliance on the DCF analysis. Our past practice of using the DCF approach has yielded just and reasonable results and is consistent with long-standing ratemaking principles. Therefore, at this time, we will not make broadly applicable changes to how the Commission has traditionally performed its DCF analysis on companies in the electric industry. However, we will consider on a case-by-case basis whether the application of the traditional DCF analysis should be modified and entertain proposals to use different proxy groups as a way of capturing different business models.

2. Construction Work in Progress (CWIP) and Pre-Commercial Expenses

a. Background

103. In the NOPR, the Commission noted that the long lead times required to plan and construct new transmission can impact utility cash flow, in turn affecting the overall financial health of a company and its ability to attract capital at reasonable prices. The Commission proposed including 100 percent of CWIP in rate base,⁷⁰ and expensing rather than capitalizing pre-commercial operations costs associated with new transmission investment in order to relieve the pressures on utility cash flows associated with transmission investment programs.

104. In 2004, the Commission accepted a proposal by American Transmission Company (American Transmission) to include 100 percent of CWIP in the calculation of transmission rates and to expense pre-commercial operations costs for new transmission investment, instead of capitalizing those costs and earning a return.⁷¹ American

⁷⁰ CWIP is a return on capital. Since 1987, the Commission's general policy has been to allow only 50 percent of the non-pollution control/fuel conversion construction costs as CWIP in rate base. The remaining construction costs, including an allowance for funds used during construction (AFUDC) which provides a return on those expenditures, generally would have been capitalized and included in rate base only when the plant went into commercial operation, i.e., when the plant became used and useful. Allowing some portion of the costs in rate base prior to commercial operation provides utilities with additional cash flow in the form of an immediate earned return. See 18 CFR 35.25(c)(3).

⁷¹ See *American Transmission*, supra note 2.

⁶⁷ E.g., APPA, the Kentucky Commission, New Mexico AG, NY Association, New York Commission, TDU Systems and TAPS.

Transmission stated that these incentives would help maintain adequate cash flow during the construction process and that without these incentives it could face a downgrade of its fixed income rating over the next several years due to inadequate cash flow, thereby increasing its capital costs by \$176 million over a twenty-year horizon.

105. The Commission stated in the NOPR that allowing public utilities, on a case-by-case basis, to include up to 100 percent of prudently incurred transmission-related CWIP in rate base and permitting them to expense prudently incurred pre-commercial operations costs will further the goals of section 219 by relieving the pressures on utility cash flows associated with their transmission investment programs and providing up-front regulatory certainty. The Commission specifically requested comment on (1) the types of costs that should be considered “pre-commercial” operation costs; and (2) whether there should be a presumption that these incentives meet the requirements of FPA section 219 that investments ensure reliability and reduce the cost of delivered power.

b. Comments

106. Most of the commenters,⁷² support including 100 percent of prudently-incurred CWIP in rate base and expensing all pre-commercial operation costs, stating that these incentives will encourage transmission investment through improved cash flow, greater rate stability and lower rates to future customers. Additionally, SDG&E notes that this incentive will balance short-term rates and long-term rates by increasing the rates during construction but lowering the rates during operation of a facility.

107. Opponents, such as the New Mexico AG and California Commission, state that maintaining the status quo would be in keeping with the long-standing ratemaking doctrine that recovery of utility plant costs should be based on utility plant that is “used and useful.” They also oppose expensing pre-commercial costs instead of capitalizing such costs because there will be no opportunity for a comprehensive review of project costs before those costs are passed on to ratepayers.

108. Snohomish argues that the Commission must implement a procedure to handle refunds where the project is never ultimately completed, and must condition inclusion of CWIP

and other pre-operation costs in rates on adherence to the construction schedule submitted with the application.

109. In its supplemental comments, EEI recommends the Commission waive the requirement that a utility requesting CWIP must provide a forward-looking allocation that estimates the average use a wholesale customer will make of the utility system over the life of a project, as currently required by 18 CFR 35.25(c)(4). EEI states the purpose of the required forward-looking allocation is to protect wholesale customers against a double whammy (*i.e.*, being required to pay for the construction of new generation facilities if the customer switched supplier). EEI states that the double whammy concern is not present with transmission facilities because the customer will almost certainly not switch transmission suppliers.

110. TDU Systems assert that CWIP should not be allowed for projects for which the public utility receives upfront interconnection payments, nor for any project for which the funds have been provided by a third party, except in tandem with crediting-back of such prepayments or investments on a schedule to which the transmission customer agrees. TDU Systems assert that if formula rates are in place for the public utility seeking to expense the cost of capital assets, inter-generational inequity is even more egregious since the public utility may well receive a one-year amortization of that expense although future rate payers will benefit from the use of those facilities for years to come.

111. Other commenters state that pre-commercial costs should be defined and the Commission should provide guidance.⁷³ Commenters’ proposals for pre-commercial costs definitions include all costs associated with pre-construction activities, such as planning, related studies, and siting costs, including (1) costs of routing studies for placement of transmission lines, (2) costs of certification associated with regulatory approvals including legal and consulting costs, (3) costs of public hearings and informational hearings, (4) costs for design, planning, drafting, surveying services, material procurement and labor in support of project construction, and (5) costs associated with development and implementation of interim measures to maintain adequate reliability level due to the delayed completion of the proposed project.

112. Additionally, EEI argues the Commission should also include as pre-commercial costs other costs that have been traditionally expensed such as costs of resetting relays, using a mobile transformer, making payments to other transmission owners for upgrades to their lines, and the write-offs of the undepreciated cost of facilities that are being replaced with new transmission investment.

113. NRECA states that these costs should be limited to prudently incurred direct transmission investment costs. TDU Systems states that in no event should the Commission allow public utilities to expense costs associated with transmission facilities such as land, towers, transformers, lines, and substations.

114. PJM recommends that costs of developing a transmission proposal through a planning process should be considered a pre-commercial cost.

c. Commission Determination

115. After considering all the comments, we adopt in this Final Rule the proposal from the NOPR to give public utilities, where appropriate, the ability to include 100 percent of prudently incurred transmission-related CWIP in rate base and to expense prudently incurred “pre-commercial” costs. These rate treatments will further the goals of section 219 by providing up-front regulatory certainty, rate stability and improved cash flow for applicants thereby easing the pressures on their finances caused by transmission development programs. As noted by many commenters, these proved effective for American Transmission by easing the pressures on American Transmission’s finances caused by its transmission development program allowing American Transmission to, among other things, stay on schedule with its development program. For American Transmission, this also meant a higher credit rating and lower cost of capital, thus benefiting customers. Similar results can be expected for other transmission developers availing themselves of such opportunities.

116. We appreciate the concerns, as expressed by the California Commission and others, that the proposal is a departure from existing ratemaking doctrine that rates should be based on plant that is “used and useful.” However, as times and circumstances warrant, the Commission has revised its ratemaking policies. In fact in Order No. 298,⁷⁴ the Commission did just that

⁷² *E.g.*, EEI, American Transmission, AWEA, PG&E, AEP, NSTAR, WPS and TDU Systems.

⁷³ *E.g.*, EEI, SCE, AEP, NSTAR, WPS, NU, FirstEnergy, the Nevada Companies, KCPL, NRECA and Ameren.

⁷⁴ *Construction Work in Progress for Public Utilities; Inclusion of Costs in Rate Base*, Order No.

when it decided to allow any public utility engaged in the sale of electric power for resale to file to include in rate base up to 50 percent of CWIP, subject to limitations. Thus, the Commission already allows inclusion of some CWIP in rate base. The Commission also departed from existing principles in the *American Transmission and Southern California Edison* cases.⁷⁵ The nation has suffered a decline in transmission investment and it is time that the Commission revisit ratemaking policies that may serve as a barrier to investment and revise them accordingly while ensuring that customers are protected and rates remain just and reasonable. Finally, we note that 100 percent recovery of CWIP costs is already provided for pollution control facilities of public utilities.⁷⁶

117. Allowing public utilities the opportunity, in appropriate situations, to include 100 percent of CWIP in the calculation of transmission rates and to expense pre-commercial operations costs for new transmission investment (instead of capitalizing these costs and earning a return) removes a disincentive to construction of transmission, which can involve very long lead times and considerable risk to the utility that the project may not go forward. The fact that public utilities have the opportunity to recover these costs in rates in a different manner than in the past does not mean that the rates are not subject to review under FPA sections 205 and 206. Even for rates that are formulaic, it may be necessary for the utility to revise the rate formula under section 205 to capture the recovery of these types of costs to the extent that they are not provided for in the formula. Moreover, as the D.C. Circuit has found, the Commission can depart from the norm as long as it reasonably balances consumers' interest in fair rates against investors' interest in "maintaining financial integrity and access to capital markets."⁷⁷ Finally, if the transmission

facility never enters service (*i.e.*, is never used or useful), the transmission owner may still seek recovery of the expenses associated with the construction work in progress (*i.e.*, the return on capital) under our abandoned plant incentive, as discussed below. Accordingly, we find that the "used and useful" ratemaking principle is not a sufficient basis to deny adoption of the NOPR's proposal. However, as explained above, we will require each applicant to demonstrate that there is a nexus between its request for 100 percent CWIP recovery and the investments being made. Ordinarily, such an incentive would be appropriate for large new investments or in situations, as occurred with ATC, where denying such an incentive would adversely affect the utility's ratings. There may be other situations as well where such an incentive is appropriate and we will consider each proposal on the basis of the particular facts of the case.

118. With regard to requests that the Commission condition inclusion of CWIP and pre-operation costs on adherence to the construction schedule submitted with the application and that we implement a procedure to handle refunds in the event the facility is not put into service, we find them to be unnecessary and/or inconsistent with the other measures we adopt in this Final Rule. As discussed further below, the Commission is proposing to provide a public utility with the opportunity to file for abandoned plant costs. Thus, requiring a refund procedure that raises perceived risks of proposing new transmission at this time would be inconsistent. We also do not see the need to condition inclusion of CWIP on adherence to a construction schedule. Because the actual recovery of CWIP will occur either under a rate on file or a rate to be filed under FPA section 205, parties will have an opportunity to raise any concerns with regard to actual expenditures vis-a-vis construction progress at that time. Accordingly, we see no reason to condition inclusion of CWIP on adherence to a construction schedule.

119. The Commission's current CWIP regulations were developed in an era of bundled wholesale services and apply to any rate schedule. Since that time, most wholesale transmission service subject to the Commission's jurisdiction is provided at unbundled rates under open access transmission tariffs. EEI points out that the requirement for a forward looking allocation that estimates the average use a wholesale customer will make of the utility system over the life of the project is not

necessary with transmission facilities. We agree. The forward looking allocation ratio was to prevent a customer that was switching power plant suppliers from having to share in the cost of CWIP of a particular plant if the customer had no responsibility in the decision of the utility to build the plant. We believe it highly unlikely that transmission customers will be faced with such an opportunity. Accordingly, because we do not view the "double whammy" to be a concern in the transmission context, we grant EEI's request and waive the requirement in 18 CFR 35.25(c)(4) as it pertains to preventing double whammy with regard to CWIP associated with new investment in transmission.⁷⁸ Further, we clarify § 35.35(d)(1)(ii) to state that other provisions of § 35.25 apply, unless waived by the Commission on a case-by-case basis. We believe that these clarifications to the regulatory text will avoid uncertainty expressed by commenters regarding the procedures for obtaining the CWIP incentive.

120. In response to comments, we clarify that pre-payments, *i.e.*, payments prior to the start of construction, for project costs by third-parties should not be included in CWIP. If a customer is making contributions in aid of construction, these amounts should not be included in rate base. Similarly, in the instance of generator interconnect, the up-front amount paid by the customer should not be included in rate base; rather it is included in rate base over time as the transmission provider provides credits to the customer.

121. The Commission has previously determined that recovery of CWIP on a formulaic basis is not permitted without prior Commission review to ensure that the Commission's CWIP standards are met.⁷⁹ The Commission in *Maine Yankee* allowed Maine Yankee to propose a method to limit its filing obligation to once a year so that Maine Yankee did not have to file each month that it changed the CWIP balances in its monthly formula charges.⁸⁰ Likewise, we will allow public utilities to propose a method to limit their filing requirement related to CWIP to an annual filing. These annual filings may be limited to CWIP and will not subject

298, FERC Stats. & Regs. ¶ 30,455 (1983), *order on reh'g*, 25 FERC ¶ 61,023 (1983).

⁷⁵ See *American Transmission*, *supra* note 2; *Southern California Edison Co.*, 112 FERC ¶ 61,014, at P 61, *reh'g denied*, 113 FERC ¶ 61,143 (2005) (SCE).

⁷⁶ See 18 CFR 35.25(c)(1).

⁷⁷ *Jersey Central Power & Light Co. v. FERC*, 810 F.2d 1168, 1178 (D.C. Cir. 1987) (*Jersey Central*). "Although a utility's rate base normally consists only of items presently 'used and useful' (see *New England Power Co. Mun. Rate Comm. v. FERC*, 668 F.2d 1327, 1333 (D.C. Cir. 1981), *cert. denied*, 457 U.S. 1117 (1982)), a utility may include 'prudent but canceled investments' in its rate base as long as the Commission reasonably balances consumers' interest in fair rates against investors' interest in 'maintaining financial integrity and access to capital markets.'" *Jersey Central*, 810 F.2d 1168, 1178 (D.C. Cir. 1987).

⁷⁸ However, this waiver does not relieve transmission owners from supplying the necessary information required in § 35.25(c)(4) that pertains to CWIP-induced price squeeze. The Commission will evaluate CWIP-induced price squeeze concerns on a case-by-case basis.

⁷⁹ *Maine Yankee Atomic Power Co.*, 66 FERC ¶ 61,375, at 62,252-53 & n. 10 (1994) (*Maine Yankee*).

⁸⁰ *Id.*, at 62,252.

public utilities to a comprehensive rate review.⁸¹

122. With respect to the types of pre-commercial operations costs that we will allow to be expensed rather than capitalized, we will allow, on a generic basis, the same types of costs that we approved in the American Transmission settlement.⁸² Further, we will entertain proposals by public utilities to expense other types of costs for consideration on a case-by-case basis.

3. Hypothetical Capital Structure

a. Background

123. The Commission stated in the NOPR (at P 29) that it has largely relied on the actual capitalization of a utility in setting its rate of return, but recognized that an overly rigid approach to evaluating a proposed capital structure could be a disincentive to investment in new transmission projects and Transco formation. Each project or company may have unique financial and cash flow requirements, and a rigid approach to acceptable capital structures could threaten the viability of some projects. Accordingly, the Commission proposed allowing applicants to file an overall rate of return based on a hypothetical capital structure, and giving them the flexibility to refinance or employ different capitalizations as may be needed to maintain the viability of new capacity additions. The Commission stated that it expected applicants to develop their proposals based on the specific requirements and circumstances of their projects, and that the Commission would evaluate proposals for this incentive on a case-by-case basis. The Commission required public utilities to provide support in their application for why the hypothetical capital structure incentive is needed to promote investment consistent with the goals of section 219. The Commission required the applicant to provide its transmission investment plan and explain the

⁸¹ We deny the request to limit recovery of these incentives to the amount originally budgeted. We note that, as a practical matter, it would be difficult to hold electric transmission projects to the original budget estimate when it can be 10 to 15 years between the time the project is proposed and lines are actually built. Also, if public utilities are held to recovering only originally estimated budgets, they would either have incentives to overestimate costs or to avoid the risky projects which the policy is intended to facilitate.

⁸² American Transmission, in its application approved in American Transmission defined pre-certification costs as preliminary survey and investigation costs in Account 183. These costs include all expenditures for, preliminary surveys, plans and investigations, made for the purpose of determining the feasibility of utility projects and costs of studies and analyses mandated by regulatory bodies related to plant in service.

specific projects to which the proposed return will apply.

b. Comments

124. Many commenters support the hypothetical capital structure as an incentive.⁸³ Both American Transmission and Trans-Elect note that they received approval to use a hypothetical capital structure and that they had been able to stay on schedule for extensive transmission construction programs.⁸⁴

125. Several parties, including EEI, NSTAR and NU argue in a similar vein that hypothetical capital structures can aid investments by companies that are entering a large capital expenditure program or are emerging from financial distress and may be aiming for a capital structure they have not yet realized. Semantic suggests a 75 percent equity and 25 percent debt capital structure be used to reflect the higher risks of early adoption of advanced technologies.

126. PJM and NSTAR state that hypothetical capital structures are particularly useful for projects involving consortia. PJM cites its proposed consortium approach to building transmission, where a capital structure could be based on the project as a whole rather than piecemeal based on the individual capital structures of each participant in individual rate cases.⁸⁵

127. A number of commenters oppose hypothetical capital structures.⁸⁶ APPA and CREPC argue hypothetical capital structures could result in a windfall to public utilities by increasing actual return far in excess of the Commission's allowed return on equity. Commenters also express concern that the proposed incentive represents a departure from Commission precedent and could result in unjust and unreasonable rates.

128. Other commenters, such as the Kentucky Commission, Dairyland and MISO States, assert that the Commission should preclude a public utility from receiving both hypothetical capital structure and the ROE incentive because

⁸³ American Transmission, EEI, First Energy, KCPL, Nevada Companies, NSTAR, NU, NYSEG and RGE, PJM, PG&E, Progress, Semantic, Trans-Elect, United Illuminating and Xcel support the proposal.

⁸⁴ Trans-Elect cites *Western*, 99 FERC ¶ 61,306 at 62,280, *reh'g denied*, 100 FERC ¶ 61,331 at P 7, 9 (stating that rate treatments including hypothetical capital structure were necessary for the Path 15 project to be built). See also, *METC*, 105 FERC ¶ 61,214 at P 20 (Commission recognized the need to encourage, through regulatory rate-making policy, the independent business model).

⁸⁵ PJM TOs concur that the incentive could be helpful in project-specific rates.

⁸⁶ E.g., California Commission, TDU Systems, APPA, CREPC, Steel Manufacturers, New Mexico AG, the Oklahoma Commission, PPC, NECOE, Connecticut AG, and the Delaware Commission.

combining the incentives could result in adopting a cost of equity well in excess of the DCF range of reasonableness.

129. Because of concerns about the criteria to be used in evaluating proposals for hypothetical capital structures, many parties, including CREPC, California Commission, NRECA and California Oversight Board, recommend evaluating the proposal on a case-by-case basis, with California Oversight Board arguing for standard of proof much higher than merely having to support the proposal as the NOPR proposes.

130. NECOE states that the Commission should categorically prohibit vertically-integrated utilities from using a hypothetical capital structure. MISO States argues that this incentive is not reasonable, especially if applied to a company's entire rate base, instead of just its new transmission. APPA states that if a specific transmission project is financed separately from other projects within a transmission network (e.g., merchant transmission line), it may be appropriate to evaluate its capitalization separately from other affiliates; however, the evaluation should be based on actual capitalization instead of hypothetical capitalization. In contrast, Ameren asserts that hypothetical capital structures beyond project-financed investments can be supported and should be considered on a case-by-case basis.⁸⁷

c. Commission Determination

131. The Commission finds that hypothetical capital structures can be an effective tool available to public utilities to foster transmission investment in appropriate circumstances. As some commenters point out, use of a hypothetical capital structure is not new. For example, the Commission has allowed independent transmission companies to use a hypothetical capital structure to recognize the significant benefits of independent ownership and operation of transmission including, among other things, improved access to capital markets for transmission investment⁸⁸ and the Commission has allowed its use for specific projects when shown to be necessary for project financing, among other things.⁸⁹ Further, as PJM argues in its comments, hypothetical capital structures may be

⁸⁷ Ameren states that the Commission has approved the use of a hypothetical capital structure to better reflect the risk profile of a regulated enterprise. See *High Island Offshore Systems, L.L.C.*, 110 FERC ¶ 61,043, at P 143, *order on reh'g*, 112 FERC ¶ 61,050 (2005) (*High Island*).

⁸⁸ *METC*, 105 FERC ¶ 61,214 at P 20.

⁸⁹ *Western*, *supra* note 2.

effective for development of consortium projects. This can be especially important for projects with a diverse set of sponsors, some of which have different capital structures, (e.g., a power marketing agency that contributes access but no equity compared to a project sponsor that brings only equity to a proposed investment). We note the rise in interest in these types of projects, including such large-scale, multiple-developer projects as the Frontier Line and TransWest proposals. Thus, the Commission finds that, in certain contexts, this incentive is appropriate for consideration under section 219 because it has been demonstrated to foster the development of transmission investment, as indicated by the experience of American Transmission and Trans-Elect.

132. The Commission continues to believe that an overly rigid approach to evaluating proposed capital structures may discourage the development of new transmission projects. Therefore, the Commission will evaluate each proposal on a case-by-case basis but will not prescribe specific criteria or set target debt/equity ratios for evaluating hypothetical capital structures, as requested by some commenters.⁹⁰

133. We will not categorically deny the incentive to vertically-integrated utilities, as recommended by NCOE. We agree with Ameren that there may be circumstances in which a hypothetical capital structure may be appropriate for a transmission investment by a vertically-integrated utility. However, we are not suggesting that hypothetical capital structures will become the norm. As with the other incentives, we will require that the applicant demonstrate a nexus between its proposed incentive and the facts of its particular case.

134. In this regard, we note that many of the instances in which hypothetical capital structures are used and can be used reflect unique circumstances, such as a project or consortium that requires a special capital structure where the capital structure may change significantly with new investments. We disagree with TDU Systems that the Commission has (or should adopt) a general policy on when to use hypothetical capital structures. Moreover, we do not believe that the Commission's recent approvals of hypothetical capital structures for electric transmission companies have

⁹⁰ We note that many commenters support case-by-case review and recognize the merits of evaluating the specific circumstances of hypothetical capital structure proposals.

resulted in abnormally high equity ratios or over-compensation for the equity holder at the expense of the ratepayer.

4. Accelerated Depreciation

a. Background

135. In the NOPR (at P 30), the Commission proposed accelerated depreciation as another way to increase cash flow to utilities, thereby removing a potential disincentive to investing. The Commission has determined that in some circumstances allowing accelerated depreciation is warranted to encourage investment in transmission infrastructure because it provides improved cash flow and better positions public utilities for longer-term transmission investments.⁹¹ The Commission stated that permitting accelerated depreciation more broadly than just for emergency conditions or special projects may further the goals of section 219 by providing incentives to undertake transmission projects that have the potential to reduce the cost of delivered power and ensure reliability, and, therefore, proposed to allow transmission facilities to be depreciated over a period of 15 years, in place of the typical Commission practice to allow depreciation over the useful life of the facilities.⁹²

136. The Commission also sought comment on two issues. The Commission asked whether 15 years is an appropriate time period for cost recovery or whether the Commission should establish a presumption of a shorter or longer depreciable life for new transmission facilities.⁹³ The Commission also requested comment on whether accelerated depreciation has any longer-term negative impacts that would undermine the goals of section 219.

b. Comments

137. A number of commenters support the proposal to allow accelerated depreciation of 15 years for the reasons set forth in the NOPR.⁹⁴ Some of the supporters, such as the

⁹¹ See *Removing Obstacles* and *Western*, *supra* note 2.

⁹² *Removing Obstacles*, 94 FERC ¶ 61,272, at 61,968–69.

⁹³ For example, in *Removing Obstacles*, the Commission permitted a 10-year depreciable life for facilities that will increase transmission capacity to relieve existing constraints and could be in service within a few months.

⁹⁴ E.g., Ameren, EEI, BG&E, FirstEnergy, NSTAR, PG&E, PJM, PJM TOs, SCE and WPS. Ameren, MidAmerican and Nevada Companies assert that the Commission should be receptive to a shorter depreciable life or that a different life may be appropriate, possibly tied to the term of a service agreement.

Delaware Commission, KCPL, International Transmission, NYSEG and RGE, Progress, Siemens, Upper Great Plains, and United Illuminating recommend that the incentive should be optional.

138. Other commenters oppose the proposal to allow accelerated depreciation of transmission facilities.⁹⁵ For example, Connecticut AG, NCOE and TANC assert the accelerated depreciation incentive will increase costs and rates and result in gold-plating and over-building of transmission infrastructure. APPA claims that after new transmission facilities have been depreciated over the shorter time period proposed by the Commission, the transmission owners will essentially be providing transmission service for free. APPA is concerned that when this happens the transmission owners will propose to “recalibrate” (i.e., increase) the transmission rate base to depreciate the same facilities yet another time at ratepayer expense.

139. Additionally, TAPS opposes accelerated depreciation because transmitting utilities will no longer earn a return on their investments after the facility has been depreciated and would potentially seek to recover a management fee which would deny ratepayers of the supposed benefits of accelerated depreciation.⁹⁶ TAPS claims that given the likelihood of this management fee, the Commission cannot refer to accelerated depreciation as a timing difference. Ameren, on the other hand, states the one drawback to accelerated depreciation is that once the asset has been fully depreciated, the public utility can not earn a return.⁹⁷ Ameren states the Commission should consider generic procedures for the establishment of compensatory management fees for fully depreciated transmission assets.

140. TAPS also argues that accelerated depreciation would skew investments towards depreciable plant and away from non-depreciable land even if acquisition of rights-of-way was the cheaper alternative. TAPS states that, if the Commission is intent on permitting accelerated depreciation, the Commission should require the utility to auction off the fully depreciated facilities at full market value with the proceeds credited to ratepayers.

⁹⁵ E.g., TDU Systems, the California Commission, APPA, the Connecticut AG, NY Association, NCOE, TAPS, the New York Commission and TANC.

⁹⁶ TAPS cites *High Island*, 110 FERC ¶ 61,043, at P 105–115.

⁹⁷ AEP and International Transmission also note this concern.

141. California Commission opposes accelerated depreciation because when a facility is placed into service, the value of the undepreciated plant is at its highest; therefore, the company earns a high return on the plant. As a result, the company has immediate cash flow that does not need to be enhanced. California Commission, TAPS and TDU Systems express concern that accelerated depreciation may cause generational inequities between those who pay for the facilities now and those who do not have to pay later.

142. EEI states that this incentive should not be dependent on corporate structure, should not be limited to 15 years when it may be appropriate to use a shorter depreciable life for certain facilities, and when 15 years is used by a public utility, the company should be able to match the tax law depreciation methodology, which weights the tax depreciation more heavily toward the beginning of the life of the project rather than spreading it evenly over 15 years.

143. APPA cites to a number of concerns including the effect of such accelerated depreciation on book-tax timing differences, and the associated deferred tax accounts, and complications in calculating inter-period income tax allocations. APPA also contends that, if the Commission allows rate recovery over a 15 year life for transmission assets, then there should be no provision for deferred income taxes allowed with respect to such assets in any rate case (and no deduction from rate base), because such book and taxable income with respect to such assets would then be matched.

144. International Transmission asserts that in Order No. 618, the Commission correctly determined that the choice of depreciation method should be left to industry.⁹⁸ International Transmission argues that flexibility in determining depreciation methods is particularly important when new technologies are deployed that may not be proven, may cost more or have uncertain useful lives, and may be needed to accommodate ongoing industry restructuring or regulatory innovation.

145. International Transmission states that accelerated depreciation does not increase cash flow for companies with

formula rates as it would for companies with stated rates, because the formula rates reset every year. International Transmission urges the Commission to clarify that any changes to depreciation rates for a company using a formula rate will be accepted as a ministerial filing with issues limited only to estimation of the depreciation life and salvage parameters; and that an added bonus of this approach would permit companies with formula rates to remove from their formula rates, in ministerial filings, accumulated deferred income tax balances from rate base. International Transmission argues that to do so would increase cash coverage ratios and the return on equity during the early years of an asset's life and thereby create a tax-related incentive that furthers the Congressional intent to encourage transmission investment.⁹⁹ International Transmission states that if it allows companies to use accelerated depreciation, the Commission will need to revisit its Accounting Directive in Order No. 618, in which the Commission stated that recovery over the useful life generally best matches benefits with costs. International Transmission offer that accelerated depreciation could lead to the following problems: (1) Depreciation would no longer be representative of the useful life of assets, (2) the representation of net fixed asset value in financial statements could be distorted; (3) there would be a divergence between Generally Accepted Accounting Principles and Commission reporting and (4) efforts by FASB, the Commission and others to clarify financial reporting could be frustrated.

c. Commission Determination

146. After considering all comments, we will adopt the NOPR proposal to allow, as an option, accelerated depreciation for new transmission facilities that meet the goals of section 219. Accelerated depreciation increases the cash flow of public utilities thereby providing an incentive to undertake transmission investment. However, we are not proposing to grant accelerated depreciation on a generic basis; rather, as with the other incentives, the applicant must demonstrate a nexus between its proposal and the facts of its particular case (e.g., the need for additional cash flow produced by accelerated depreciation in order to fund new transmission investment).

147. We do not share the commenters' concerns that this incentive will result in intergenerational inequity. Most transmission customers are dependent upon the transmission system serving them and are likely to continue to receive transmission service over the long-term. Thus, unlike in power supply situations where there are greater options to change suppliers, there is little likelihood of intergenerational impact through the use of accelerated depreciation for transmission investment. In the event accelerated depreciation results in higher rates in the near-term, most of the same customers paying the higher rates will benefit from lower transmission rates in the longer-term. We clarify that the use of accelerated depreciation may be proposed for new transmission facilities including additions to capacity on existing facilities.

148. Given the long-term under-investment in transmission, we disagree with the comments of the California Commission that existing policy is sufficient to encourage transmission investment in all situations. As the California Commission is aware, Trans-Elect stated that accelerated depreciation was a necessary component for its participation in the Path 15 project. In response to the mandate of section 219, we believe it is appropriate to offer this rate treatment more broadly to encourage the same successful outcome that was achieved with Path 15. This does not mean that accelerated depreciation is necessary or will be granted for every project. Instead, the applicant will be required to demonstrate that there is a need for the additional cash flow produced by the accelerated depreciation or that the incentive is appropriate for other reasons. Likewise, at this juncture, concerns expressed by some commenters about the potential for overbuilding of transmission facilities as a result of this rate treatment are unsupported and highly speculative.

149. We concur with the comments that suggest the need for flexibility in the length of the depreciable life. Therefore, public utilities may propose using accelerated depreciation for rate purposes over a period of time as short as 15 years. Moreover, we will consider, on a case-by-case basis, depreciable lives of less than 15 years because shorter depreciable lives may be appropriate in certain cases, such as advanced technologies for which the useful life is not necessarily known.

150. Based on the comments, we are mindful of the potential consequences of this rate treatment when the facilities are fully depreciated. Commenters

⁹⁸ *Depreciation Accounting*, Order No. 618, FERC Stats. and Regs. ¶ 31,104, at 31,694 (2000) (Order No. 618). According to International Transmission, in Order No. 618, the Commission modified its initial proposal to require straight-line depreciation to permit other methods of depreciation that allocated the cost of utility property over its useful life in a systematic and rational manner. The Commission recognized that this approach would "[allow] flexibility in a changing business environment."

⁹⁹ International Transmission notes that Congress reduced the tax depreciable life on transmission investments from 20 years to 15 years to encourage transmission investment. EPAAct 2005, section 1308.

express concern that the Commission will allow public utilities to recalibrate the amount of depreciation, or institute a management fee. Other commenters state the Commission should require certain rules for sale of the facilities because of complications that will arise from selling fully depreciated assets. We will not address those issues here but will address such issues if and when they occur.

151. Commenters raise various accounting issues. With respect to the effect of this rate treatment on ADIT (accumulated deferred incomes taxes), we disagree that this proposal will necessarily require that no provision for deferred incomes taxes be allowed with respect to such assets (and no deduction from rate base). As stated previously, we are going to be flexible with respect to the depreciable lives of qualifying assets; therefore, public utilities may choose 30 years as Trans-Elect did with Path 15 and as a result deferred income taxes may still be necessary. Moreover, even if public utilities choose 15 years, depreciation expense for rate recovery purposes will likely be calculated using the straight-line method over those 15 years,¹⁰⁰ while accelerated depreciation for tax purposes may be calculated using a different method (e.g., double declining balance) over 15 years. Therefore, despite the use of the same 15 year life, method differences could continue to create timing differences for which deferred income taxes would be required.

152. With respect to APPA's concern about potential difficulties in applying SFAS 71,¹⁰¹ the Commission and other rate regulatory authorities often include amounts in allowable costs for ratemaking purposes in periods other than the period in which those amounts would ordinarily be charged to expense or included in income for financial accounting purposes. In those instances, the rate actions of regulators have economic consequences that must be recognized in financial statements. Under both SFAS 71 and the Commission's Uniform System of Accounts, if regulation provides reasonable assurance that incurred costs

¹⁰⁰ The straight-line method is typically used by utilities and will likely continue to be used for most utility property. However, consistent with Order No. 618 we will not require its universal use, as they may be overly prescriptive. Order No. 618 at 31,694.

¹⁰¹ SFAS 71 applies to general-purpose external financial statements of an enterprise that has regulated operations. The Commission's Uniform System of Accounts for Public Utilities and Licensees (18 CFR Part 101) contains provisions similar to SFAS 71 that apply to financial statements public utilities must file with the Commission.

will be recovered in future periods, companies must capitalize the costs. If current recovery is provided for costs that are expected to be incurred in the future, companies must recognize the current receipts as a credit amount on the balance sheet. Therefore, because the accounting requirements for accelerated depreciation are no different than accounting for the economic consequences of other rate actions, we do not see an impediment to implementing accelerated rate recovery of transmission assets.

153. We are not persuaded that we need to revisit Order No. 618 in this proceeding as some commenters suggest. In Order No. 618, the Commission established standards for determining depreciation expense for book purposes. Here we are establishing a standard for determining depreciation expense allowable for rate purposes. Although accounting and cost-based rate setting generally share common standards, there are instances, and this is one, where different standards should be used by each discipline and the difference bridged by recognition of regulatory assets or liabilities as provided for in our Uniform System of Accounts.¹⁰² Therefore, companies will continue to depreciate transmission assets over their economic service life in a systematic and rational manner for accounting purposes and separately recognize as a regulatory liability any difference between depreciation expense recognized for accounting purposes and accelerated depreciation expense included in the development of rates. In order to clarify this distinction the Commission shall revise § 35.35(d)(1)(v) of the regulatory text proposed in the NOPR which read "(v) accelerated regulatory book depreciation." The revised regulatory text shall read "(v) accelerated depreciation used for rate recovery."

154. We deny International Transmission's request to alter our section 205 filing requirements for public utilities operating under formula rates. In Order No. 618, the Commission permitted utilities to not make a filing to change depreciation rates for accounting purposes but maintained the filing requirement for changes in depreciation rates for rate purposes.¹⁰³ The Commission said it would monitor changes in depreciation rates for accounting purposes when companies filed for rate changes. We decline in this Final Rule to adopt International Transmission's requested changes to formula rates. International

¹⁰² 18 CFR part 101.

¹⁰³ Order No. 618 at 31,695.

Transmission is free to petition the Commission to revise its formula rate to allow flexibility going forward, but we decline to make such a generic determination here because to do so would presume that all formula rates worked in the same manner.

5. Recovery of Costs of Abandoned Facilities

a. Background

155. The Commission noted that public utilities, in considering investments that fulfill the requirements of FPA section 219, may encounter investment opportunities with significant risk associated with factors beyond their control, such as generation developers' decisions to develop or terminate the development of potential resources or difficulty obtaining state or local siting approvals. In these circumstances, the Commission stated that it may be appropriate to consider ways to reduce the risk associated with potential upgrades or other improvements to the transmission system. To reduce the uncertainty associated with higher risk projects, thereby facilitating investment in these projects, the Commission proposed allowing recovery of 100 percent of the prudently incurred costs of transmission facilities that are cancelled or abandoned due to factors beyond the control of the public utility.

156. The Commission's proposal was an extension of a recent Commission decision to allow Southern California Edison Company¹⁰⁴ to recover all prudently incurred costs related to certain proposed transmission facilities if those facilities were later cancelled or abandoned.¹⁰⁵ The Commission noted that the company's management did not control the decision to develop or cancel the wind farm generation project and that the company's shareholders did not share in the earnings associated with the generation project. The

¹⁰⁴ *SCE*, 112 FERC ¶ 61,014 at P 58–61, *reh'g denied*, 113 FERC ¶ 61,143 at P 9–15.

¹⁰⁵ Prior to *SCE*, the Commission's policy with respect to recovery of cancelled plant costs provided that 50 percent of the prudently incurred costs of a cancelled generating plant should be amortized as an expense over a period reflecting the life of the plant if it had been completed and that the remaining 50 percent of the prudently incurred costs of the cancelled plant should be written off as a loss. Under this policy, ratepayers are entitled to the income tax deduction associated with that portion of the loss for which they are paying. In addition, they are entitled to a rate base reduction to reflect the accumulated deferred income tax amounts associated with 50 percent of the abandonment loss. See *New England Power Co.*, Opinion No. 295, 42 FERC ¶ 61,016 at 61,068, 61,081–83, *order on reh'g*, 43 FERC ¶ 61,285 (1988). See also, *Public Service Company of New Mexico*, 75 FERC ¶ 61,266 at 61,859 (1996) (*PSNew Mexico*).

Commission further determined that the company might be at a higher risk in developing the project because of factors beyond its control. It also noted that SCE was not a wind farm developer and therefore would not directly benefit from the facilities. Thus, the Commission concluded that SCE should not shoulder the risk of the project.¹⁰⁶

b. Comments

157. A number of commenters support the 100 percent recovery of prudently incurred costs of transmission projects that must be abandoned for reasons beyond the transmission provider's control as a way to reduce the up-front risk associated with important regional projects.¹⁰⁷ Some, like the Kentucky Commission,¹⁰⁸ advocate that the Commission should adopt a case-by-case approach to recovery of costs related to cancelled plant.¹⁰⁹ Kentucky Commission agrees that this incentive should be evaluated on a case-by-case basis to ensure that the decision to abandon the facility was truly beyond the utility's control. California Commission and CADWR do not oppose the recovery of 100 percent of the recovery of prudently incurred costs as long as the determination is made on a case-by-case basis. International Transmission states that preliminary surveys and investigations should also be included in the costs that can be recovered.

158. SCE supports the recovery of abandoned plant and recommends specific standards to facilitate the recovery. SCE states that 100 percent of prudently incurred costs should be approved for recovery if the facility was initially proposed and sited through a process involving stakeholder input and the subsequent decision to abandon is not under the control of management. Additionally, SCE states that utilities should be able to recover the costs of abandoned plant even when they have some control over the decision to abandon but the project was cancelled or abandoned due to problems in obtaining regulatory or other approvals. SCE also supports recovery where economic circumstances have changed,

¹⁰⁶ SCE, at P 61.

¹⁰⁷ E.g., AWEA, Ameren, AEP, EEL, KCPL, NSTAR, Vectren, International Transmission, WPS, APPA, NYSEG-RGE, NorthWestern, National Grid, New York Commission, NY Association, Progress, PNM and TNMP, SDG&E, and Upper Great Plains.

¹⁰⁸ E.g., California Commission and CADWR.

¹⁰⁹ Trans-Elect supports the case-by-case approach and cites *San Diego Gas & Elec. Co.*, 98 FERC ¶ 61,332 at 62,408, *reh'g denied*, 100 FERC ¶ 61,073 (2002) ("claims for full recovery of any infrastructure projects that are ultimately cancelled will be addressed by the Commission on a case-specific basis").

causing there to be no demonstrable net benefits.

159. Others¹¹⁰ oppose the incentive. For example, CREPC states that guaranteeing the cost recovery of cancelled plant allows investors to ignore risk and places the risk on parties who are unable to manage the risk. ESAI argues that allowing recovery of 100% of prudently incurred development costs runs the risk of producing a proliferation of white elephants.

160. TANC argues that the Commission has upheld and enforced its existing cancelled plant policy and rejected the utility's arguments that it be allowed full recovery of the cancelled plant because it could not get state regulatory approvals; and that the Commission should not adopt a separate policy now.¹¹¹ TANC argues the proposal violates the intent of Opinion 295-A which is to encourage investors to make efficient production and consumption decisions.

161. Commenters¹¹² offer numerous instances where they believe it would be inappropriate to allow a utility to recover abandoned plant costs. For example, the Commission should not permit recovery: where the nature of the project was speculative; and where the project was abandoned for reasons within the control of the utility; or where there is an unexpected turn in the economy. TAPS questions whether project abandonment is really beyond a utility's control if a state siting authority does not outright reject a proposal but instead conditions its acceptance in a way that the utility finds objectionable.

162. Snohomish asserts applicants must make showings of why the project failed and recoverable costs should be limited to the original budget. New Mexico AG, TDU Systems and TAPS assert that if utilities are guaranteed their investment in abandoned facilities they need a lower ROE to represent the reduced risk of recovery.

c. Commission Determination

163. We find that an applicant may request 100 percent of prudently-incurred costs associated with abandoned transmission projects can be included in transmission rates if such abandonment is outside the control of management. This incentive will be an effective means to encourage transmission development by reducing the risk of non-recovery of costs.

164. Many commenters request that we evaluate proposals on a case-by-case

basis and we affirm that we intend to do so. The case-by-case approach and the limitation to prudently-incurred costs should adequately discipline investment decisions. However, we will not prescribe specific rules to govern our evaluation but offer limited guidance below.

165. We agree with many commenters that when local, state and federal (as applicable) siting authorities reject an application outright, we would view those circumstances, generally, as abandonment beyond the control of management. As TAPS points out, the situation is less clear when siting authorities do not reject the application outright but add conditions to the application that make it uneconomical or otherwise objectionable. In these instances we would expect the utility to file with the Commission and support the decision to abandon. The Commission will evaluate, in these instances, the change in circumstances from those originally planned on a case-by-case basis.

166. We see no need to specify unique application procedures for this incentive. We will require a section 205 filing for recovery of abandoned plant costs in rates at the time the project is abandoned. We disagree with CREPC that this incentive shifts risk from those who can manage the risk to those who cannot because this incentive is limited by definition to abandonment that is beyond the control of the utility. We will not by rule limit the recovery of costs associated with abandoned plant to the costs included in the original budget estimate. The Commission will evaluate the public utility's cost recovery to ensure no double recovery of costs. For example, if a utility already recovered survey costs by expensing these costs as a pre-commercial cost, it would be unjust and unreasonable for the utility to recover those costs again if the facility was subsequently abandoned.¹¹³

167. We will not mandate a reduction in ROE for utilities that receive approval for this rate treatment. As stated in the ROE incentive discussion, determinations of a just and reasonable ROE include risk evaluations made in individual rate proceedings and are based on the facts pertinent to the utility and its proxy group. We note, however, that a utility that receives approval to recover abandoned plant in rate base would likely face lower risk and thus may warrant a lower ROE than would

¹¹⁰ E.g., CREPC, the New Mexico AG, Steel Manufacturers and TANC.

¹¹¹ TANC cites *PSNew Mexico*.

¹¹² E.g., Industrial Consumers, Oklahoma Commission, PPC, MISO States, and TAPS.

¹¹³ We also clarify that we maintain the timing of recovery as set forth in Opinion No. 295 which required recovery over the life of the asset as if it had gone into service.

otherwise be the case without this assurance.¹¹⁴ This does not mean that the Commission would reject an incentive-based ROE for a project that also receives assurance of abandoned plant costs that are beyond the utility's control. We would consider any such request on a case-by-case basis. The risk of a failed project is only one criteria that would be evaluated in determining whether an incentive-based ROE would be appropriate in a given case.

6. Deferred Cost Recovery

a. Background

168. In the NOPR, the Commission stated that public utilities with a retail rate moratorium may have less incentive to build transmission facilities that could reduce congestion or ensure reliability because of concerns about cost recovery for those facilities. Accordingly, the NOPR proposed to permit such utilities to use a deferred cost recovery mechanism which allows them to commence recovery of new facility costs in FERC-jurisdictional rates at the end of a retail rate moratorium. By providing a mechanism to facilitate cost recovery by public utilities that build transmission facilities during a retail rate moratorium, the Commission believed that it would meet the goals of section 219 by providing certainty to investors that costs can be recovered as quickly as possible.¹¹⁵

b. Comments

169. Many commenters support the deferred recovery proposal.¹¹⁶ International Transmission states that deferred cost recovery should be used to facilitate the divestiture of transmission assets to Transcos. Of those that support the proposal, several urge cooperation between federal and state regulatory authorities.¹¹⁷ In particular, NSTAR and AEP urge the FERC to collaborate with states and regional state committees to develop solutions for full and timely cost recovery and/or be prepared to intervene in state and court proceedings to the extent state regulators attempt to trap wholesale costs and prevent recovery of those costs in retail rates. EEI urges the Commission to ensure that the necessary regulatory mechanisms

are in place to allow cost recovery and should cooperate with the states to develop these recovery mechanisms including transmission cost recovery tracker mechanisms.¹¹⁸ In EEI's supplemental comments, EEI states that any utility that constructs new transmission facilities should automatically be entitled to deferred cost recovery.

170. Trans-Elect argues that the Commission should allow recovery of all costs approved for deferred recovery for Michigan Electric Transmission Company (METC)¹¹⁹ and International Transmission.¹²⁰

171. TAPS agrees that deferred cost recovery is reasonable in the case cited in the NOPR in which all connected retail customers pay the same rates and see the same deferral. However, TAPS asserts that allowing utilities with stated rates based on old test years to defer the collection of additional revenues associated with costs related to new facilities would constitute an unreasonable double-dip and would be inconsistent with section 219(d). Moreover, because the rates of bundled retail customers are set elsewhere based on different test years, this double-dip would be paid only by wholesale customers and unbundled retail customers and would be unreasonable and unduly discriminatory.

172. Several commenters opposing deferred cost recovery cite to concerns about the effect on state regulation.¹²¹ Some argue that the proposal may undermine or impinge on areas exclusively under state jurisdiction (Pennsylvania Commission cites 16 U.S.C. 824 (a)(b)). Others allege that the unrestricted ability of a public utility to defer cost recovery until the end of the rate moratorium may not be consistent with the spirit of settlements struck as part of rate freezes.¹²² Pennsylvania Commission adds that all the rate caps in its state are time-limited and any incremental benefit from a federal incentive would be more than offset by the legal uncertainty that would be attached to such incentives and the eventual federal/state conflict that would ensue.

173. MISO States argues that the Commission would do better to work

with state authorities on retail rate recovery issues (e.g., ensure rate recovery at wholesale and retail) than to adopt a policy unilaterally.¹²³ MISO States comments that Commission statements and accusations that state-statutory retail rate reviews undermine incentive ratemaking at the federal level are unwarranted. If the Commission proceeds with its proposed incentive of allowing deferred cost recovery, the Commission should consider granting deference to objections from state-level officials, according to MISO States.

174. Other commenters¹²⁴ seek assurance that the Commission will ensure the company does not over-recover its actual costs; offer that the Commission should adopt a case-by-case approach to allowing deferred cost recovery until the end of a moratorium and requiring agreement by wholesale and retail customers as to the nature, amount and duration over which the costs are to be deferred and synchronization of wholesale and retail ratemaking practices to avoid regulatory price squeeze;¹²⁵ and, argue that the Commission should place limits on the amount that can be deferred, and initial deferral period and subsequent recovery period.

c. Commission Determination

175. We find that permitting public utilities under retail rate freezes to defer recovery of new transmission investment costs undertaken consistent with section 219 will help facilitate investment. Increased certainty of cost recovery of new transmission investment will encourage development of more transmission infrastructure thereby fulfilling the goals of section 219 of the FPA.

176. To date, the Commission has approved deferred cost recovery mechanisms during the formation of Transcos which permitted the new Transcos to defer recovery of other costs such as the ADIT adjustment associated with the acquisition of the transmission system and to defer recovery of the rate differential between the frozen rates and the rate it would have received. As discussed more fully below, we believe that Transcos offer significant benefits and the deferred cost recovery

¹¹⁴ SCE, *supra* note 104.

¹¹⁵ The Commission has approved a deferred cost recovery provision that allowed for the recovery of the cost of new facilities upon the end of a retail rate moratorium. See *Trans Elect, Inc.*, 98 FERC ¶ 61,142, *reh'g denied*, 98 FERC ¶ 61,368 (2002).

¹¹⁶ In addition to commenters mentioned below, AEP, Ameren, KCPL, National Grid, Nevada Companies, NSTAR, NYSEG and RGE, and Upper Great Plains also support the proposal.

¹¹⁷ E.g., PJM TOs, NSTAR, EEI, and AEP.

¹¹⁸ NU and PEPSCO support EEI's comments.

¹¹⁹ See *Michigan Electric Transmission Company*, 107 FERC ¶ 61,206 at P12 (2004).

¹²⁰ See *ITC Holdings*, 102 FERC ¶ 61,182 at P 74.

¹²¹ E.g., Kentucky Commission, MISO States, Pennsylvania Commission, and Wyoming Advocate.

¹²² Similarly, New Mexico AG, California Commission, PPC and Steel Manufacturers oppose the deferred cost recovery proposal because of the potential effect on state regulation.

¹²³ Steel Manufacturers contends that the Commission should instead work cooperatively with states on transmission planning matters, particularly in regional forums, in order to reduce possible areas for dispute, cost recovery gaps, or duplicative cost recovery.

¹²⁴ E.g., Municipal Commenters, and APPA.

¹²⁵ APPA notes that new transmission facility costs that would be eligible for inclusion as CWIP in rate base should similarly be eligible for deferred cost recovery to address mismatches in cost recovery created by retail rate freezes.

mechanisms that we approved for METC and International Transmission were helpful to establish those Transcos. We also believe that deferred cost recovery mechanisms should be available to all public utilities, not just Transcos and recognize the importance of ensuring that federal and state ratemaking policies align so that we not only reduce regulatory lag but facilitate transmission development.

177. Most of the comments opposing this proposal cite potential conflicts with state regulation to be a critical issue. We believe that deferred cost recovery mechanisms generally will not hinder retail ratemaking. However, if a situation arises where a state regulator believes that a federal deferred cost mechanism conflicts with a state goal or undermines a state settlement with the applicant, we will consider objections by state regulators on a case-by-case basis, and seek to avoid inconsistencies between state and federal regulation. In this regard, we note that the approval by the Commission of regional state committees provides one vehicle for discussing Federal and state ratemaking issues on a cooperative and regional basis. With respect to TAPS' concern that the cost of the incentive would be recovered from only wholesale customers and unbundled retail customers, the Commission may approve a rate design such that wholesale customers and unbundled retail customers pick up only a proportionate share of the costs of the incentive.

178. With respect to commenters' specific proposals for trackers, limits, and deferral periods, we decline to adopt such proposals here. The justness and reasonableness of any deferred cost recovery proposal will be considered as part of the section 205 filing and there is no basis to arbitrarily place limits on recovery through this rule. The intent of the deferred recovery mechanism is to increase the certainty of cost recovery to encourage more transmission investment. It may also facilitate the creation of Transcos in states where retail rate freezes are in place. The deferred recovery mechanism is an option available for any public utility to propose; a public utility may also propose the use of a regulatory asset, as suggested by APPA.¹²⁶ We believe that a public utility must propose a set of incentives that is tailored to the facts of its particular case and the Commission

¹²⁶ Regardless of whether it proposes to use a regulatory asset, the public utility should explain its proposed accounting for the deferred recovery mechanism.

must review those proposals to ensure they are just and reasonable.

7. Other Incentives—Single-Issue Ratemaking

a. Background

179. In the NOPR (at 54), the Commission recognized that transmission pricing issues are some of the most difficult issues facing the industry and that the Commission's policy of not allowing selective adjustments to a cost-of-service may serve as a disincentive to transmission investment.¹²⁷ Certain applicants may consider the time requirements and the uncertainties associated with rate proceedings that encompass their entire transmission systems to be disincentives to making incentive filings, as specified in the NOPR. To ensure that the approval process for incentive treatment is as streamlined as possible, thereby ensuring timely infrastructure investments, the Commission stated it was willing to consider incentive filings, applicable to both Transcos and traditional public utilities, that propose rates applicable only to the new transmission project.¹²⁸

b. Comments

180. Numerous commenters¹²⁹ support single issue ratemaking for the reasons set forth in the NOPR. Additionally, Ameren states that single-issue ratemaking can be useful in obtaining advance approvals of specific rate treatments that may be required by investors as a condition to financing new construction.¹³⁰ Moreover, Kentucky Commission states that as long as single issue rate cases relate only to new transmission and comply with the filing requirements set forth elsewhere in the NOPR, it does not object to this proposal.

181. FirstEnergy states this proceeding is analogous to the *Removing Obstacles* orders where, in order to facilitate development of transmission investment the Commission permitted limited section 205 rate applications. FirstEnergy states that in this proceeding, Congress has realized there is a pressing need for transmission investment and the

¹²⁷ See, e.g., *City of Westerville, Ohio v. Columbus Southern Power Co.*, 111 FERC ¶ 61,307 at P 18 & n.11 (2005).

¹²⁸ The NOPR cited *Removing Obstacles* as an example of one type of approach utilizing a limited section 205 filing.

¹²⁹ E.g., Ameren, EEI, PJM, Trans-Elect, FirstEnergy, NorthWestern, MidAmerican, Nevada Companies, AEP, KCP&L, Semantic and Xcel.

¹³⁰ See, e.g., *Western*, *supra* note 2 (issuing advance approvals of certain rate treatments for proposed California transmission Path 15 upgrades).

Commission should permit limited section 205 rate applications to facilitate the needed development. FirstEnergy asserts single issue ratemaking is particularly important for companies using formula rates.

182. AEP states that the Commission should be flexible with ratemaking conventions and that single-issue ratemaking could be a powerful incentive to encourage more transmission investment. AEP also states that single-issue ratemaking along with transmission cost trackers at the state level would be productive measures especially with integrated utilities.

183. TDU Systems notes that where the Commission has accepted single issue ratemaking, the Commission required the implementation of a mechanism that would harmonize the rate increase from that surcharge with adjustments to rates for existing facilities to reflect the offsetting decreases in depreciation costs associated with those existing facilities. EEI agrees that it is important to establish a crediting mechanism in some cases to harmonize the rate treatment for new and existing transmission facilities.¹³¹ PJM, Progress, TAPS and TDU Systems state that Schedule 12 of the PJM tariff provides an example of how concerns with single issue ratemaking can be addressed to implement a \$/KW/month adder to network or point-to-point transmission rates.¹³²

184. TAPS proposes an alternative approach in which the Commission could harmonize the existing rates and new facility rates, when the inputs to the existing rate are known (*i.e.*, not hidden in a "black box" settlement), by updating the load divisor and depreciation reserve, and all other rate components would remain the same (other than the new facility charge). Where the existing rate was black box, a load divisor and depreciation reserve would have to be imputed for these purposes by assuming that the difference between the filed-for and settled rate represented an adjustment to the rate divisor and depreciation reserve.

185. Additionally, if the Commission proceeds with single issue ratemaking, APPA, TAPS and SCE suggest having the public utility file a full rate case at some point in the future which would roll-in the existing rate and the separate

¹³¹ EEI cites *Allegheny Power*, 111 FERC ¶ 61,308 at P 54; see also Request for Rehearing of the PJM Transmission Owners, Docket No. ER05-513-001, filed on June 30, 2005.

¹³² PJM and TAPS also cite *Allegheny Power* (accepting cost recovery provisions of Schedule 12).

surcharge for the new transmission investment. APPA and TAPS recommend a full rate case after three years while SCE does not state a specific deadline for a full rate case.

186. APPA, NASUCA and TDU Systems oppose single issue ratemaking for transmission service claiming that public utilities are likely earning returns on their existing transmission facilities in excess of previously allowed rates of return (due to load growth, continuing depreciation of existing transmission facilities, and stale rates). They argue that single issue ratemaking fails to determine if the entire transmission rate is just and reasonable. APPA states that to allow a rate increase for a new facility to be added to the transmission rates charged for existing facilities improperly mixes costs from different periods for the same functional class of facilities. In addition, NASUCA and TDU Systems state that single issue ratemaking violates section 205 because one rate determinant may often be accompanied by an associated decrease in other portions of the rate and failure to consider all rate components together can lead to overstatements that produce unjust and unreasonable rates.¹³³ Further, NASUCA states that waivers of the general rule for a full blown rate case are found only in limited circumstances, for example where the utility is merely an accounting conduit for rate changes made by another utility from which the first utility purchases services.¹³⁴

187. Municipal Commenters oppose single issue ratemaking because it represents a departure from cost-of-service ratemaking in that it fails to demonstrate any nexus between the awarding of proposed incentives and the owner's overall cost of service, need, financing cost, capital structure or performance.

188. TAPS suggests an alternative approach of having companies file their incentive rate proposals, individually tailored to that utility where appropriate, but generally applicable to that utility's qualifying transmission investments. Subsequent facility-specific filings, as necessary, would merely apply the existing approved plan. With this approach, single issue ratemaking is unnecessary according to TAPS.

¹³³ NASUCA cites *Arkansas Power & Light Co. v. Missouri Public Service Commission*, 829 F.2d 1444, 1451–52 (8th Cir. 1987) (A state may determine whether the company has experienced savings in other areas which might offset the increased price resulting from the pass-through of the increased wholesale rate).

¹³⁴ NASUCA cites *Panhandle Eastern Pipe Line. v. FERC*, 613 F.2d 1120, 1127 (D.C. Cir. 1979).

189. In the event that the Commission decides to proceed with allowing single issue ratemaking for new transmission investment projects, commenters have suggested methodologies for implementing single issue ratemaking and ways to mitigate any potential problems with it.

190. EEI explains that public utilities should be permitted to file with the Commission to establish a revenue requirement to recover the costs of constructing a specific new transmission facility pursuant to section 205. Under this approach, the transmission owner determines whether to establish a new ROE or use its current Commission-approved ROE.

c. Commission Determination

191. We believe that single-issue ratemaking can provide a significant incentive for achieving the infrastructure investment goals of section 219 because it can provide assurance that the decision to construct new infrastructure is evaluated on the basis of the risks and returns of that decision, rather than the additional uncertainty associated with re-opening the applicant's entire base rates to review and litigation. We agree with FirstEnergy that there is a pressing need for transmission investment and therefore the Commission should allow for limited section 205 filings as a way to facilitate needed development, as was approved for the Path 15 project. The Commission's approval of limited section 205 procedures in *Removing Obstacles* showed how useful and appropriate single-issue ratemaking can be for needed investment in existing facilities, as Trans-Elect attests in their comments.

192. We will not require harmonization of rates, roll-in of new and existing rates or reopening of existing rates in this rule, as recommended by some commenters. Nor will we specify in this rule the rate calculations associated with developing a transmission rate for a particular new facility. Our concern in this rule is to ensure new investments are not impeded because of existing-system rate issues. Accordingly, applicants filing for single-issue ratemaking for a particular project are only required to address cost and rate issues associated with the new investment in the section 205 proceeding to approve rates. However, the applicant will be required to fully develop and support any transmission rate designed to recover the costs of a particular transmission system facility or upgrade—including cost allocation and rate design. The Commission will consider the potential need to combine

or reconcile the new rate with any existing transmission rate when an applicant submits a request for incentives. In some instances, the Commission may find that single-issue ratemaking is appropriate without any determination as to when that rate will be harmonized with existing rates; in other cases, the Commission may, if appropriate, adopt certain of the mechanisms suggested by the commenters, such as a requirement to file a full rate case at a date certain in the future. In each instance, the Commission will balance the need for new infrastructure, and the importance of permitting single issue ratemaking in support of that infrastructure, with the concerns over whether a specific mechanism is required to re-open existing rates or whether the traditional complaint processes are sufficient for that purpose.

193. We find the claims of some commenters that public utilities are currently earning excessive returns on their existing rates to be speculative. We have no basis to conclude earned returns are excessive since these commenters have not submitted section 206 filings alleging such excessive returns nor do they provide evidence in their pleadings identifying the companies that are realizing excessive returns.

C. Incentives Available to Transcos

1. Definition of Transco

a. Background

194. The NOPR (at P 37) proposed to define a Transco as a stand-alone transmission company, approved by the Commission, which sells transmission service at wholesale and/or on an unbundled retail basis, regardless of whether it is affiliated with another public utility. The Commission invited comments on this proposed definition of Transcos.

b. Comments

195. AEP and PEPCO support the proposed definition because it allows a Transco to be affiliated with another public utility. AEP states that eligible entities should include integrated utility companies or their affiliates, and PEPCO that the definition of a Transco should allow for ownership by a single affiliate.

196. Other commenters support a definition that includes affiliated Transcos, but only those with passive ownership. Commenters differed on the level and nature of independence requirements, if any, that should apply to affiliated Transcos. PJM TOs, for example, argued only for the same governance requirements otherwise

applicable to Transcos. TAPS, on the other hand, advocates more specific definitions of affiliated Transcos that would need to meet all of the standards of the *Policy Statement Regarding Evaluation of Independent Ownership and Operation of Transmission* (Policy Statement Regarding Evaluation of Independent Ownership).¹³⁵ Several commenters, including APPA and ITC, argue for the benefits of independence. Vectren opposes the proposed definition of Transco in the NOPR because by permitting inclusion of transmission owners with affiliates that own generation and/or distribution, it allows a Transco to be substantially identical to a vertically-integrated utility. Vectren questions whether the Commission's policy initiatives would have more impact on an FPA jurisdictional Transco with generation and distribution affiliates than on a traditional integrated transmission owner due to the Transco's parent company's common equity ownership of transmission and distribution as well as its role in making critical Transco business decisions. Vectren also argues that holding companies with Transcos will utilize shared service companies to fulfill common managerial and administrative functions for Transcos and affiliates.

197. Commenters differed on whether the level of affiliate ownership should bear on the definition of a Transco. For example, Ameren states that utilities exhibiting comparable levels of independence (and benefits) should be entitled to similar rate treatments, regardless of organizational structure. Ameren focuses on the level of functional separation and operational independence of the Transco—and not the percentage of passive equity ownership. Semantic requests that the Commission define the maximum permitted traditional utility ownership allowed in a Transco.

198. Some commenters, including TransCanada and American Transmission, advocate flexibility regarding ownership in the proposed definition. NSTAR, National Grid, and OMS contend that the Commission's proposed definition of Transco is overly restrictive in applying only to companies that are solely transmission providers. They argue that transmission and distribution companies that have taken significant steps toward independence by divesting of generation and marketing activities be similarly rewarded.

199. Due to concerns about competition for capital within Transcos, TDU Systems states only Transcos with

strict limits on investments in other industries should receive incentive rates. APPA states that Transcos must have access to sources of equity capital other than their affiliates, such as through issuance of new equity or through capital contributions from a diverse base of Load Serving Entity owners.

200. Semantic states that the definition of Transco should be broadened to include entities that deliver services using advanced transmission technologies recognized in section 1223(a) of EPAAct 2005, such that a Transco need not directly participate in the flow of energy. A Transco could be an "Advanced Technology Transco" that delivers enhanced grid state data processed by analytical software.

c. Commission Determination

201. We will adopt in the Final Rule the definition from the NOPR that a Transco is a stand-alone transmission company that has been approved by the Commission and that sells transmission services at wholesale and/or on an unbundled retail basis, regardless of whether it is affiliated with another public utility. This definition includes the flexibility advocated by some commenters and allows the Commission to consider various business models and arrangements.

202. The definition we adopt here does not exclude affiliated Transcos with active ownership by market participants, or stand-alone transmission companies that own transmission and distribution facilities. However, we expect applicants to demonstrate the value of their particular affiliated Transco proposal. We will consider the eligibility of such arrangements based on a showing of how the specific characteristics of a proposed Transco affect its ability and propensity to increase transmission investment and lead to increased transmission investment similar to the Transcos we have already approved. We note that the three Transcos established thus far—which have all demonstrated their willingness and ability to invest in new transmission—are either not affiliated with any market participant (e.g., International Transmission and METC) or have joint ownership and board membership by a number of market participants and independent members (e.g., American Transmission). Concerns regarding affiliated Transcos, such as those voiced by Vectren, or support for companies that own transmission and distribution or other business structures, will be considered in the context of specific applications for incentive treatment.

203. In addition, because we do not wish to preclude entities that may help foster investment in needed transmission infrastructure simply because they have not yet been proposed or evaluated, we will not establish specific limits on Transcos regarding, for example, business investments in other industries, sources of equity, or levels of active and passive ownership.

204. We also clarify that an entity's status as a Transco will not be conditioned on membership in an ISO or RTO. As the Commission explained in the NOPR, just as the need for investment is a national need, we believe that the expansion and investment objectives of new FPA section 219 are best met by a definition of Transcos that does not restrict the formation of Transcos to only certain organized markets. Similarly, we clarify that an applicant that receives an incentive related to its status as a Transco may also request and be eligible for other generally applicable incentives discussed in the Final Rule, such as those for joining an RTO or ISO. The Commission will consider the suitability of multiple incentives at the time of an application.

205. We will not create a new Transco category that includes entities that do not own transmission facilities, as requested by Semantic. Consistent with section 219 the Final Rule applies to rate treatments for transmission of electric energy in interstate commerce by public utilities. To the extent Semantic meets this requirement, it may file an application for incentive treatment and the Commission will then make its determination of whether the Semantic proposal meets the requirements of section 219.

2. Transco ROE Incentive

a. ROE Incentive

i. Background

206. As part of the encouragement of Transco formation, the Commission stated that it will permit suitably structured Transcos to receive an ROE that both encourages Transco formation and is sufficient to attract investment. For example, the Commission approved equity returns for METC and International Transmission that reflect the significant benefits that their status as Transcos provide, and these returns are higher than those approved for integrated entities. Continuing to allow a higher ROE (that falls within a zone of reasonableness) in recognition of the benefits Transcos provide is an appropriate way to ensure the achievement of section 219's objectives.

¹³⁵ 111 FERC 61,473 (2005).

Therefore, the Commission stated that it will consider the positive impact Transcos have on transmission investment and in turn on the reliable or economically efficient transmission and generation of electricity when it evaluates ROEs proposed by properly structured Transcos. (NOPR at P 40, footnote omitted)

ii. Comments

207. Several commenters,¹³⁶ oppose the Commission's proposal to grant an ROE incentive to Transcos outright. Other commenters¹³⁷ oppose giving Transcos an incentive that is not available to other business models.

208. Those opposing the outright grant of ROE incentives to Transcos¹³⁸ contend, among other things, that: There should be no equity incentive adders without direct demonstration of customer benefits; such incentives would unfairly divert capital to Transcos; and that enhanced Transco ROEs do nothing to solve the problem of building needed transmission.

209. Commenters opposing¹³⁹ treatment based on corporate form or business model suggest that the Commission focus on the purpose and effect of the proposed investments, not the type of entity that proposes them. They argue that there is a lack of evidence of how Transcos encourage transmission infrastructure expansion and the track record for Transcos is incomplete.

210. Other commenters raise concerns about the signals the Commission is sending regarding RTOs and independence of operations, planning and expansion that can be ensured through other types of regional transmission groups or through traditional utilities, particularly those in a RTO with a regional planning process.¹⁴⁰ EEL, for example, opposes the Commission managing business models and argues the Commission should not (even unintentionally) give the impression through incentives that it seeks to restructure the transmission sector.

¹³⁶ E.g., APPA, Community Power Alliance, Municipal Commenters, NASUCA, NECPUC, New Mexico AG, NRECA, NU, Pennsylvania Commission, Snohomish, and TANC.

¹³⁷ E.g., AEP, BG&E, EEL, First Energy, KCPL, MidAmerican and PacifiCorp, Midwest ISO, NECPUC, Northwestern, PEPCO, PJM, PJM TOs, PPC, Progress Energy, SCE, Southern Companies, and Vectren.

¹³⁸ E.g., Municipal Commenters, NECPUC, Progress Energy, Snohomish, PPC.

¹³⁹ E.g., APPA, Community Power Alliance, FirstEnergy, Pennsylvania Commission and NASUCA.

¹⁴⁰ E.g., American Wind, Mid American, PacifiCorp, and EEL.

211. Other commenters offer suggestions as to how to distinguish incentives. For example, NU and PJM suggest targeting incentives at companies that are investing in transmission and/or involved in regional planning, regardless of corporate structure. PJM suggests the Commission proceed on a case-by-case basis.

212. Finally, commenters argue that higher ROEs for only some transmission owners are discriminatory and not just and reasonable, and have no basis in section 219. Alternatively, some suggest that Transcos have lower risk than integrated companies and should receive lower ROEs. Others argue that incentives should cover only new investments and behavior,¹⁴¹ not existing infrastructure. For example, California Commission opposes providing higher ROEs to Transcos, arguing that Transco and traditional integrated utility shareholders bear the same (and only significant) risk as transmission project owners—during the initial stage of project permitting and developing. SCE offers that Transco-specific ROEs might actually provide a disincentive for future Commission-jurisdictional transmission investments by traditional utilities if they can earn higher ROEs on state-jurisdictional facilities. TANC offers that a for-profit Transco has no incentive to make, and, in fact, is discouraged from making, economically efficient and/or energy efficient investments. Dairyland points out that American Transmission's plans for substantial investment were made in the context of a settlement agreement in which American Transmission agreed to a lower ROE than that approved for Midwest ISO transmission owners and that the settlement improved American Transmission's cash flow and reduced its risk, providing a sufficient financial package to enable its investments even with the lower ROE. Dairyland states that American Transmission shows that substantial investment by Transcos is likely to occur even if ROEs are reduced.

213. Some commenters take issue with the representations in the NOPR regarding state and federal jurisdiction.¹⁴² For example, Community Power Alliance opposes rewarding changes in ownership structure resulting in transfer of jurisdiction from state to federal

¹⁴¹ E.g., New Mexico AG, NRECA, Pennsylvania Commission, PG&E, Vectren, Southern Companies, California Commission, SCE, and TANC.

¹⁴² E.g., Community Power Alliance, PEPCO, NSTAR, and PJMTOs.

regulators. PEPCO believes the NOPR suggests that traditional utilities may be treated less well by federal regulators merely because they are subject to state as well as federal jurisdiction. New Mexico AG states Transco incentives are nothing more than an attempt by the Commission to override state regulatory jurisdiction. Nevada Companies state that the Commission must work with state regulatory authorities to foster Transco formation.

214. TDU Systems opposes incentive rates for new investment by Transcos after those Transcos form. If any such award is granted, TDU Systems argues it be done only upon demonstration of need, and apply only to system expansions, not existing facilities.

215. Other commenters,¹⁴³ generally support incentive-based ROEs to encourage Transco formation. For example, International Transmission supports incentives for Transco formation and investment not merely to reward a particular transmission ownership structure but to encourage a type of transmission ownership that has produced the results that Congress sought when it enacted section 219. International Transmission states that both its own specific experience and the track record of Transcos generally illustrate the benefits of Transco ownership of transmission.¹⁴⁴ International Transmission states that if other forms of transmission ownership invest in transmission in a manner comparable to Transcos, those other entities should be eligible for equal incentives, but that until they do, Transco-specific incentives are fully appropriate.

216. KKR offers the following potential investment advantages of Transcos: elimination of competition for capital between generation and

¹⁴³ E.g., International Transmission, KKR, Nevada Companies, TDU Systems, Trans-Elect and Upper Great Plains.

¹⁴⁴ International Transmission states that in the last decade of Detroit Edison's ownership of the facilities now owned by International Transmission, Detroit Edison invested about \$10 million a year in those transmission facilities that International Transmission states it invested \$41 million on in 2003; \$82 million on in 2004; and over \$118 million on in 2005. At the end of 2005, the net asset value of International Transmission's facilities has nearly doubled while its CWIP balance remained roughly flat. International Transmission states that this substantially increased investment is producing benefits for consumers in enhanced reliability and increased access to competitively priced generation. International Transmission states that in the latest Midwest ISO Transmission System Expansion Plan, the three Transcos in the Midwest ISO account for 54 percent of the approximately \$2.9 billion in projected investment through 2009. Comparing the level of projected investment across Transcos and non-Transcos, the average Transco in the Midwest ISO is investing at over *seven times* the rate of the average non-Transco in the Midwest ISO.

transmission functions; a singular focus on transmission investment which allows more rapid and precise response to market signals indicating when and where transmission investment is needed; a lack of incentive to maintain congestion in order to protect generation market share; and an enhanced ability to manage assets and access to capital markets. As stand-alone entities lacking incentive to favor a particular market participant's generation, Transcos are likely to attract a variety of new generators, including solar and wind renewable generation.

217. KKR states that enhanced ROE can both drive capital investment and support Transco formation. An enhanced ROE in excess of that sufficient to support new investment will be factored into the purchase price of the Transco assets or company and be delivered in whole or in part to the seller.

218. Additional comments in support of higher ROEs for Transcos,¹⁴⁵ note that Transco formation and investment will occur when actual Transco returns are equal to or greater than returns for investments with comparable risk and that these returns must be earned on a consistent basis.

219. Trans-Elect offers suggestions on the manner in which the incentive could be tied specifically (and exclusively) to the acquired facilities. In addition, Trans-Elect states that whatever methodology is used to develop a range of equity cost estimates, use of the mid-point (or average) of that range would be contrary to the notion of stimulating new transmission investment. Particularly in the context of the inherently higher-risk Transco business model, Trans-Elect supports ROEs toward (or at) the high end of the range.

220. Upper Great Plains supports Transco incentives but argues they be limited to what is necessary to put Transcos on an equal footing with other transmission developers. According to Upper Great Plains, leveling the playing field will encourage Transcos to more fully develop the advantages made possible by their business structure.

iii. Commission Determination

221. After considering all the comments, we adopt in this Final Rule the proposal from the NOPR to provide to Transcos a ROE that both encourages Transco formation and is sufficient to attract investment after the Transco is formed. The incentive ROE does not preclude a Transco from applying for any other incentive adopted in this rule,

including hypothetical capital structures, ADIT, acquisition premiums, formula rates or deferred cost recovery. We note that such additional incentives could aid the formation of Transcos as well as bolster their ability to add transmission infrastructure. We note, in addition, that application of the ROE incentive or applicable other incentives will likely be more efficiently translated into rates for those applicants that operate under or concurrently propose formula rates.

222. This decision is based on the proven and encouraging track record of Transco investment in transmission infrastructure. For example, International Transmission states that its investment was more than ten times higher in 2005 than the annual investment by DTE during the last decade of DTE's ownership of the same transmission system.¹⁴⁶ Trans-Elect states that it expended \$112 million in capital on its system from May 2002 through 2005.¹⁴⁷ Since January 1, 2001, American Transmission states that it has invested approximately \$1 billion in strengthening its system, essentially tripling its investment in transmission infrastructure in five years.

223. The expansion plans of existing Transcos are also encouraging. International Transmission notes that in the latest Midwest ISO Transmission System Expansion Plan, the three Transcos in the Midwest ISO account for 54 percent of the Plan's approximately \$2.9 billion in projected investment through 2009. It also states that comparing the level of projected investment across Transcos and non-Transcos, the average Transco in the Midwest ISO is investing at a rate that is over *seven times* that of the average non-Transco in the Midwest ISO.¹⁴⁸

224. As stated in the NOPR, the Commission believes that this positive record of Transco investment in transmission facilities is related to the stand-alone nature of these entities.¹⁴⁹ In particular, we agree with the comments submitted by KKR explaining the benefits of the Transco model. By eliminating competition for capital between generation and transmission functions and thereby maintaining a singular focus on transmission investment, the Transco model responds more rapidly and precisely to market signals indicating when and where transmission investment is needed. We agree that Transcos have no incentive to

maintain congestion in order to protect their owned generation. Moreover, Transcos' for-profit nature, combined with a transmission-only business model, enhances asset management and access to capital markets and provides greater incentives to develop innovative services. By virtue of their stand-alone nature, Transcos also provide non-discriminatory access to all grid users.

225. Numerous commenters state that the Commission should not favor one corporate structure (*i.e.*, Transcos) over another. We agree in part. In the context of the goal to increase investment in needed transmission infrastructure, it is inappropriate to favor one corporate structure over another to the extent both business structures have similar transmission investment records. To date, however, no other business structure has a transmission investment record similar to that of a Transco and therefore our incentives that focus on Transcos are justified. While this rule provides incentives for all public utilities, the additional incentives for Transcos, in light of their superior record of adding infrastructure, are neither unduly discriminatory nor contrary to the goals of section 219.

226. We believe an incentive ROE for Transcos is justified because Transcos are spending their additional return on capital spending, as demonstrated by the negative cash flow profiles of the current Transcos and their future capital spending plans, as discussed in the comments of the Transcos and KKR. Though Transcos have demonstrated that they will build transmission, and plan to build more in the future, we agree with commenters that state that our focus should be on actual results—*i.e.*, getting transmission built. Currently, Transcos are spending capital aggressively, reinvesting any earned returns and spending a significant amount more than they are earning. However, continuing to allow a Transco, over the long-term, to receive an incentive ROE for all its facilities that recognizes its increased transmission investment only makes sense if the Transco continues to provide the benefits which we are trying to incentivize. Therefore, as discussed earlier, we encourage Transco applicants to submit proposals to measure performance and thereby justify continuation of ROEs (as well as other rate treatments) that were provided for the purpose of attracting and sustaining transmission investments.

227. We disagree with AWEA's statement that single-system Transcos do nothing for regional goals. Even a single-system Transco can build

¹⁴⁶ International Transmission comments at 21.

¹⁴⁷ METC comments at 3.

¹⁴⁸ International Transmission Reply Comments at 6.

¹⁴⁹ NOPR at P 39.

¹⁴⁵ *E.g.*, Nevada Companies and Trans-Elect.

infrastructure that significantly aids a broad region. Moreover, to the extent Transcos belong to transmission organizations, their expansion plans must be approved by transmission organizations and therefore they support regional planning goals.

228. We disagree with Municipal Commenters' contention that the Transco incentive is misguided as transmission prices have increased dramatically in regions where the transmission systems were spun off from investor owned utilities. We have no evidence that Transcos have increased prices, nor did Municipal Commenters provide supporting evidence. Nor do we agree Transco formation would simply increase earnings without any direct demonstration of customer benefits from such formation. The amount of infrastructure likely to be added by Transcos will directly benefit customers in the region. Responding to the Pennsylvania Commission, we have no basis to conclude Transcos may introduce undesirable biases in grid investment and operations. Furthermore, like any public utility, their rates remain subject to review to ensure justness and reasonableness. We therefore have no basis to change our conclusion that Transcos are appropriate structures for investment in infrastructure and accomplishment of the objectives of section 219.

229. In response to concerns of commenters such as NRECA and the California Commission that the incentive return for Transcos is not based on a risk evaluation of Transcos, we believe those concerns are premature. Such an evaluation is more appropriately part of the section 205 process in individual rate applications of assessing representative proxy companies and the impact of other factors, including risk.

230. We expect that providing for deferred cost recovery for Transcos, such as has been approved for Trans-Elect and International Transmission, will address Nevada Companies' concern that state-level rate freezes could preclude recovery of costs associated with divesting transmission assets to Transcos.

231. We believe PEPCO and the New Mexico AG have misinterpreted our statements in the NOPR regarding benefits of federal jurisdiction for Transcos. The NOPR does not state that a state's jurisdiction over some of the activities and assets of traditional utilities hinders investment, as PEPCO maintains. Rather, the NOPR indicated that Transcos would benefit from having incentive approvals determined in a

single jurisdiction, by eliminating delay and uncertainty. The purpose of our policy of incentives for Transcos is to build much needed transmission infrastructure. States continue to have jurisdiction over the siting of new transmission infrastructure and many of the high voltage interstate projects will require extraordinary cooperation and collaboration between state and Federal regulators.

b. Transco Level of Independence

i. Background

232. The Commission proposed to clarify and broaden the definition of Transcos to be stand-alone transmission companies approved by the Commission, without a condition of membership in a RTO or ISO, and requested comment on how to factor the level of independence into any request for ROE-based incentives for Transcos. The Commission sought comment on whether it should specify additional incentive levels within the zone of reasonableness to correspond to certain levels of independence and if so, what those amounts should be. The Commission also sought comments concerning whether membership in an RTO or ISO should be considered in setting incentive-based ROEs approved by the Commission for a Transco.¹⁵⁰

ii. Comments

233. Numerous commenters¹⁵¹ generally support tying the level of incentives to the level of independence of the Transco. For example, Ameren proposes a tiered approach to ROE incentives, with Transcos that are members of an RTO or ISO entitled to the highest ROE incentive. International Transmission states that it is appropriate to award the highest ROE-based incentives to Transcos that are truly independent. KKR states that Transcos that have achieved total structural independence should receive the most generous set of incentives. MISO States state that the level of Transco independence is an important consideration and, accordingly, the Commission could apply a graduated ROE incentive depending upon the degree of independence between the Transco and market participants, affiliates or generation.

234. National Grid states that the Commission should establish the level of ROE-based incentives based on a sliding scale keyed to various levels of independence for all forms of

Transmission Organizations, with one end of the sliding scale being "total structural independence," which would be entitled to full incentives.

235. Trans-Elect states that only entities that establish independence as to operation, planning, construction and investment decisions should qualify for ROE-based incentives for Transcos. Rather than recognizing a "range" or "levels" of independence that would justify "additional incentive levels," the Commission should confirm that entities that meet the definition of Transco would qualify for the full ROE-based incentive, while those that do not would not be eligible for the incentive. According to Trans-Elect, it is critical that Transco ownership arrangements that reflect truly passive ownership qualify for the full ROE-based incentive and that the independence standard should be deemed satisfied when passive ownership is structured to ensure that the Transco will "operate free of market participant control or influence."

236. TDU Systems supports a policy to prevent a Transco with passive ownership interests from earning Transco incentives. TDU Systems assert that should the Commission authorize passive ownership interests by market participants in Transcos, those relationships should be rigorously scrutinized. Passive ownership interests by market participants in Transcos should only be authorized upon a showing that the option of investment in the Transco is open to all LSEs in the region up to their load ratio shares, according to TDU Systems, with governance based on equal and/or equally-weighted votes, if any, for all passive owners. TDU Systems recommend that the Commission commit to monitor these relationships in order to deter the potential for abuse.

237. Some commenters also address whether membership in an RTO or ISO should be considered in setting incentive-based ROEs approved by the Commission for a Transco. For example, PEPCO states that the Commission should not provide additional incentive levels for certain levels of Transco "independence" unless it also provides the same incentive levels for participants in other models, such as RTOs. MISO States and PJM believe that the Commission should reverse its proposed policy of not taking into account if the Transco is a member of an RTO and instead recognize the positive benefits of Transco membership in RTOs. AWEA states that incentives for regionalizing the grid through RTO participation should be an additional incentive.

¹⁵⁰ NOPR at P 42.

¹⁵¹ E.g., Ameren, AWEA, Connecticut DPUC, International Transmission, KKR, MISO States, and National Grid.

238. Others, such as APPA, NRECA, and PG&E support the Commission's proposal that membership in an RTO or ISO should not be a factor in setting incentive-based ROEs for Transcos. WPS states that the proposed incentive for Transcos may be appropriate, but also could be duplicative if the Transco is an RTO member and also receives an incentive for that membership.

iii. Commission Determination

239. We will not establish a specific methodology to factor the level of independence into any request for ROE-based incentives for Transcos. We will also not specify additional incentive levels that remain within the zone of reasonableness, to correspond to certain levels of independence. While not quantifying a precise formula or method, we will consider the level of independence of a Transco as part of our analysis when we determine the proper ROE for the Transco, and evaluate the specific attributes of a particular proposal, including the level of independence, to determine appropriate incentives.

240. Though we are not establishing a range of incentives based on independence, we note that the three existing Transcos, which have significantly increased their transmission investment post-formation, are either totally independent of market participants or can meet the independence standards in the Policy Statement Regarding Evaluation of Independent Ownership. Independence is an important component of the positive contribution of Transcos on investment in needed transmission infrastructure. A Transco with active ownership by a market participant or other new business arrangements is also eligible for Transco incentives to the extent it can show, for example, why active ownership by an affiliate does not affect the integrity of its investment planning, capital formation, and investment processes or how its business structure provides support for transmission investments in a way similar to the structure of non-affiliated Transcos or Transcos with only passive ownership by market participants.

241. In addition, while a Transco need not be a member of an RTO, ISO, or other Transmission Organization, we will also consider such membership as part of our evaluation process on the level of Transco incentives that might be appropriate. We also note that a Transco is eligible for incentives if it is a member in an RTO, ISO, or other Transmission Organization.

3. Accumulated Deferred Income Taxes (ADIT)

a. Background

242. To remove any disincentives that might prevent the sale or purchase of transmission assets to form Transcos, such as capital gains taxes on sales of assets,¹⁵² the Commission (NOPR at P 43) proposed to include in the rates of Transcos an adjustment to recover ADIT. This incentive would provide the assurance of recovery in rate base of adjustments for taxes associated with asset sales, thereby reducing uncertainty.

b. Comments

243. Several Commenters¹⁵³ submitted comments that generally support the Commission continuing to consider proposals to include adjustments for ADIT in rates when a Transco is purchasing transmission facilities. For example, Trans-Elect states that continuing to allow adjustments for ADIT will eliminate this tax-related disincentive and, in the process, demonstrate to potential sellers, purchasers and the investment community the Commission's commitment to promoting independent stand-alone transmission businesses. National Grid states that allowing recovery of ADIT is designed to ensure that there is no financial or tax penalty associated with undertaking the transactions necessary to form Transcos and therefore the Commission should allow such recovery to eliminate an obstacle to Transco formation. OMS states that allowing the ADIT cost recovery adjustment appears more reasonable than simply authorizing filings to recover acquisition premiums because the ADIT adjustment premium would be specifically quantifiable and tied to a specified purpose. International Transmission and Trans-Elect also specifically support the Commission's clarification that a stand-alone transmission company that requests an incentive ROE would not be precluded from also requesting the ADIT adjustment.

244. Some commenters raise specific concerns regarding how an ADIT adjustment will be calculated. TAPS states that after the seller is held harmless for its book-based gain-on-sale tax consequences (if any) any remaining

¹⁵² See, e.g., *International Transmission Co.*, 92 FERC ¶ 61,276 at 61,915–16 (2000) (explaining potential disincentives to sellers and buyers of transmission assets if the ADIT adjustment is not granted).

¹⁵³ E.g., International Transmission, KKR, National Grid, NorthWestern, OMS, PJM TOs, TAPS, and Trans-Elect.

tax balance should flow back to ratepayers. TDU Systems state that the ADIT adjustment should be reduced by the seller's ADIT and investment tax credits associated with the transferred property. APPA is concerned about the difficulty a buyer of facilities will have in correctly calculating the ADIT, which is based on the seller's capital gains tax liability. NRECA states that the Commission needs to create sufficient safeguards to prevent double recovery. TAPS and APPA also cite the American Jobs Creation Act of 2004 as substantially mitigating, and potentially eliminating the ADIT concern.

245. APPA, PPC and Snohomish state that, in order to get the ADIT adjustment, buyers of transmission facilities should need to demonstrate concomitant customer benefits to offset increased transmission rates resulting from measures to recover capital gains tax-related acquisition premiums.

246. PPC and Snohomish state that allowing recovery of ADIT goes beyond the stated goal of promoting investment in new transmission capacity, and instead would promote the sale of existing transmission assets. They contend that allowing purchasers to amortize ADIT in rates will increase ratepayer costs and allow Transcos to benefit from the time-value of money without offsetting any actual expenditure. The value of ADIT should be passed through to customers only if the Transco is actually making tax payments, and then only in an amount equal to those payments.

c. Commission Determination

247. We find that it is appropriate for the Commission to continue to consider proposals to make an adjustment to the book value of transmission assets being sold to a Transco to remove the disincentive associated with the impact of accelerated depreciation on federal capital gains tax liabilities. This adjustment is simply intended to remove a disincentive to Transco formation. As explained in the NOPR, transmission owners are unlikely to sell transmission assets at book value if they are not held harmless from capital gains taxes on such sales by including an adjustment for taxes associated with those sales. Buyers of transmission assets may be unwilling to pay such an adjustment without some assurance of recovery of the adjustment in their rate base, as the Commission has addressed in previous Transco-related orders. In addition, we find appropriate the clarification proposed in the NOPR that a Transco requesting an incentive ROE not be precluded from also requesting the ADIT adjustment.

248. While the Commission will continue to consider proposals to include adjustments for ADIT in rates when a Transco is purchasing transmission facilities, we emphasize that we will review such proposals on a case-by-case basis to ensure that the ADIT adjustment is just and reasonable and not unduly discriminatory or preferential under the particular circumstances of the proposal.¹⁵⁴ Specific concerns about how the ADIT adjustment is calculated, such as those raised by TAPS, TDU Systems, APPA and NRECA, can be raised when a proposal is filed with the Commission. In addition, TAPS' and APPA's concern that the American Jobs Creation Act of 2004 may eliminate the need for an ADIT adjustment can be raised as an issue concerning an applicant's proposed ADIT adjustment in a specific proceeding. We note that, as there is no sunset date for the incentives, applications could be made after the potential tax benefits of the American Jobs Creation Act have lapsed, as the tax law only affects transactions that close by January 1, 2007.

249. We will not require, as requested by APPA, PPC and Snohomish, that our approval of any ADIT adjustment be conditioned on an analysis of costs and benefits related to such an adjustment, as discussed elsewhere in this Rule. We disagree with the implication of PPC that the Transco purchaser is receiving the benefit for ADIT costs that it is not really paying. ADIT is part of the purchase price of the transmission assets sold to the Transco, and hence represents actual costs to the purchaser.

250. However, as described more fully in the Performance Test section, we clarify that continuation of the ADIT adjustment, like continuation of other incentives, is conditional on the applicant achieving benchmarks for its own proposed Commission-approved metrics.

4. Acquisition Premiums for Transco Formation

a. Background

251. The NOPR (at P 55) requested comments on whether the Commission should make a generic determination that general benefits would accrue to ratepayers as a result of Transco formation. It also sought comment on whether any change in the acquisition premium/ratepayer benefits review at the federal level would risk increased resistance to such acquisitions at the

state level. The NOPR sought comment on whether there are other mechanisms that the Commission could institute to provide regulatory certainty of the recovery of the acquisition premium both through retail as well as wholesale rates. It also sought comment on what measure the Commission might use in evaluating the appropriateness of such premiums as measured against, for example, the size of the premium, the location of the assets, the level of independence of the Transco, and other relevant factors.

b. Comments

252. Several Commenters¹⁵⁵ support a generic Commission determination that Transco formation benefits consumers and that fair value paid for transmission assets by a Transco will be recoverable, even if that fair value exceeds the book value of those assets by a significant amount. Trans-Elect argues for a case-by-case consideration, *i.e.*, that a Transco should be entitled to make a showing that the benefits of a particular transaction justify allowing a specific acquisition adjustment and that the level of proposed adjustment is appropriate. KKR supports allowing a Transco Applicant to recover an acquisition premium in rates for all or a portion of any premium paid above net book value for purchases of transmission facilities. PNM encourages the Commission to eliminate its historical prohibition against recovery of acquisition adjustments for transmission assets.

253. Several commenters¹⁵⁶ oppose a generic determination regarding the allowance of acquisition premiums for Transcos, and generally support the continuation of current Commission policy which, according to commenters, is case-by-case. They also oppose the Commission making a general determination that Transco formation results in general benefits to customers for purposes of determining whether to allow recovery of an acquisition premium in rates.

254. In response to our request for comment on what measure to use to evaluate the appropriateness of such premiums, Pennsylvania Commission states that if the Commission determines that approval of acquisition adjustments is necessary to encourage acquisition and mergers of transmission systems in a business-neutral way, the Commission should require applicant(s) to

demonstrate that such costs were both reasonable and negotiated at arms' length. According to the Pennsylvania Commission, the applicant should be required to offer proof that the purchase price of assets had a reasonable relationship to the market valuation of the assets transferred, that the buyer and seller were financially separate and unrelated, and that directors and officers of, and advisors to, the buyer and seller had a financial and legal "arm's-length" relationship before and after consummation of the acquisition. International Transmission suggests that recovery of the difference between book value and fair value, as represented in a proposed purchase price, be limited to no more than 50 percent of any amount paid above the book value of the assets, in order to provide market discipline with respect to the purchase price of the assets. Snohomish states that there must be a means to independently verify the purchase price, such as requiring submission of two or more independent appraisals.

255. Dairyland supports limiting acquisition adjustments to situations where the seller of the facilities to a Transco does not have (or does not simultaneously obtain) an ownership in the Transco. AEP, PJM TOs and SCE state that if the Commission allows recovery of acquisition premiums, it should allow all business models to recover them, including traditional investor-owned utilities.

256. TAPS and TDU systems argue that entities allowed to recover acquisition premium for the formation of Transcos should not also be authorized to receive an enhanced ROE.

257. Nevada Companies state that the Commission must work with state regulatory authorities to foster Transco formation since transmission owners' incentives are reduced if they must give a large portion of an acquisition premium back to customers.

c. Commission Determination

258. We will not in this Final Rule change the Commission's policy of allowing acquisition adjustments in rates only upon a specific showing of ratepayer benefit.¹⁵⁷ However, given the positive contributions of Transcos on transmission investment discussed above, we find that a Transco may propose an acquisition premium as an incentive under the Final Rule, as provided under § 35.35(d)(1)(viii). We

¹⁵⁴ As discussed elsewhere in the Final Rule, an applicant may propose a number of incentives. Thus, a stand-alone transmission company is not precluded from requesting ROE and ADIT.

¹⁵⁵ *E.g.*, International Transmission, KKR, and Trans-Elect.

¹⁵⁶ *E.g.*, Ameren, APPA, MISO States, Northwestern, NRECA, Pennsylvania Commission, PEPSCO, PJM TOs, Snohomish, TDU Systems, and WPS.

¹⁵⁷ While the proposed ADIT incentive discussed above would adjust book value and therefore may be considered a premium on net book value, we note that unlike the acquisition premium discussed here, the proposed ADIT incentive addresses tax-related issues outside of the applicant's control.

will continue to evaluate proposals made by Transcos to recover acquisition premiums associated with the purchase of transmission facilities on a case-by-case basis. We appreciate the comments on how the Commission should evaluate the level of acquisition premiums, such as those from Pennsylvania Commission, International Transmission, and Snohomish, and we will take such factors into account in evaluating whether to allow recovery of particular acquisition premiums. While this discussion is limited to providing an incentive for Transco formation, entities other than Transcos can apply for the incentive and the Commission will evaluate those applications on a case-by-case basis.

5. Merchant Transmission

a. Comments

259. LIPA states that because of the NOPR's focus on cost-of-service ratemaking, it has less impact on merchant transmission developers, whose rates are defined by contract (and thus market benefit), and not by Commission cost-of-service ratemaking standards. Merchant transmission developers are generally required to rely on market rates for transmission service negotiated directly with purchasers of their capacity, and to assume (along with the purchasers of their capacity) all of the market risk for their facilities. Merchant transmission developers will base their decisions on other factors, particularly their ability to efficiently attain the market benefits that their investments create.

260. TransCanada believes that a two-tier subscription process would provide merchant developers with some initial regulatory and business certainty by addressing the initial up-front siting and permitting risk (because of the ability to secure meaningful commitments from the first tier subscribers). It would also allow for a full open season for the remainder of the capacity (the second tier) consistent with current Commission policy.

261. National Grid states that the key issues raised in this rulemaking (ensuring adequate returns on equity for investment and independence, facilitating timely and complete cost recovery, etc.) are regulated rate issues, which should be of no concern to merchant transmission developers.

b. Commission Determination

262. With respect to comments on merchant transmission, we agree with comments that this issue is beyond the scope of this Final Rule. Merchant projects are market driven while this

final rule deals fundamentally with regulated transmission rates. True merchant transmission projects may play an important role in the future of transmission infrastructure development, but incentives related to, for example, ROE and cost recovery, do not apply to merchant transmission.

D. Performance-Based Ratemaking

1. General Comments

a. Background

263. In the NOPR, the Commission sought comments on ways performance-based ratemaking (PBR) might apply to for-profit Transcos and traditional public utilities, and not-for-profit Transcos and public utility ISOs and RTOs. In the case of for-profit entities, the Commission sought comment on whether there should be mechanisms for sharing gains with ratepayers and, if so, what those mechanisms should be. In the case of not-for-profit public utility ISOs and RTOs, the Commission sought comment on whether and how PBR developed for for-profit entities might be applied to not-for-profit entities. Finally, the Commission sought comment on whether performance-based benchmarks for transmission costs would provide incentives for the deployment of advanced technologies.¹⁵⁸

b. Comments

264. Commenters generally support the concept of PBR, especially as it was defined in the Commission's 1992 Policy Statement on Incentive Regulation and in Order No. 2000, which emphasize that PBR should be voluntary, have both an upside and downside, that gains should be shared with ratepayers, that benefits should be quantifiable, and that costs to consumers under PBR should not exceed what they would have been under traditional regulation. They urge the Commission to retain these principles.¹⁵⁹

265. However, citing to current market structure, most commenters expressed a general lack of enthusiasm for PBR, and none held out any expectation that PBR would have a significant role to play in providing consumer benefits. Chief among the obstacles cited to implementing PBR is a difficulty in determining appropriate performance measures or benchmarks. For example, KCP&L emphasized that experts, such as EPRI, are researching appropriate performance measures but

have not yet determined how to account for various factors such as system age and configuration, geography and customer density, a point of view shared by many.¹⁶⁰ Moreover, APPA cautions that poorly designed performance measures could lead to unintended and undesirable consequences, and it recommends that the Commission conduct a series of technical conferences and workshops on PBR before considering any implementation. The Kentucky Commission states that performance-based benchmarks for transmission costs are not necessary because any technology that is beneficial will have an economic reward, thereby providing its own incentive. The transmission tariff should reflect prudent operation and maintenance so that, if there is improvement, a greater profit will be realized. For proven technologies, a sharing of both benefits and the risks would be appropriate for deployment of new technologies. Thus, many conclude that the value of PBR seems remote, although voluntary programs could be worth considering.

266. Some commenters oppose PBR because they believe it could deter investment in transmission facilities, contrary to the main objective of the proposed rulemaking. For example, International Transmission concludes that PBR might play a limited role in some circumstances, but warns that some PBR approaches, such as price cap regulation, could actually discourage investment. Others, such as FirstEnergy and Nevada Companies are concerned that PBR could increase risk and, thus, reduce investment. Some commenters believe that PBR might have a limited role in inducing utilities to adopt certain innovative practices and advanced technologies,¹⁶¹ while other commenters were more concerned that PBR would discourage reliability and provide unwarranted benefits to utilities.¹⁶²

267. Few commenters see any realistic role for PBR as a means of inducing cost saving behavior on the part of non-profit entities, although some, such as Ameren, believe that the Commission's oversight is inadequate. Industrial Consumers, in particular, express the view that PBR has no role to play in the non-profit area and, furthermore, that PBR should not be applied to the profit area unless a proven model would make pricing under PBR as transparent as pricing under conventional ratemaking.

¹⁶⁰ E.g., Comments of KCPL, SCE, and EEL.

¹⁶¹ E.g., Comments of AEP and UTC Power.

¹⁶² E.g., Comments of NSTAR and the New Mexico AG.

¹⁵⁸ NOPR at P 58.

¹⁵⁹ E.g., NASUCA, TDU Systems, Missouri Commission, and SMUD.

Some commenters¹⁶³ stress that safeguards already exist to insure that ISOs/RTOs are efficient and accountable, and they argue that there is no urgency to adopt PBR for RTOs/ISOs. Although they could consider PBR on a limited, case-by-case basis, PJM TOs also emphasize that RTOs with regional planning processes and requirements outside the transmission owners' control are poor candidates for PBR.

268. Among those commenting most favorably on implementing some form of PBR were Progress Energy, Southern Company, and National Grid. Although they see limited immediate applicability of PBR, both Progress Energy and Southern Company recommend specific types of PBR—Progress Energy favors loop flow pricing, and Southern Company favors revenue or rate caps that would reward utilities for increasing throughput. In contrast, National Grid emphasizes that it has had success with PBR mechanisms different from those mentioned in the NOPR outside the U.S. However, until the U.S. industry is more independent and there is greater consolidation of ownership and operation, it does not believe that PBR is an immediate attractive option.

269. Connecticut DPUC, along with testimony submitted by two of its witnesses, Thomas P. Lyon and Pete Landrieu, support the view that PBR is either inappropriate or unlikely to provide important benefits. Lyon's affidavit emphasizes that critical principles for PBR include not only incentives to enhance efficiency and performance, but also should promote an efficient mix of infrastructure investment. He cautions against the use of price caps because they may induce firms to degrade quality, and he would favor some type of profit-sharing plan, perhaps a PBR that links a firm's financial performance to network congestion.¹⁶⁴ Landrieu's affidavit emphasizes that PBR is unnecessary, because system standards and performance are better managed directly by various regional reliability organizations. He also is pessimistic that PBR focused only on transmission will be able to account for important and complex tradeoffs between generation and transmission. He agrees with other comments that note that establishing appropriate benchmarks is an extremely complicated task and for that reason

regards benchmark type PBR as unworkable.¹⁶⁵

c. Commission Determination

270. We interpret "incentive-based (including performance-based) rate treatments" in section 219 to require the Commission to consider PBR as an option among incentive ratemaking treatments. To that end, the NOPR invited comments on how performance-based regulation might be used to motivate transmission entities to maintain and operate their systems reliably and efficiently. Consistent with Congress' directive to encourage PBR, we signaled our intention to reevaluate previous Commission policies on PBR. We did not intend that the NOPR be viewed as a rejection of our previous statements or as a comprehensive overview of all possible approaches to PBR. Our objective was to consider whether PBR can play a useful role in transmission pricing reforms in light of the many changes in electric markets that have occurred since our earlier statements.

271. The overwhelming view on PBR from all segments of the industry is "not at this time" and "not given the current industry structure." Although there is general support for our earlier principles, we acknowledge, as commenters stress, that our voluntary program has not resulted in any PBR proposals being filed with the Commission. The consensus appears to be that the current state of the industry structure—a multitude of transmission-owning entities, many that do not directly control their transmission assets and operate in diverse geographical regions with very different customer densities, system ages and configurations—makes the determination of generally applicable performance benchmarks unworkable. Some suggest further study of PBR, express general support for the concept, and urge the Commission to remain open to considering voluntary proposals on a case-by-case basis.

272. We share the view of most commenters that it would be premature to adopt generic PBR measures at this time. However, the development of PBR measures may represent a long-term goal for the industry and the Commission to pursue. Among the goals of section 219 is to promote capital investment "in the enlargement, improvement, maintenance, and operation" of transmission facilities. Accordingly, we intend to continue to

work with the industry to encourage development of PBR proposals.

2. Comments Proposing Performance Tests and Competitive Bidding

a. Comments

273. The New Mexico AG asserts that another way to implement an incentive-based mechanism is to penalize companies or RTOs that do not perform adequately and do not make the investments necessary to ensure the reliability of the transmission grid. The Delaware Commission contends that providing incentives without assessing penalties for failure to meet obligations violates the just and reasonable standard because it rewards monopoly power. Furthermore, the Delaware Commission claims that the plain meaning of incentive requires both rewards and penalties. NASUCA states that it is one-sided and inherently unfair to provide incentives that only increase utility profits with no performance accountability.

274. The Delaware Commission recommends that the Commission implement performance penalties by first defining the utility obligation, then determining whether there are transmission incentive projects which the transmission owner has failed to carry out, and in such situations impose a penalty in the form of a prospective reduction in return on equity or prudence disallowance that can be lifted when the project is complete.

275. TAPS argues that transmission providers should have their returns reduced to the low end of the zone of reasonableness if they fail to achieve and maintain a robust transmission infrastructure. TAPS recommends the Commission consider a number of factors in its determination of system reliability, including congestion, proration of financial transmission rights (FTRs), lack of available transfer capacity (American Transmission), failure to meet customer needs and denial of reasonable access. TAPS also asserts that the capital requirements of major projects should be put out to bid if a vertically-integrated transmission owner is unwilling to permit transmission dependent utility (TDU) participation but refuses to build without receiving above-cost rate treatments.

276. The Missouri Commission proposes that the Commission implement a process that determines performance-based ROEs. The process, according to the Missouri Commission, would require transmission owners to bid out projects, thereby providing an incentive for keeping implementation

¹⁶³ E.g., NYISO, CAISO, PJM TOs and NERC.

¹⁶⁴ Comments of Connecticut DPUC, Affidavit of Thomas P. Lyon at 16–19.

¹⁶⁵ Comments of Connecticut DPUC, Affidavit of Pete Landrieu at 27–28.

costs as low as possible and minimizing the regulatory concern with cost overruns. Projects based on actual costs would receive an ROE below the median of ROEs from the proxy group while projects proposing fixed costs would receive higher ROEs, explains the Missouri Commission. The Missouri Commission also recommends that the bids include an assessment and quantification of specific risks associated with the project. E.ON U.S. would support a competitive bidding process for transmission additions required to enhance reliability or to meet native load requirements.

b. Commission Determination

277. As discussed in the preceding section, the Commission will continue to support industry in the development of PBR but will not in the Final Rule impose it. Accordingly, we will not pursue performance treatments and competitive bidding. Moreover to the extent these proposals consist of penalties (which would not provide incentives to expand transmission infrastructure and would likely limit the investment in infrastructure by reducing the return—and therefore funds for capital expansions), they do not implement the requirements of section 219.

278. We note that the Commission has other regulations to address concerns over access and discrimination raised by commenters, including rules promulgated under Order No. 888, the anti-manipulation provisions of Order No. 672¹⁶⁶ and market behavior rules. We believe those regulations provide adequate protections. Further, all rates that include incentives will remain in the zone of reasonableness, and, therefore, we disagree with the Delaware Commission that rates without penalties are not just and reasonable.

279. While the requirements of section 219 and the Final Rule do not encompass bidding processes, as recommended by the Missouri Commission and TAPS, we are sympathetic to the objective of the Missouri Commission to reduce the costs of expansions to consumers. We expect that regional planning processes that evaluate and compare the costs and benefits of expansion proposals, as well as state commission reviews and requirement that costs be prudently

incurred will serve to provide the screening function desired by the Missouri Commission, and therefore additional processes are not necessary. We agree with NASUCA that there is merit in holding utilities receiving incentives accountable for investing the capital and building the capacity for which the incentives are provided, as we discuss further in section IV.A (Standard for Approval) and section III.D (Effective Date and Duration Of Effectiveness For Incentives). As we discuss further below in section IV.H (Public Power), we will not make TDU participation in the project a precondition for receiving incentives.

E. Advanced Technologies

1. General

a. Background

280. Pursuant to section 219(b)(3) of the FPA, the NOPR proposed to encourage the use of advanced technology in new transmission projects. Advanced transmission technologies are defined in section 1223 of EPAct 2005 to be technologies that increase the capacity, efficiency, or reliability of an existing or new transmission facility.¹⁶⁷ The Commission stated that it expected that the NOPR's proposed incentives, including the ROE-based incentives, will stimulate investment in new transmission facilities, which will, in turn, provide opportunities for the deployment of innovative technologies for those new transmission facilities.

281. The NOPR also asked for comments on: (1) Whether the Commission should require that applications for incentive-based treatment include a technology statement; (2) whether other incentives could fulfill the goals of section 219(b)(3); and (3) whether performance-based benchmarks for transmission costs (*i.e.*, a risk-sharing approach) would provide incentives for the deployment of advanced technologies.¹⁶⁸

b. Comments

282. NRECA and others support the incentives proposed in the NOPR and do not support additional separate incentives for advanced technology. They believe that technologies will be developed when they are cost effective.

283. NEMA believes the technology list from section 1223 of EPAct 2005 should be incorporated into the Final

Rule to ensure that the Commission's regulations express the intent of Congress. But, EEL argues that a predetermined list of advanced technologies would soon become outdated, which may discourage the use of other worthwhile technologies. Bonneville states that the list in the NOPR is incomplete and includes items that range from measures in common use today to very speculative items. AEP believes that any list of advanced technology should be illustrative and non-exclusive.

284. AEP and others want the Commission to encourage additional measures related to reliability and infrastructure development, including control center upgrades, national security-related infrastructure facilities vital to the electric system and operation, the refurbishment of aging transmission assets, advanced grid control technologies for real-time measurement, communications and control, "non-wires" alternatives to control or dispatch loads and resources for optimum use of the transmission and distribution infrastructure, inventories of transformers and other critical equipment, and substation upgrades.

285. Some commenters seek incentives for technologies that could indirectly mitigate congestion and enhance grid reliability. UTC Power believes the Commission should provide incentives for distributed generation, such as fuel cells. Sabey believes that advanced technology usage on the distribution system may provide transmission congestion relief. FirstEnergy suggests incentives for pumped storage hydro and compressed air energy storage.

286. NSTAR and Vectren urge the Commission to recognize the higher risk caused by accelerated obsolescence of transmission facilities. Obsolescence may be the result of the changing transmission technology. Accelerated depreciation could be relevant to a specific facility that may have a useful life less than its physical life due to obsolescence.

287. Some commenters, such as International Transmission, state that it is imperative that new technology installed on the grid be reliable and durable for decades. They express concern that new technologies may carry significant risks and may ultimately not be low cost and reliable.

c. Commission Determination

288. We agree with comments that new technologies will be adopted when they are cost effective. Incentives will be considered for advanced technologies through the same evaluation process as

¹⁶⁶ *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, 71 FR 8662 (Feb. 17, 2006), FERC Stats. & Regs., ¶ 31,204 (2006), *order on reh'g*, Order No. 672-A, 71 FR 19814 (Apr. 18, 2006), FERC Stats. & Regs. ¶ 31,212 (2006).

¹⁶⁷ Section 1223 identifies 18 such technologies and further provides that advanced transmission technologies include any other technologies that the Commission considers appropriate.

¹⁶⁸ NOPR at P 64–66.

other technologies, as discussed in this Final Rule.

289. We will not provide a unique incentive designed for a specific technology. To the extent that applicants seek additional incentives for advanced technologies, the Commission will consider the propriety of such incentives on a case-by-case basis.

290. Section 1223 of EPAct 2005 lists 18 advanced transmission technologies. We interpret this list as being illustrative of the kinds of technologies that Congress sought to encourage and not exclusive of advanced technologies that may be employed and considered for incentive ratemaking treatment. We expect new technologies to continually evolve. Moreover, as noted above, section 1223 of EPAct 2005 also provides that advanced transmission technologies include any other advanced transmission technologies that the Commission considers appropriate. Thus, we decline to adopt in the regulatory text a specific list of technologies eligible for incentive ratemaking, and will entertain proposals for incentives rate treatments for advanced technologies on a case-by-case basis.

291. This includes technologies that may indirectly mitigate congestion and enhance grid reliability, if such technologies can be shown to increase the capacity, efficiency, or reliability of an existing or new transmission facility.

292. The Commission does not have sufficient information to make generic judgments about what barriers exist, if any, to the introduction of particular technologies based on the record. To the extent applicants believe additional incentives for advanced transmission technologies are needed, they must support such requests in individual cases.

293. In addition, we note that those applicants that do not want to use accelerated depreciation for all their facilities may elect to utilize this incentive for advanced technologies since the useful life of such technologies may not be sufficiently known. The Commission will also consider requests to recover the costs of obsolescent plant, thereby facilitating the addition of new, more technically advanced transmission infrastructure.

2. Case-by-Case Review

a. Comments

294. Ameren and others suggest the Commission should determine whether technology applications are just and reasonable on a case-by case basis, which would allow applicants flexibility to determine which

technologies are best suited for a particular project.

295. National Grid believes the Commission should encourage the development of the best technology for particular needs identified in transmission owners' planning processes. This avoids putting the Commission in a position of picking winners and losers, but would allow transmission owners to make appropriate decisions relative to costs, benefits and risks associated with advanced technologies.

296. International Transmission suggests the Commission should determine what incentives are necessary to overcome barriers to deployment of the technologies defined in section 1223 of EPAct 2005, and then authorize those incentives on a case-by-case basis.

297. As an alternative to the case-by-case consideration of incentives, AEP recommends establishment of criteria for transmission investment to receive full incentive treatment. Such criteria might include: reducing congestion, advancing growth and security of the interstate grid, and providing an opportunity to site fuel diverse, newer technology, and environmentally friendly generation.

b. Commission Determination

298. The Commission will consider incentives for advanced technologies on a case-by-case basis. As discussed above, we are not making generic determinations regarding the applicability of incentives to particular technologies. Consistent with this case-by-case approach, we will not adopt AEP's suggestion to establish generic criteria for evaluating which transmission investments will receive full incentives. As discussed by Ameren and others, case-by-case review also provides flexibility to transmission providers in identifying the technologies that are most appropriate for their project applications and business models. It also avoids putting the Commission in a position of picking winners and losers, but allows transmission owners to make appropriate business decisions, as discussed by National Grid. The Commission in its reviews will provide incentives to technologies that increase the capacity, efficiency, or reliability of an existing or new transmission facility.

299. With regard to International Transmission's concerns, the Commission is not in a position to make generic judgments about what barriers exist, if any, to the introduction of particular technologies. To the extent applicants believe additional incentives for their advanced technology

applications are needed, they can make a case for advanced technology incentives in their individual proceedings and the Commission will make a case-by-case determination.

3. Whether To Require A Technology Statement

a. Comments

300. TAPS and others believe the Commission should not require that a particular technology or the most advanced technology be used in order to qualify for incentives. They believe that a technology statement would add an unnecessary burden to applications and would likely result in Commission approval of imprudent and routine transmission investment. They also argue that statements made by an applicant would tend to be self-serving, and not detailed enough for proper Commission evaluation. Instead, the Pennsylvania Commission suggests that the Commission develop in-house technology expertise, or alternatively establish a peer review board of nationally recognized independent experts.

301. UTC Power believes the technology statement should also include a list of the advanced technologies capable of meeting the project goals for reducing congestion and increasing reliability, and reasons they were not employed. Duquesne supports a technology statement but does not believe that it should have to be specific as to describe all technologies that were considered and not used.

b. Commission Determination

302. In as much as EPAct 2005 requires the Commission to encourage the deployment of transmission technologies, we will require applicants for incentive rate-treatment to provide a technology statement that describes what advanced technologies have been considered and, if those technologies are not to be employed or have not been employed, an explanation of why they were not deployed.

4. Risk Sharing

a. Comments

303. CCAS suggests that the Commission offer a framework of cost sharing among entrepreneurs, ratepayers, utility shareholders and taxpayers, peer review and competitive solicitation to share and recover qualified research development and demonstration project costs through transmission rates. NEMA supports performance-based ratemaking as a means of enabling advanced technology

implementation for the sharing of benefits and risks between utilities and customers.

304. CAISO suggests that the Department of Energy and the Commission cooperate with the industry and reliability organizations on programs to identify, test, and disseminate information on new technology. APPA also suggests a process for the Commission to work with each region to develop a technology plan and a research and development budget, with costs to be recovered through regional transmission rates. Sabey encourages the Commission to provide incentives for technology demonstrations on small-to-medium scale projects.

305. NU and others suggests the Commission consider incentive ratemaking treatment of research and development dollars spent by utilities, which benefit the advancement of new technology. The Kentucky Commission believes in federal funding for research and that the Department of Energy is an appropriate sponsor for research in new transmission technology.

306. EPRI supports efforts to enhance grid infrastructure, and offers a list of advanced transmission technologies that are near term or commercially available, those that may be available for demonstration within four months with commercial availability in three to five years, and longer-term technologies still in the research and development stage with possible demonstration in three to five years.

b. Commission Determination

307. The Department of Energy is a more appropriate federal agency to promote research and development. Accordingly, research and development are beyond the scope of this proceeding, and we will not include incentive ratemaking for research and development costs in the Final Rule.

5. Other Technology-Related Issues

a. Comments

308. Semantic states that the Final Rule needs to define "prudently-incurred" costs that are to be recoverable and proposes that "prudently-incurred" be defined to include a substitution test such that expenditures are not made in excess of that which is required. By way of example, Semantic offer that an open RFP process for congestion relief should provide for separate pricing for the avoided cost value of each separable reliability benefit for which the reliability standards require action. This separate pricing of strategies for

achieving the reliability and congestion goals must be compared to the summed cost of the advanced technology that can achieve the goals when determining prudence and just and reasonable rates. Semantic believes that such an approach results in greater efficiency in the use of the existing grid and the Final Rule should provide incentives other than ROE adders to foster such efficiency through the use of Advanced Transmission Technologies for time of day congested segments of the grid.

309. American Superconductor states that the Commission should revisit and clarify its Seven Factor Test for distinguishing between transmission and distribution facilities, to reflect technology advances made since the Commission adopted the Seven Factor Test. For example, American Superconductor states that it has developed dynamic VAR technologies that can effectively support transmission grids while connected to distribution facilities. Classification of such advanced technologies as transmission facilities would make them eligible for recovery under Commission-jurisdictional tariffs.

b. Commission Determination

310. We deny Semantic's request to define "prudently-incurred" as requiring an open RFP process to consider alternative technologies and to provide additional incentives to address time of day congestion. As previously stated, we expect that new development programs will include, or at least consider, advanced technologies, but we will not mandate it. We agree that improvements in the operation of the grid, perhaps through advanced technologies addressing time of day congestion, could result in efficiency benefits and encourage such proposals on a case-by-case basis.

311. We also deny American Superconductor's request to revisit our Seven Factor Test because it is beyond the scope of this proceeding.¹⁶⁹

F. Transmission Organization Incentive

1. Background

312. The NOPR (at P 45) proposed that the Commission will continue to consider requests for ROE-based incentives for utilities that join an RTO, in recognition of the benefits such organizations bring to customers, as outlined in detail in Order No. 2000. In

¹⁶⁹ We note that if these technologies truly perform a transmission function, a more productive approach than modifying the Seven Factor Test may be to propose modification of the Uniform System of Accounts to reflect such plant in a new transmission-related plant account. But that is beyond the scope of this proceeding.

addition, it proposed that the Commission will consider similar requests by utilities that join an ISO for an incentive ROE that, while still in the zone of reasonableness, is higher than the ROE the Commission might otherwise allow if the utility did not join.

313. The NOPR (at P 46) also sought comment on whether the Commission should consider incentive-based ROE requests for public utilities that are not in an RTO but that join a Commission-approved regional planning organization.

2. Comments

314. Comments span a wide range of views on proposed incentive for utilities that join an RTO. Several commenters¹⁷⁰ support the proposal to continue to consider requests for ROE-based incentives for utilities that join a Transmission Organization. Most of these commenters also request that the incentive apply equally to both new members and existing members. They contend that denying an incentive to existing Transmission Organization members while awarding it to new members who join these organizations unfairly discriminates against those entities that should be rewarded for taking the initial step of establishing and joining an independent Transmission Organization and would therefore be contrary to good public policy, unjust, unreasonable, and unduly discriminatory. In addition, this discrimination could create an incentive for a transmission owner to depart from an existing RTO and to join a new RTO, simply to obtain the NOPR incentives "for public utilities that join a Transmission Organization." PEPCO states that an adder should apply generally to all facilities for utilities in the RTO, not just to new investment after a new company joins an RTO.

315. Other commenters¹⁷¹ contend that, if the Commission does allow an incentive for joining a Transmission Organization, the incentive should only apply going forward for new members, not for those who already joined. They argue that incentives should incite or spur a desired future action, and thus it makes no sense to provide incentives to transmission owners for past behavior or for actions that are likely to occur

¹⁷⁰ E.g., Ameren, EEL, Electric Power Supply, FirstEnergy, KCPL, MidAmerican, National Grid, NYSEG, NorthWestern, New England TOs, NSTAR, PEPCO, PacifiCorp, PG&E, PJM, PJM TOs, TransCanada, Trans-Elect, Vectren, and WPS.

¹⁷¹ E.g., Connecticut DPUC, Dairyland, Delaware Commission, NRECA, NECOE, NECPUC, New York Commission, SMUD, TANC, MISO States and TDU Systems.

under other normal business circumstances. Incentives for existing members would represent an unjustified windfall for utilities, at the expense of the transmission customers. In addition, the FPA does not permit the Commission to reward a utility "in recognition" of benefits for actions already taken by the utilities.

316. Some of these commenters also assert that the incentive should not apply where a transmission owner is ordered to join a RTO/ISO by statute or has agreed to join an RTO/ISO as a condition of receiving approval for a merger, market-based rates, or because of other regulatory actions. Also, possible incentives for joining an RTO, and the procedures for requesting such incentives, are already addressed in Order No. 2000.

317. Certain commenters¹⁷² contend that the Commission should consider giving ROE incentives only to companies joining a newly forming Transmission Organization, rather than existing ones, and then only for a limited period of time; and if a public utility withdraws from an RTO or ISO for which it obtained an ROE adder for joining, the Commission should issue an order immediately eliminating such ROE adders.

318. Others request that the Commission make a generic finding that entities that join an ISO or RTO automatically qualify for the incentive. For example, Trans-Elect submits that the Commission can and should use the record developed in this proceeding to find, on a generic basis, that RTO/ISO membership produces sufficient customer benefits to qualify for the 50 basis-point ROE adder.

319. Some commenters¹⁷³ state that this incentive should not be limited to public utilities. It should apply to all transmitting utilities and electric utilities, including municipal utilities. Another view, that of Northwestern's, would have the Commission consider granting such incentives to transmission owners that are actively engaged in the development of an RTO or ISO, and permit transmission owners to recover prudently incurred costs of developing an RTO or ISO as they are incurred, in regions that do not currently have such an independent entity. American Wind strongly supports the objective to regionalize the grid, but believes that it would not serve the Commission's or Congress' goal to allow incentives to any type of Transmission Organization that is approved by the Commission for the operation of facilities. For example,

American Wind states that single-system Transcos do nothing for regional goals.

320. Some commenters raise issues concerning the definition of a Transmission Organization. For example, Bonneville and PNM believe that incentives should be available to utilities that enter agreements or form transmission associations outside the specific models of RTOs or ISOs. MISO States contend that the Commission should not grant ROE incentives to utilities joining Transmission Organizations until these entities are more clearly defined. MISO States assert that the Commission currently has inadequately specified standards and requirements for "independent transmission providers" and no established standards or requirements for "other transmission organizations."

321. Some commenters seek some type of conditions/criteria for receiving the Transmission Organization incentive, including: Ongoing participation in an ISO that provides open access on the basis of competitive bids and that allocates the costs of grid access to users based on LMP; participation in the relevant ISO or RTO planning process such that the ISO or RTO will make a determination of need; or tying the incentives to whether the Transmission Organization has an effective regional planning process that results in the construction, not merely the identification, of transmission. Others suggest tying the level of the incentive to meeting certain criteria, including: A single sliding scale ROE adder mechanism which is tied to levels of independence; or a graduated incentive tied to important features of the Transmission Organization like degree of independence, range of functions, transparency of operations, openness of stakeholder forums, and geographic scope of the transmission planning area.¹⁷⁴

322. Some commenters state that there should be penalties associated with a lack of participation in Transmission Organizations.¹⁷⁵ For example, they contend that: The ROE should be reflecting that service not provided by an ISO or RTO is less optimal; there should be a negative 50 basis point penalty on those public utilities that seek to withdraw from RTOs within the first 5 to 10 years of participation to recognize the costs paid by consumers to fund the public utility's participation; and there should

be penalties for incumbent transmission owners that continue to frustrate RTO formation.

323. Some commenters oppose ROE-based incentives for joining an RTO or ISO.¹⁷⁶ Among other reasons, they state that: It has not been determined whether the benefits of participation in RTOs outweigh the costs, and, therefore, there is no justification for an incentive to encourage participation in RTOs; that the incentive is unwarranted because RTOs and similar organizations have a poor track record for getting new transmission built; that return incentives for RTO participation raise the already heavy RTO cost burden and add fuel to the concerns of state commissions and customers about RTO costs, thus undermining RTOs; that the risk of joining an RTO/ISO will already be reflected in the utility's return allowance; that joining an RTO/ISO is already lucrative, a fact that can be illustrated by the sound business conditions of the existing transmission owners' businesses in an RTO/ISO area in which transmission businesses will have guaranteed returns as a monopoly business; and that the incentive is not tied to actual new investments, and allowing an increased ROE on all transmission investment (including existing facilities) would merely drive up transmission rates.

324. According to PPC, EPAct 2005 is conspicuously silent regarding whether Transmission Organizations are desirable, and section 219(c) cannot fairly be read to authorize the Commission to provide incentives to the utilities that join such organizations that are greater than those incentives that are available to other, non-member utilities.

325. Several commenters support incentives for participation in a regional planning process that is not necessarily an RTO.¹⁷⁷ For example, PJM supports incentives for transmission owners' participation in robust regional transmission planning processes as an effective, collaborative and transparent means to ensure the development of economically efficient transmission projects that truly benefit customers. MidAmerican states that a strict requirement for public utility participation in an RTO or ISO could discourage certain transmission owners, particularly nonjurisdictional transmission owners, from regional participation under any structure. Bonneville states that modest financial incentives linked to construction of new facilities advocated by an independent

¹⁷⁴ E.g., SDG&E, CAISO, International Transmission, National Grid, and MISO States.

¹⁷⁵ E.g., California Oversight Board, TDU Systems, and TransCanada.

¹⁷⁶ E.g., APPA, NRECA, and TDU Systems.

¹⁷⁷ E.g., Ameren, Southern Companies, SCE, PJM, and MidAmerican.

¹⁷² E.g., MISO States, NRECA, and TDU Systems.

¹⁷³ E.g., CAISO, APPA, and NRECA.

regional planning process may be sensible, but incentives must be tied to implementation of the regional plan, not just for mere participation in the organization.

3. Commission Determination

326. To the extent within our jurisdiction, we will approve, when justified, requests for ROE-based incentives for public utilities that join and/or continue to be a member of an ISO, RTO, or other Commission-approved Transmission Organization. However, we are not persuaded that we should create a generic adder for such membership, but instead will consider the appropriate ROE incentive when public utilities request this incentive. The decision in this rule to consider specific incentives on a case-by-case basis fulfills the Congressional mandate to the Commission.¹⁷⁸ Thus, issues concerning risk such as those raised by SMUD are more appropriately addressed in the proceedings that evaluate proxy companies and set a zone of reasonableness.

327. We will not make a generic finding on the duration of incentives that will be permitted for public utilities that join Transmission Organizations. An entity will be presumed to be eligible for the incentive if it can demonstrate that it has joined an RTO, ISO, or other Commission-approved Transmission Organization, and that its membership is ongoing. Any public utility receiving an incentive ROE for joining a Transmission Organization but that withdraws from such organization is no longer eligible for the ROE incentive.

328. We will not broaden or restrict the definition of Transmission Organization. For purposes of this Final Rule, and as defined in section 3(29) of the FPA, a Transmission Organization means a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities. We note that all RTOs and ISOs are already covered by this definition, and we will consider, on a case-by-case basis, applications for other types of entities to be classified as Transmission Organizations for purposes of whether membership

warrants incentives under these provisions.

329. With respect to NorthWestern's argument that the Commission should consider incentives for the development of a Transmission Organization and permit recovery of prudently incurred costs of such development as they are incurred, the Commission will review applications for incentives in the context of filings for the creation of Transmission Organizations and determine the appropriate methods for recovery of costs on a case-by-case basis. With respect to comments suggesting specific criteria to qualify for the incentive (e.g., participation in a planning process) or that the level of the incentive be tied to meeting certain criteria, we will not specify such criteria in this Final Rule.

330. Several comments urge that eligibility for these incentives not be limited to public utilities. However, the fact is that section 219(a) directs that this rulemaking provide incentives for "public utilities" and public utilities are the only entities whose rates are jurisdictional under sections 205 and 206 of the FPA. Further, although section 219(c) refers to incentives for "transmitting utilities" and "electric utilities" that join Transmission Organizations, it also contains the provision "to the extent within its jurisdiction." Accordingly, the rule will apply to jurisdictional public utilities.¹⁷⁹ We clarify that this does not mean that public utilities are precluded from proposing incentive plans under section 205 whereby incentives would be given to public utilities as well as nonpublic utilities. Indeed, we encourage such plans. However, we would generally not have authority under sections 205 and 206 to enforce such incentives for the nonpublic utilities.

331. We also clarify that, as explained earlier, entities that have already joined, and that remain members of, an RTO, ISO, or other Commission-approved Transmission Organization, are eligible to receive this incentive. The basis for the incentive is a recognition of the benefits that flow from membership in such organizations and the fact continuing membership is generally

voluntary.¹⁸⁰ Our interpretation of the statute is that eligibility for this incentive flows to an entity that "joins" a Transmission Organization and is not tied to when the entity joined. As some commenters note, to do otherwise could create perverse incentives for an entity to actually leave Transmission Organizations and then join another one. It would also be unduly discriminatory for the Commission to consider the benefits of membership in determining the appropriate ROE for new members but not for similarly situated entities that are already members.

332. We will not at this time establish a specific incentive for joining a Commission-approved regional planning organization. A regional planning process is very important to meeting regional transmission needs, and, we believe it will produce benefits for customers. For this reason, we have initiated a proposed rulemaking to require transmission providers to coordinate with interconnected systems when planning transmission system additions.¹⁸¹ This increased coordination in regional planning proposed in the OATT Reform NOPR would be mandatory, not optional, and therefore we will not offer at this time an incentive for such coordination. However, if a region develops a planning processes that is superior to that required by the OATT reform rulemaking (such as by using an independent entity to perform system planning), nothing in this final rule would preclude entities in the region from requesting appropriate incentives under FPA section 219.

333. As stated earlier in this Final Rule, we will not adopt performance-based ROEs that reduce ROEs for transmitting utilities that do not join Transmission Organizations, as recommended by several commenters. The purpose of this rule is to provide incentives, per the requirements of section 219.

G. Recovery of Prudently Incurred Costs To Comply With Reliability Standards and Recovery of Prudently Incurred Costs Associated With Transmission Infrastructure Development

1. Background

a. Prudently Incurred Costs To Meet Mandatory Reliability Standards

334. Under FPA section 215 (Electric Reliability), an Electric Reliability

¹⁷⁸ We believe that the Commission's accounting and reporting procedures for RTOs, as required by Order No. 668, address commenters' concerns about the management of RTO costs. See *Accounting and Financial Reporting for Public Utilities Including RTOs*, Order No. 668, FERC Stats. & Regs. ¶ 31,199 (2005).

¹⁷⁹ We note that new section 211A gives the Commission authority to order transmission services by otherwise nonjurisdictional transmitting utilities. The Commission has never exercised authority under the new provision and the new provision provides limited rate authority. However, we leave open the possibility that incentives for otherwise nonjurisdictional transmitting utilities could be permitted in an order under section 211A.

¹⁸⁰ Our clarification also applies to utilities that joined RTOs or ISOs because of merger conditions or market-based rate requirements.

¹⁸¹ See OATT Reform NOPR at 214.

Organization may propose, and the Commission may approve by rule or order, reliability standards.¹⁸² Pursuant to section 219(b)(4)(A) of the FPA, the NOPR (at P 47) proposed to allow recovery of all prudently incurred costs necessary to comply with these mandatory reliability standards. Proposed new § 35.35(f) would allow for such recovery.

b. Prudently Incurred Costs Associated With Transmission Infrastructure Development

335. Under FPA section 216 (siting of interstate electric transmission facilities), the Commission has certain backstop siting authority for transmission facilities when the Secretary of Energy designates a geographic area experiencing electric transmission capacity constraints or congestion that adversely affects consumers as a National Interest Electric Transmission Corridor. Pursuant to section 219(b)(4)(B) of the FPA, the NOPR (at P 48) proposed to allow recovery of all prudently incurred costs related to infrastructure development pursuant to section 216. Proposed new § 35.35(g) would allow for recovery of such prudently incurred costs.

2. Comments

336. Several commenters raise issues applicable to both the mandatory reliability standard-related incentive and the infrastructure development-related incentive. For example, PJM TOs argue that the Commission should require that recovery of such prudently incurred costs be through stand-alone section 205 filings.

337. FirstEnergy and National Grid seek clarification that the NOPR is not revising existing policy on the recovery of prudently incurred costs and that there continues to be a presumption that investment is prudently made, with the burden of the challenging party to prove otherwise.

338. NRECA requests guidance from the Commission on what it considers to be prudently incurred costs. NRECA suggests the addition of a test to determine if the costs to comply with mandatory reliability standards and infrastructure development are just, reasonable and not unduly discriminatory, and that the Commission require participation in a regional planning process, with LSE participation.

339. Some commenters proffer specific examples they believe should be considered as prudently incurred reliability or infrastructure development costs. For example, AEP recommends the cost of control centers and national security infrastructure, and Semantic recommends substation tests as reliability costs.

340. East Texas and others caution the Commission to approve only the costs that are necessary to comply with mandatory reliability standards and for transmission infrastructure development. They express concern about the potential for rising costs to customers that may result from additional transmission investment.

341. APPA and others raise issues specific to recovery of prudently incurred costs to comply with mandatory reliability standards. APPA and other commenters agree that it is appropriate for the Commission to allow recovery of all prudently incurred costs to comply with mandatory reliability standards, and recommend the Commission clarify standards for determining that such costs are prudently incurred. TDU Systems suggest the Commission approve only prudently incurred costs to comply with mandatory reliability standards that are approved by a regional entity and in the context of a full FPA section 205 rate hearing or under a formula rate.

342. East Texas raises an issue specific to recovery of prudently incurred costs associated with infrastructure development. It requests that the Commission make explicit provisions in its transmission incentives rules for any actions that it may undertake under the new siting authority provided to it under section 216.

3. Commission Determination

343. The Commission will allow recovery of all prudently incurred costs necessary to comply with the mandatory reliability standards under section 215 and all prudently incurred costs associated with infrastructure development under section 216. In response to commenters, we further clarify that the Commission will review applications for the recovery of such prudently incurred costs under its section 205 procedures.

344. Some confusion may have been caused because the NOPR is more broadly related to transmission pricing reform and expresses the Commission's willingness to consider a variety of transmission pricing "incentives" to encourage the construction of new transmission. In many instances new investment in transmission may both

improve reliability and reduce congestion. However, the NOPR specifically referred to recovery of "prudently incurred costs" in the context of the section 215 and 216-related expenses and investment. We take this opportunity to clarify that we are simply codifying our long standing regulatory policy that allows utilities the opportunity to recover all prudently incurred costs associated with the provision of transmission service in interstate commerce.

345. We deny NRECA's request that the Commission require participation in a regional planning process as part of the prudence review. As we have stated earlier in this rule, we will not make regional planning a precondition of receiving incentive ratemaking treatment. However, we expect and encourage participation in regional planning processes for all major transmission additions, including those within a designated national interest corridor.

346. In regard to commenters' specific examples of what they believe should be considered as prudently-incurred reliability or infrastructure development costs, we find it premature to develop such a list of pre-approved costs without proper consideration of the equipment involved and its application to the transmission system. This type of case-specific justification would be required from the applicant in its section 205 filing.

347. Similarly, we deny APPA's request to establish standards for determining that reliability standards compliance costs are prudently incurred. The Commission is making no change in the long-standing regulatory presumption in a section 205 proceeding that costs are prudently incurred, but parties are free to provide evidence to the contrary; and, ultimately, the burden is on the applicant to demonstrate that its proposal is just and reasonable.

348. We deny the request of East Texas that the Final Rule include explicit provisions for any actions the Commission may take with respect to the Commission's backstop siting authority under FPA section 216. This is beyond the scope of this rulemaking, which addresses only the recovery of prudently-incurred costs related to transmission infrastructure development pursuant to FPA section 216, not the Commission's backstop siting authority under that section. This issue is best addressed in the National Interest Electric Transmission Corridors proceeding in Docket No. RM06-12-000.

¹⁸² An Electric Reliability Organization is the organization certified by the Commission to establish and enforce reliability standards for the bulk power system, subject to Commission review. See Order Nos. 672 and 672-A.

H. Public Power

1. Background

349. Given the importance of public power participation and the requirements of section 219, the NOPR (at P 63) requested comments on what actions the Commission should take in this rulemaking to encourage public power participation in new transmission projects. The NOPR asked, for example, whether the consortium approach would help to promote expansion of the transmission grid, and, if so, what types of incentives the Commission could provide to encourage such consortia.

2. Comments

350. Commenters express diverse views. Several commenters¹⁸³ express support for the consortium approach. For example, Connecticut DPUC states that the approach has appeal especially for very large transmission projects involving multiple states and that where there is agreement on the project, a sharing of the benefit incentives might be applicable. Similarly, Ameren and PJM state that public power involvement can be valuable and that the Consortium should receive the same incentives available to public utilities developing such projects. PJM supports a case-by-case approach for incentive rate treatment for these types of projects. EEI and MidAmerican offer that regardless of whether public power is involved, any member of the consortium should receive the same incentives that public utilities receive for building new projects. Upper Great Plains states that incentives should be available to all forms of joint projects, not just those arising from an RTO-led consortium.

351. Certain commenters¹⁸⁴ state that public power participation should not be mandated. New England TOs warn that requiring that utilities offer participation in transmission projects to certain pre-specified parties will be counter-productive. New England TOs state that there are other entities (*e.g.*, private equity, merchant transmission) who might have an interest in investing in a particular project and that the Commission has no basis for discriminating in favor of public power by giving it special investment rights and that doing so will create controversy.

¹⁸³ *E.g.*, Connecticut DPUC, PJM, Municipal Commenters, Semantic, Progress Energy, and Ameren Services.

¹⁸⁴ *E.g.*, KCPL, National Grid, International Transmission, New England TOs, NU, NYSEG, and SMUD.

352. Some of these same commenters that support the consortia¹⁸⁵ also support the Commission offering to public power entities the same incentives it is offering to jurisdictional public utilities, including Transcos. For example, AMP-Ohio states that the Commission should encourage arrangements that allow public power entities to obtain direct ownership. Wyoming Infrastructure Authority states that public power participation has demonstrably aided grid expansion projects to increase reliability and efficiency of the transmission grid.

353. Others propose limitations, including limiting incentives to those applicants offering third-party participation in projects.¹⁸⁶ Citizens Energy, for example, states that the Commission should require Transmission Organizations to adopt rules which ensure non-discrimination against merchant transmission. TransCanada proposes a specific process for merchant transmission. FirstEnergy states that public power participation should be permitted only when such entities have an OATT on file with the Commission. Still other commenters¹⁸⁷ state public power already enjoys various benefits over investor-owned utilities (*e.g.*, access to low-cost borrowing funds, ability to set own rates, tax advantages) and that the Commission should not further the rate advantages.

3. Commission Determination

354. We agree with comments that public power participation can play an important role in the expansion of the transmission system. We want to encourage public power participation in new transmission projects, but the ratemaking incentives we discuss in the Final Rule are generally not directly available to non-jurisdictional entities such as most public power entities, because they do not file their rates with the Commission. However, to the extent our jurisdiction allows, the Commission will entertain appropriate requests for incentive ratemaking for investment in new transmission projects when public power participates with jurisdictional entities as part of a proposal for incentives for a particular joint project.¹⁸⁸ Encouraging public power

¹⁸⁵ *E.g.*, AMP-Ohio, Ameren, CAISO, Municipal Commenters, Nevada Companies, Upper Great Plains, Powder River, Wyoming Infrastructure Authority and Snohomish.

¹⁸⁶ *E.g.*, TAPS, TANC, NECOE, Citizens Energy, TDU Systems, and Municipal Commenters..

¹⁸⁷ *E.g.*, KCPL and EEI.

¹⁸⁸ This is not to say that the Commission would not consider incentive ratemaking treatment for a consortium project that did not include public

participation in such projects is consistent with the goals of section 219 by encouraging a deep pool of participants.

355. We will not specify which incentives might be most appropriate for encouraging participation by public power entities but instead will allow the applicants to make proposals that best suit their circumstances. We also clarify that the Commission's approval of an incentive plan proposed by a public utility that also pertains to an entity that is not otherwise jurisdictional under sections 205 and 206 (*e.g.*, public power), does not affect the non-jurisdictional status of the entity.

356. We will not, however, require public power or other joint participation in a transmission project in order for investment in a project to be eligible for incentives. While participation by a diverse group of investors might be the best structure for an individual project, it is inappropriate to mandate a particular joint-structure be used in all cases. However, we clarify that, to the extent allowed under our jurisdiction, a public power entity should have the same opportunity afforded to jurisdictional entities to recover costs related to new transmission investment.

357. We believe a consortium approach that includes public power and other entities for new investment has value and we encourage participation by public power in meeting the transmission infrastructure provisions of section 219. However, we will not require a consortium approach. We believe it is more appropriate for applicants to fashion proposals for new transmission infrastructure projects that are tailored to the specific circumstances and needs of a particular project. In addition, we believe a consortium-led proposal that is the result of an open, collaborative, regional process and that includes a diverse group of participants may face less resistance from parties when a filing is made here, because competing interests will have already been addressed before the proposal is filed with the Commission.

V. Reporting Requirement

A. Background

358. Section 35.35(h) of the proposed rule would require jurisdictional public utilities to report annually to the Commission no later than April 18, 2007, and, in succeeding years, on the date on which FERC Form No. 1 information is due the following data

power participation. Nothing in this rule prevents jurisdictional entities from combining their resources on a project.

and projections: (subsection i) in dollar terms, actual investment for the most recent calendar year, and planned investments for the next five years; and (subsection ii) for all current and planned investments over the next five years, a project by project listing that specifies for each project the expected completion date, percentage completion as of the date of filing and reasons for delay. A draft Form X was provided in the Appendix.

359. In the NOPR (at P 49), the Commission stated that the purpose of the reporting requirement is to determine the effectiveness of the proposed rules and to provide the Commission with an accurate assessment of the state of the industry with respect to transmission investment.

B. Comments

360. A number of commenters¹⁸⁹ support the proposed Form X reporting requirement. For example, International Transmission states that such reports are important to determine if the investment incentives adopted by the Commission are actually working to elicit investment in transmission that benefits consumers. Some of these commenters make a number of recommendations, including the following: Define transmission investment for reporting; include separate categories for new generation interconnection versus other types of system upgrades; classify investments by voltage level to distinguish facilities that have little or nothing to do with the interstate transmission grid; exclude small, miscellaneous upgrades; provide instructions that Transmission Facilities in the table "Capital Spending On Electric Transmission Facilities" are defined as transmission assets under the Uniform System of Accounts in accounts 350 through 359; like the report with FERC Form No. 1; provide a list of categories for the "Reasons for Delay" column, such as siting, delayed completion of a new generator; report the consumer benefits of the project (e.g., congestion relief, enhanced reliability); require the posting of the information on RTO, ISO, Transco or public utility Web sites or OASIS; require that all the reports be aggregated in one report that is made public, thereby providing manufacturers with a better basis to plan for industry needs.

361. Commenters also contend that the report does not go far enough.¹⁹⁰

¹⁸⁹ E.g., International Transmission, NRECA, APPA, National Grid, AEP and TAPS, Siemens, and NEMA.

¹⁹⁰ E.g., International Transmission, Northwestern, Siemens, NEMA, and Semantic.

Some¹⁹¹ state that such reports should extend to all transmission providers, including those subject to new section 211A of the FPA and government-owned entities. Semantic asserts that the reporting requirements proposal is incomplete and does not adequately secure the comprehensive state of the grid information required by the regulators and market participants. Semantics would require that power systems state data must be made available in real-time to identify parallel flows and to avoid under-investment, over-investment or bad investments; that the report should provide for the filing of data that enables the Commission to fulfill its oversight responsibility for RTOs under § 35.34(k)(4) and to promote compliance with § 35.34(k)(1). Semantics further recommends that time of day rate schedules should be reported into a web-accessible national repository. Semantic explains that capital investment in advanced technologies will relieve congestion if this information is made known to technology vendors and entrepreneurial entities.

362. Certain commenters¹⁹² that support the reporting also express concerns. For example, National Grid states the Commission should clarify that the forward-looking projections in Form X, rendered in good faith and upon a reasonable basis, would not subject the reporting transmission owners to claims of fraud, detrimental reliance or other liabilities arising from the fact that actual capital spending may vary from reported projections.¹⁹³ Ameren requests that the Commission clarify that the reported information is to be provided for informational purposes only and should not be allowed to form the basis of a review by the Commission or other entities regarding the reasonableness or prudence of the amounts reported. PG&E and the Nevada Companies assert that a disclaimer should be added to footnote 1 explaining that much of the information reported here may change over time and may be subject to correction. Trans-Elect asserts that the reporting requirement, alone, should not be allowed to form a basis for a section 206 investigation.

¹⁹¹ E.g., International Transmission, EEI, Northwestern, and KCP&L.

¹⁹² E.g., National Grid, Ameren, PG&E, and Nevada Companies.

¹⁹³ See Section 27A of the Securities Act of 1933, as amended; Section 21E of the Securities Exchange Act of 1934, as amended; 15 U.S.C. 77z-2 and 78u-5; 17 CFR 240.3b-6.

363. Some commenters raise confidentiality concerns.¹⁹⁴ EEI and KCP&L urge that the Commission afford Critical Energy Infrastructure Information (CEII)¹⁹⁵ status to this information since it clearly relates to the production, generation, transmission or distribution of energy, could be useful to a person planning an attack and gives strategic information beyond the location of critical infrastructure. EEI encourages the Commission to perform an evaluation as to the need for confidentiality of selected company information due to the commercially sensitive nature of the information. Similarly, Ameren and TransElect request that the Commission clarify that the required information may be submitted pursuant to the Commission's confidential filing procedures.¹⁹⁶

364. A number of commenters oppose the reporting requirement for a variety of reasons. Several¹⁹⁷ claim that the Commission has not provided adequate justification for the Form X data collection, as required by the Paperwork Reduction Act, given that the Commission already collects information on utility transmission investment and planning in existing FERC Form Nos. 1, 714 and 715 and that the Commission has not demonstrated the need to make the information collection mandatory. Ameren, AEP and PJM TOs state that the requested information duplicates information already being compiled by RTOs in their planning process; and MISO States suggest that the Commission obtain an aggregate report from the RTO. PJM TOs recommend that Form No. 1 requirements be modified prospectively, instead of requiring a new form. EEI is concerned that the Commission, state commissions and the public may inappropriately rely on the information, expecting the plans to be implemented without regard to the regulatory approvals and applicant and market decisions involved. EEI further states that reporting information on planned future facilities can lead to unnecessary opposition that might not occur with a proper public siting process, lead to speculation in land use fees that can harm the applicant's customers.

365. EEI, arguing that the only accurate measure of the effectiveness of

¹⁹⁴ E.g., TransElect, EEI, KCP&L, and Ameren.

¹⁹⁵ They cite *Critical Infrastructure Information*, Order No. 630, 68 FR 9857 (March 3, 2003), FERC Stats. & Regs. ¶ 31,140 (2003), *order on reh'g*, Order No. 630-A, 68 FR 46,456 (Aug. 6, 2003), FERC Stats. & Regs. ¶ 31,147 (2003).

¹⁹⁶ See 18 CFR 388.112.

¹⁹⁷ E.g., EEI, Southern, SCE, KCP&L, Nevada Companies, Progress Energy, Mid-American and PG&E.

the incentives is the number of applications filed for incentives, encourages the Commission to simply monitor the number of applications for new transmission facilities, the magnitude of the facilities involved and the incentives sought and thereby obtain the most accurate measure of the effectiveness of the proposed incentives. EEI also encourages the Commission to rely on annual aggregate transmission investment information that EEI has provided to the Commission and can continue collecting for the Commission's benefit. Nevada Companies assert this information should not be required since it is inaccurate and incomplete.

366. Southern, SCE and Ameren propose limitations on the information to be provided as follows: Only aggregate information should be required, and project-specific information should not be required since it is extremely burdensome, entails security and confidentiality issues, and is subject to change; if project-level information is required, that it be limited to major transmission projects, *i.e.*, 345 kv and above; and limit project-specific reporting requirements to only projects costing \$20 million or more and that are subject to a Transmission Organization's or a regional planning organization's planning and approval process.

C. Commission Determination

367. To ensure that these rules are successfully meeting the objectives of section 219, the Commission needs industry data, projections and related information that detail the level of investment. The rule's purpose is to both provide new investment as well as ensure that customers benefit. Thus, information regarding projected investments as well as information about completed projects will help the Commission to monitor the success of the ratemaking reforms announced in this rule. Thus, the Commission will adopt the proposed reporting requirement Form X and designate it as the FERC-730. Further, the Commission will make certain modifications to clarify when reports must be filed and what data must be submitted in FERC-730 reports.¹⁹⁸ The information required in FERC-730 is not available from Form Nos. 1, 714 or 715, nor is it available from other federal agencies. For instance, FERC Form No. 1 requires the reporting of historical financial data but

does not contain forward looking projections of expected transmission investments.¹⁹⁹ Thus, the information sought is not already readily available and will be required only from public utilities that have been granted incentive rate treatment for specific transmission projects under the provisions of § 35.35.

368. We agree with commenters that, for some utilities, the information requested is similar to information submitted to RTOs. However, the Commission does not receive that information, and the information provided to RTOs may not be identical to the information requested here. Therefore, to ease the administrative burden, those utilities providing information to RTOs can submit the same information to the Commission. We strongly encourage utilities that submit FERC-730 reports to do so in an electronic format via eFiling.²⁰⁰ To rely on information collected by EEI, as recommended, would not provide the Commission with the accurate information we need to assess the effectiveness of our regulations under section 219. The Commission would not have available to it the survey instruments or the analysis behind the reported information. Thus, reliance on second-hand gathered survey information for the purposes of rate setting would not provide the independent, factual basis to allow the Commission to make a determination that continuing incentives is appropriate. Likewise, the summary investment information available in existing reports does not provide information on projected investment or reasons for delays in projects, thereby limiting its value for determining the effectiveness of the rules.

369. We do not believe a CEII designation is required for this information since it is expected to only include information on capital spending and a general designation of the project name, without requiring data on facility location. With respect to confidential treatment of FERC-730, as a general matter we do not believe that this type of general planning information involves commercially sensitive information. However, while we will require applicants to provide capital

spending projections and other information in their applications, we also recognize that applicants may have legitimate reasons to maintain confidentiality of certain information. For this reason, applicants can request protection of information under § 388.112.

370. With respect to project-level information, this information is needed to determine the status of critical projects and reasons for delay, and will play a role in the Commission's evaluation of continuing incentives. To facilitate this review, we will require that filers specify which projects are currently receiving incentives in the project detail table and that they group together those facilities receiving the same incentive. We will not limit the information to projects above a certain voltage, since lower-voltage projects can have significant impacts on reliability and congestion relief, nor will we limit the information to projects subject to a Transmission Organization's or a regional planning organization's planning and approval process since we are addressing a national problem and complete coverage is therefore necessary. As discussed earlier in this rule, projects eligible for incentives—and hence required to submit data—are not restricted to projects or investments that result from regional planning processes. We agree with SCE that a minimum dollar threshold of \$20 million is a reasonable level for reporting of significant projects.

371. We agree with many of the recommendations for modifications to the tables as shown in the revised FERC-730 in the Appendix. We will not require the reporting of consumer benefits of projects. In order for these projects to have received an incentive, the project must have met the requirements of this rule, which includes that it benefit consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion. We will not require the addition of operating data to the table since the sole purposes of the information collection is to determine the level of capital spending, the status of significant and critical projects and reasons for delay. We will not require a Proposed Operating Date, as recommended by Ameren, since our sole concern with this information is that the planned projects are completed on time; operational start-up issues such as synchronization with the grid and testing introduce additional issues not directly relevant to tracking the progress of investments in new infrastructure.

372. Further, we will not require year-by-year capital spending estimates for

¹⁹⁸ FERC-730 filers are reminded that each FERC-730 filing must be accompanied by a Subscription consistent with the requirements of 18 CFR 385.2005(a).

¹⁹⁹ See *e.g.*, FERC Form No. 1 schedule pp. 204-7, "Electric Plant in Service (Accounts 101, 102, 103 and 106)" which requires the reporting of the original cost of electric plant in service and p. 216, "Construction Work in Progress—Electric (Account 107)" which requires the reporting of expenditures for certain construction projects at December 31 of the reporting year.

²⁰⁰ The Commission will issue a separate notice on how to submit this data electronically via eFiling.

the project detail table as recommended by TAPS since the goal of the rule is not to ensure the achievement of annual capital spending targets but rather to ensure the overall project is completed, and if not, the reasons for the delay. We will not require the inclusion of cost allocation or pricing information as recommended by TAPS since that information is beyond the scope of our requirements. We do not see the need for a disclaimer that information is subject to change, since the required information is clearly labeled “projected” and “expected” and therefore assumed to be subject to change. Since this rulemaking applies to public utilities and incentives are being permitted pursuant to sections 219 and 205, which pertain to public utilities, we will not require information from entities that are not jurisdictional under section 205, although such entities are encouraged to voluntarily provide this information. We clarify that the meaning of “On Schedule” in the Project Detail table is the most up-to-date, expected project completion date.

373. We clarify that the reported information is to be provided for informational purposes only, and its purpose is not to establish the prudence of the amounts spent. As we specified earlier in the rule, we expect applicants will propose metrics and provide a nexus between the incentive and the investment, and therefore the information in this report will not be the sole basis for a section 206 investigation. We further clarify that the projections in FERC-730, rendered in good faith and upon a reasonable basis, would not subject the reporting transmission owners to claims of fraud, detrimental reliance or other liabilities arising from the fact that actual capital spending may vary from reported projections.

374. Rather than requiring all public utilities to submit FERC-730, we clarify that only those public utilities that have been granted incentive-based rate treatment for specific transmission projects under the provisions of § 35.35 must file FERC-730 in the manner prescribed in Appendix A. A public utility is subject to the FERC-730 reporting requirement beginning with the year the Commission issues an order in response to a filing made pursuant to section 205 of the Federal Power Act, or in a petition for a declaratory order that precedes a filing pursuant to section 205. The initial FERC-730 filing is due by April 18 of the following calendar year and subsequent filings are due each April 18 thereafter.

375. In addition, we will add a new provision to § 35.35(h) and delegate to

the Chief Accountant or the Chief Accountant’s designee authority to act on requests for extension of time to file FERC-730 or to waive the requirements applicable to any FERC-730 filing.

376. Finally, we find the data issues raised by Semantic to be beyond the scope of this rulemaking. While the data requested by Semantic could provide a useful purpose for the operations and management of electric facilities and may have applicability to the Commission’s regulations for RTOs, this rulemaking is limited to an evaluation of incentives for investment in electric transmission facilities. Therefore, the reporting requirements of the rulemaking are appropriately limited to data on industry investment.

VI. Other Issues

A. Rate Related Issues

1. Rate Related Issues

377. Commenters also raised other rate issues such as formula rates, rate design, the five-month suspension policy and recovery of other costs. The Commission addresses these issues below.

a. Comments on Formula Rates

378. As an alternative to single-issue ratemaking, certain commenters urge the Commission to require recovery of incentives through various forms of formula rates.²⁰¹ Certain MISO TOs state that the Commission should facilitate recovery from wholesale and retail customers including bundled and unbundled retail load through a formula rate for new investments. Certain MISO TOs cite section 219 of the FPA to argue that Congress required the Commission to ensure the recovery of *all* prudently incurred costs necessary to comply with mandatory reliability requirements and related to transmission infrastructure development.²⁰²

379. EEI argues that the section 205 filing for a public utility with a formula rate should be limited to including appropriate language in the formula rate allowing the utility to get the incentives and not be the basis to challenge any other aspect of the formula rate.

b. Comments on Rate Design

380. Several commenters urge the Commission to require applicants to seek rolled-in treatment, rather than participant funding, to recover any costs

²⁰¹ *E.g.*, APPA, AWEA, KKR, MDU, PG&E, Certain MISO TOs, and TAPS.

²⁰² Certain MISO TOs state that all costs of new investment should include the costs of facilities built by the company as well as the costs of facilities allocated to the company through a RTO transmission cost allocation process.

incurred under the rule.²⁰³ Those commenters assert that participant funding is inequitable because it imposes too much of a system burden on limited customers and that participant funding may actually discourage investment.

381. Other commenters support participant funding for projects.²⁰⁴ They argue that socialization unfairly requires others to pay for facilities that they do not need and may deter new investment. Xcel requests that the Commission provide clear guidance on the issue of “rolled in” versus “incremental” pricing. Xcel states that the Commission should allow phased roll-in of transmission facilities as it does for natural gas pipelines because rolled-in pricing would encourage proper siting of generation.

382. EEI states that the Commission should be open to proposals that deviate from the “higher of” policy where justified.

383. Other commenters express support for regional or zonal rates.²⁰⁵ They argue that regional rates would foster new projects because the rates would match cost recovery to the broad regional benefits obtained and reduce opposition from local consumers and state regulators and litigation.

c. Comments on Five-Month Suspension

384. EEI, SCE and Xcel argue that the Commission’s current suspension policy hinders transmission investment because delaying the effective date of rates forces a utility to absorb the costs associated with the new facilities during the suspension period, thereby effectively reducing that utility’s return on equity. Additionally, EEI argues that, because any rate increase authorized by the Commission could be made subject to refund, with interest, customers could be made whole even without a five-month suspension. SCE suggests that the Commission should either change the threshold for determining when rates are excessive or use a sliding scale that would impose a longer suspension the larger the excessive revenues.

d. Other Comments on Rate Design

385. Commenters raised a variety of rate design issues. Energy Capital states that the Commission must modify traditional ratemaking practices to recognize the risks and structures required to fund a single line transmission project. SCE states that an

²⁰³ *E.g.*, East Texas, TDU Systems, and TAPS.

²⁰⁴ *E.g.*, NorthWestern, Progress, Southern Companies, PSEG, and E.ON US.

²⁰⁵ *E.g.*, TAPS and Upper Great Plains.

additional disincentive to transmission investment is the imputation of revenues from grandfathered agreements that are greater than the actual revenues under the agreements, thereby reducing the earned return for transmission tariff service. TAPS faults the Commission's policy of excluding EPRI dues from transmission rates because wholesale customers may make their own direct contributions. Trans-Elect requests the Commission to confirm that all financing costs, including prepaid liquidity reserve and working capital costs required by the lender as a condition to financing, are recoverable in rates.

e. Commission Determination

386. We agree with several commenters that formula rates can provide the certainty of recovery that is conducive to large transmission expansion programs.²⁰⁶ Moreover, formula rates alleviate the need for other relief sought by commenters. For example, public utilities with formula rates will generally be able to flow through increased transmission investment without concern as to the Commission's five-month suspension policy with the exception of the suspension period for approval of initial rates. While we continue to encourage public utilities to explore the benefits of filing transmission-related formula rates,²⁰⁷ we will not require public utilities to use formula rates to recover incentives.

387. We disagree with the interpretation that section 219 requires the Commission to claim jurisdiction over the transmission component of bundled retail load. While MISO TOs are correct that section 219 requires the Commission to ensure the recovery of all costs prudently incurred for section 215 reliability compliance and section 216 national interest corridor investments, we do not believe it is necessary to assert jurisdiction over bundled retail transmission to fulfill this statutory requirement.²⁰⁸

²⁰⁶ We will not rule on PG&E's proposed rate base tracking mechanism here because we do not have an actual proposal with supporting documents before us.

²⁰⁷ *Allegheny Power System Operating Companies*, 111 FERC ¶ 61,308 at P 51 (2005). See also *Allegheny Power System Operating Companies*, 106 FERC ¶ 61,003 at P 32 (2004) ("The parties may explore whether adopting formula rates for recovery of the costs of both the TOs' existing transmission facilities and new transmission facilities would be best. Specifically, we note that other TOs that we have approved incentive rates for also have formula rates.").

²⁰⁸ We will not add the term "all" to the regulatory text in 18 CFR 35.35(f) and (g) as recommended by Certain MISO TOs. The text in those sections reflects the language in section 219

388. The rate design issues raised in the comments are beyond the scope of this proceeding.²⁰⁹ While rate designs can impact infrastructure investment, this rule is limited to addressing incentive treatments that foster infrastructure investment. Interested parties may raise issues associated with rate design policies in the associated section 205 filings in which applicants are seeking rate recovery of transmission incentives.

389. We will not revise our five-month suspension policy in this proceeding. To the extent that public utilities are concerned that the Commission's suspension policy unnecessarily delays recovery of prudent costs, there are alternative means to ensure such recovery. As mentioned previously, formula rates enhance cost recovery certainty. Further, public utilities that are concerned that a particular rate increase may be deemed "excessive" under our suspension policy may use our pre-filing process for discussing those concerns.

390. We will not make the determination on Energy Capital's proposal that the Commission modify its traditional ratemaking practices to recognize unique aspects of non-traditional transmission owners because the issues raised are novel and we would be better informed with an actual proposal before us. Regarding SCE's concern about imputing the transmission revenues under grandfathered agreements using the OATT rate, this issue is beyond the scope of this proceeding.

391. We shall deny TAPS proposal to reconsider our policy on recovery of EPRI research and development costs when the unbundled retail load takes service under the same transmission rate as wholesale customers.²¹⁰ That is beyond the scope of this proceeding.

392. The Commission will remain flexible with respect to rate treatments proposals that applicants or interested parties can demonstrate to be just and reasonable.

of the FPA and therefore meets the Commission's compliance requirements.

²⁰⁹ We will not retain 18 CFR 35.34(e) in the new regulations as requested by MISO States. However, the new regulations allow RTOs to propose alternative incentives in 18 CFR 35.35(d)(1)(iii) and under these new regulations, RTOs may propose the incremental pricing provisions previously included in 18 CFR 35.34(e).

²¹⁰ The Commission has explained that, when the basis for calculating the amount of the voluntary contribution to EPRI for research and development is based on the amount of retail sales, recovery from wholesale customers is unreasonable. See *Public Service Company of New Mexico*, Opinion 133, 17 FERC ¶ 61,123 at 61,249 (1981), *order on reh'r*'g, Opinion No. 133-A, 18 FERC ¶ 61,036 (1982).

393. We will deny the request to confirm in this proceeding that prepaid liquidity reserve and working capital costs required by project lenders as a condition to financing are recoverable. Those issues were the subject of an Administrative Law Judge's Initial Decision in Docket No. ER05-17-002 and are pending Commission review. Those issues are better addressed in that proceeding because that proceeding has a complete litigated record.

394. We also find that EEI's request that the Commission use this rule to revisit "and" pricing to be beyond the scope of this rule.

B. Section 35.34

1. The Proposal To Eliminate Section 35.34(e)

a. Background

395. The NOPR proposed that applicants for incentive ratemaking treatment under section 35.35 would not be required to support their applications with cost-benefit analyses. The NOPR also proposed to eliminate § 35.34(e), which requires cost-benefit analyses by RTO applicants in order to avoid potential conflict between or overlap of the pre-existing regulations and the new § 35.35.

b. Comments

396. Several comments specifically addressed the NOPR's proposal to eliminate § 35.34(e). TDU Systems do not oppose elimination of § 35.34(e), so long as the consumer protections embodied in that section are incorporated into a new rule adopted to replace it. TDU Systems argues that adoption of the conditions and criteria it recommends (*i.e.*, public power participation in planning, financing and construction, and rolled-in rate treatment for expansions of network facilities) would ensure that these protections remain in place. TAPS, APPA and Industrial Consumers support retention of the cost-benefit provision for reasons given in their comments on the cost-benefit issue.

397. NRECA supports the Commission's proposal. Public utilities have had the opportunity for five years now to form RTOs and obtain transmission rate incentives for RTO membership. In light of the fact that it is yet to be demonstrated that the benefits of RTOs outweigh their cost, elimination of this provision is appropriate.

398. MISO supports the elimination of § 35.34(e), because it will be superfluous and unnecessary if the NOPR is adopted. Moreover, MISO points out that the authorization for RTOs to

include innovative rate treatments in their rates found in § 35.34(e) expired after January 1, 2005, with respect to transmission rate moratoriums and rates of return that do not vary with capital structure.

399. Ameren Services does not oppose the Commission's proposal to remove existing section 18 CFR 35.34(e) from its regulation. This is consistent with the mandate of new FPA section 219 to provide incentives for qualifying entities. Ameren Services contends that removal of § 35.34(e) will avoid confusion that could arise from potential conflicts between innovative rate treatments available under existing § 35.34(e) and the additional incentives proposed to be adopted in new § 35.35.

400. MISO States generally support the elimination of § 35.34(e). However, MISO States point out that § 35.34(e) appears to contain a provision that permits RTOs to apply for incremental pricing for new transmission facilities in association with an embedded-cost access fee for existing transmission facilities. Such a provision does not appear to be encompassed in the language of the Commission's proposed new § 35.35 rule. MISO States believe that such a provision could prove useful in certain circumstances and urges the Commission not to drop this provision in the transition process of deleting the elements in § 35.34(e) and replacing them with the new elements in § 35.35.

401. NorthWestern opposes preferential treatment based on corporate structure. It argues that if the Commission does remove § 35.34(e) as proposed, it should make certain that its resulting policies provide the appropriate non-preferential treatment.

c. Commission Determination

402. Comments opposing the elimination of the cost-benefit analysis requirement are addressed above in our determination to affirm the NOPR on the cost-benefit issue.

403. MISO States expresses concern that the proposed new § 35.35 does not appear to encompass the provision in pre-existing § 35.34(e)(v) allowing RTOs to apply for incremental pricing for new transmission facilities in association with an embedded-cost access fee for existing transmission facilities. The deletion of § 35.34(e) is intended to eliminate potentially conflicting or overlapping regulations concerning requests for incentive rate treatment. Thus, for example, the deletion of § 35.34(e) eliminates potential confusion over whether a proposal would be an "innovative" rate treatment (and require a cost-benefit analysis) under the pre-existing rules or be an incentive rate treatment requirement (with no cost-benefit analysis) under the new rules.

404. In Section IV.D. of this preamble in our determination segment, we find that we do not have a sufficient basis to adopt rules for PBR in this rule. Notwithstanding that determination not to enumerate PBR in the list of incentive rate treatments, we also state that we remain open to consider PBR proposals as an incentive rate treatment pursuant to section 219. Given that determination, and to avoid potential conflict or overlap with the rules adopted herein, we believe that removal of the pre-existing PBR provisions—§§ 35.34(e)(2)(v) and 35.34(e)(3)—is appropriate.

405. We address NorthWestern's comment that the Commission should not favor any particular corporate

structure in the discussion of the Transco incentives, *supra* Section IV.

VII. Information Collection Statement

406. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.²¹¹ The Commission is submitting these reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act.²¹² Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502-8415, fax: (202) 273-0873, e-mail: michael.miller@ferc.gov].

407. Public Reporting Burden: The Commission did not receive specific comments concerning its burden estimates and uses the same estimate here. Comments on the proposed reporting requirement (proposed in the NOPR as Form X) are addressed above in Section V, Reporting Requirements, where we adopt the FERC-730 information collection requirement. The comments received and our adoption of FERC-730 do not lead us to revise the NOPR's estimates of the public reporting burden.

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC-516:				
Transcos	30	1	296	8,880
Traditional Public Utilities	200	1	181	36,200
FERC-730	200	1	30	6,000
Totals	230	1	222	51,080

Total Annual Hours for Collection: (Reporting + Recordkeeping, (if appropriate)) = 51,080 hours.

Information Collection Costs: The Commission sought comments about the time and corresponding costs needed to comply with these requirements. No comments were received. Costs for FERC-516 and FERC-730 = \$6,129,600 (51,080 hours at \$120 an hour). (The

hourly rate was determined by taking the median annual salary from Bureau of Labor Statistics, Department of Labor Occupational Outlook Handbook. The figures reported by BLS are for 2002 and added to them was an inflation factor of 4.73 percent for the period January 2003 through December 2004.)

Title: FERC-516 "Electric Rate Schedule Filings", FERC-730 "Report of Transmission Investment Activity".

Action: Proposed Collections.

OMB Control No.: 1902-0096; and to be determined.

Respondents: Business or other for profit.

²¹¹ 5 CFR 1320.13 (2005).

²¹² 44 U.S.C. 3507(d) (2000).

Frequency of Responses: On occasion for applicants and annually for transmission investment report.

Necessity of the Information: The Final Rule amends the Commission's regulations to implement the statutory provisions of section 1241 of EPAct 2005. The Act directs the Commission to establish incentive-based (including performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities in order to benefit consumers by ensuring reliability and reducing the cost of delivered power by relieving transmission congestion. This mandate addresses an identified need to encourage construction of transmission infrastructure and encourage investment. Sufficient supplies of energy and a reliable way to transport those supplies are necessary to assure reliable energy availability and to enable competitive markets. Without sufficient delivery infrastructure, some suppliers will not be able to enter the market, customer choices will be limited, and prices may be needlessly higher or volatile. The implementation of incentive and performance-based rate treatments supports the Commission's mandate to support investments in transmission capacity to reduce the cost of delivered power by reducing congestion.

408. Entities seeking incentives to build new transmission facilities must file under Part 35 of the Commission's regulations, an application describing how the entity will bring benefits to the grid. The information provided for under Part 35 is identified as FERC-516. The information for actual and planned investments as proposed in an annual report is identified as FERC-730 and the information is provided for under § 35.35(h) of the Commission's regulations.

409. Comments on the final rule may also be sent to the Office of Management and Budget. For information on the requirements, submitting comments on the collection of information and the associated burden estimates including suggestions for reducing this burden, please send your comments to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, (202-502-8415) or send comment to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202-395-7285, e-mail:

oria_submission@omb.eop.gov., and please reference this rulemaking docket no. in your submission.

VIII. Environmental Statement

410. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.²¹³ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.²¹⁴ Thus, we affirm the finding we made in the NPR that this Final Rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration would be necessary.

IX. Regulatory Flexibility Act Certification

411. The Regulatory Flexibility Act (RFA)²¹⁵ requires that a rulemaking contain either a description and analysis of the effect that the Final Rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. However, the RFA does not define "significant" or "substantial" instead leaving it up to any agency to determine the impacts of its regulations on small entities. The Final Rule will not have a significant adverse impact on a substantial number of small entities. The Final Rule applies only to entities that own, control, or operate facilities for transmitting electric energy in interstate commerce and not to electric utilities per se. Small entities that believe this Final Rule will have a significant impact on them may apply to the Commission for waivers.

X. Document Availability

412. 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.

413. From the Commission's Home Page on the Internet, this information is available in the eLibrary. The full text

²¹³ *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (1987), FERC Stats. & Regs. ¶ 30,783 (1987).

²¹⁴ 18 CFR 380.4(a)(2)(ii).

²¹⁵ 5 U.S.C. 601-612 (2000).

of this document is available on eLibrary both 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.

414. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact Online Support at 1-866-208-3676 (toll free) or 202-502-6652 (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).

XI. Effective Date and Congressional Notification

415. This Final Rule will take effect September 29, 2006. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a major rule within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.²¹⁶ The Commission will submit the Final Rule to both houses of Congress and the Government Accountability Office.²¹⁷

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,
Secretary.

■ In consideration of the foregoing, the Commission amends part 35 of Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

Subpart F—Procedures and Requirements Regarding Regional Transmission Organizations

§ 35.34 [Amended]

■ 2. In § 35.34, remove and reserve paragraph (e).

■ 3. A new subpart G is added to read as follows:

²¹⁶ 5 U.S.C. 804(2) (2000).

²¹⁷ 5 U.S.C. 801(a)(1)(A) (2000).

Subpart G—Transmission Infrastructure Investment Provisions

§ 35.35 Transmission infrastructure investment.

(a) *Purpose.* This section establishes rules for incentive-based (including performance-based) rate treatments for transmission of electric energy in interstate commerce by public utilities for the purpose of benefiting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.

(b) *Definitions.* (1) *Transco* means a stand-alone transmission company that has been approved by the Commission and that sells transmission services at wholesale and/or on an unbundled retail basis, regardless of whether it is affiliated with another public utility.

(2) *Transmission Organization* means a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.

(c) *General rule.* All rates approved under the rules of this section, including any revisions to the rules, are subject to the filing requirements of sections 205 and 206 of the Federal Power Act and to the substantive requirements of sections 205 and 206 of the Federal Power Act that all rates, charges, terms and conditions be just and reasonable and not unduly discriminatory or preferential.

(d) *Incentive-based rate treatments for transmission infrastructure investment.* The Commission will authorize any incentive-based rate treatment, as discussed in this paragraph (d), for transmission infrastructure investment, provided that the proposed incentive-based rate treatment is just and reasonable and not unduly discriminatory or preferential. A public utility's request for one or more incentive-based rate treatments, to be made in a filing pursuant to section 205 of the Federal Power Act, or in a petition for a declaratory order that precedes a filing pursuant to section 205, must include a detailed explanation of how the proposed rate treatment complies with the requirements of section 219 of the Federal Power Act and a demonstration that the proposed rate treatment is just, reasonable, and not unduly discriminatory or preferential. The applicant must demonstrate that the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion consistent with the requirements of section 219, that

there is a nexus between the incentive sought and the investment being made, and that resulting rates are just and reasonable. For purposes of this paragraph (d), incentive-based rate treatment means any of the following:

(1) The Commission will authorize the following incentive-based rate treatments for investment by public utilities, including Transcos, in new transmission capacity that reduces the cost of delivered power by reducing transmission congestion or ensures reliability, and is otherwise just, reasonable and not unduly discriminatory or preferential, as demonstrated in an application to the Commission:

(i) A rate of return on equity sufficient to attract new investment in transmission facilities;

(ii) 100 percent of prudently incurred Construction Work in Progress (CWIP) in rate base;

(iii) Recovery of prudently incurred pre-commercial operations costs;

(iv) Hypothetical capital structure;

(v) Accelerated depreciation used for rate recovery;

(vi) Recovery of 100 percent of prudently incurred costs of transmission facilities that are cancelled or abandoned due to factors beyond the control of the public utility;

(vii) Deferred cost recovery; and

(viii) Any other incentives approved by the Commission, pursuant to the requirements of this paragraph, that are determined to be just and reasonable and not unduly discriminatory or preferential.

(2) In addition to the incentives in § 35.35(d)(1), the Commission will authorize the following incentive-based rate treatments for Transcos, provided that the proposed incentive-based rate treatment is just and reasonable and not unduly discriminatory or preferential:

(i) A return on equity that both encourages Transco formation and is sufficient to attract investment; and

(ii) An adjustment to the book value of transmission assets being sold to a Transco to remove the disincentive associated with the impact of accelerated depreciation on federal capital gains tax liabilities.

(e) *Incentives for joining a Transmission Organization.* The Commission will authorize an incentive-based rate treatment, as discussed in this paragraph (e), for public utilities that join a Transmission Organization, if the applicant demonstrates that the proposed incentive-based rate treatment is just and reasonable and not unduly discriminatory or preferential.

Applicants for the incentive-based rate

treatment must make a filing with the Commission under section 205 of the Federal Power Act. For purposes of this paragraph (e), an incentive-based rate treatment means a return on equity that is higher than the return on equity the Commission might otherwise allow if the public utility did not join a Transmission Organization. The Commission will also permit transmitting utilities or electric utilities that join a Transmission Organization the ability to recover prudently incurred costs associated with joining the Transmission Organization, either through transmission rates charged by transmitting utilities or electric utilities or through transmission rates charged by the Transmission Organization that provides services to such utilities.

(f) *Approval of prudently-incurred costs.* The Commission will approve recovery of prudently-incurred costs necessary to comply with the mandatory reliability standards pursuant to section 215 of the Federal Power Act, provided that the proposed rates are just and reasonable and not unduly discriminatory or preferential.

(g) *Approval of prudently incurred costs related to transmission infrastructure development.* The Commission will approve recovery of prudently-incurred costs related to transmission infrastructure development pursuant to section 216 of the Federal Power Act, provided that the proposed rates are just and reasonable and not unduly discriminatory or preferential.

(h) *FERC-730, Report of transmission investment activity.* Public utilities that have been granted incentive rate treatment for specific transmission projects must file FERC-730 on an annual basis beginning with the calendar year incentive rate treatment is granted by the Commission. Such filings are due by April 18 of the following calendar year and are due April 18 each year thereafter. The following information must be filed:

(1) In dollar terms, actual transmission investment for the most recent calendar year, and projected, incremental investments for the next five calendar years;

(2) For all current and projected investments over the next five calendar years, a project by project listing that specifies for each project the most up-to-date, expected completion date, percentage completion as of the date of filing, and reasons for delays. Exclude from this listing projects with projected costs less than \$20 million; and

(3) For good cause shown, the Commission may extend the time within which any FERC-730 filing is to

be filed or waive the requirements applicable to any such filing. The authority to act on motions for extensions of time to file FERC-730 or to waive the requirements applicable to any FERC-730 filing, including granting or denying such motions, in whole or in part, is delegated to the Chief Accountant or the Chief Accountant's designee.

(i) *Rebuttable presumption.* The Commission will apply a rebuttable

presumption that an applicant has met the requirements of section 219 for:

(1) A transmission project that results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission;

(2) A project that has received construction approval from an appropriate state commission or state siting authority; or

(3) A proposed project that is located in a National Interest Electric Transmission Corridor pursuant to section 216 of the Federal Power Act.

Note: The following appendices will not be published in the *Code of Federal Regulations*.

Appendix A—FERC-730, Report of Transmission Investment Activity

Company Name: _____

TABLE 1.—ACTUAL AND PROJECTED ELECTRIC TRANSMISSION CAPITAL SPENDING

Capital spending on electric transmission facilities ¹ (\$ thousands)	Actual at December 31,	Projected investment (incremental investment by year for each of the succeeding five calendar years)				
	20__	20__	20__	20__	20__	20__
.						

¹ Transmission facilities are defined to be transmission assets as specified in the Uniform System of Accounts in account numbers 350 through 359 (see, 18 CFR Part 101).

TABLE 2.—PROJECT DETAIL¹

Project description ²	Project type ³	Expected project completion date (month/year)	Completion status ⁴	Is project on schedule? (Y/N)	If project not on schedule, indicate reasons for delay ⁵
.					

¹ Respondents must list all projects included in the actual and projected electric transmission capital spending table, excluding those projects with projected costs less than \$20 million.

² Project description should include voltage level.

³ Project types are New Build, Upgrade of Existing, Refurbishment/Replacement, or Generator Direct Connection.

⁴ Completion status designations are Complete, Under Construction, Pre-Engineering, Planned, Proposed, and Conceptual.

⁵ Reasons for delay designations are Siting, Permitting, Construction, Delayed Completion of New Generator, or Other (specify).

Appendix B—Commenters on the NOPR

Public Utilities and Trade Associations

- Ameren Service Company (Ameren)
- American Electric Power System Corporation (AEP)
- American Transmission Companies (American Transmission)
- WestConnect Public Utilities (WestConnect)
- Baltimore Gas and Electric Company (BG&E)
- California Independent System Operator Corporation (California ISO)
- Certain Midwest ISO Transmission Owners (Certain MISO TOs)
- Citizens Energy Corporation (Citizens Energy)
- Consumers Energy Company (Consumers Energy)
- DTE Energy Company (DTE Energy)
- Duquesne Light Company (Duquesne)
- E.ON U.S. LLC (E.ON US)
- Edison Electric Institute (EEI)
- Electric Power Supply Association (EPSA)
- FirstEnergy Service Company (FirstEnergy)
- Gridwise Alliance (Gridwise)
- International Transmission Company (International Transmission)
- ISO New England (ISO-NE)
- Kansas City Power & Light Company (KCPL)
- MidAmerican Energy Company (MidAmerican)
- Midwest Independent Transmission System Operator, Inc. (Midwest ISO)

- Montana-Dakota Utilities (Montana-Dakota)
- National Grid USA (National Grid)
- Nevada Power Company and Sierra Pacific Power Company (Nevada Companies)
- New England Transmission Owners (New England TOs)
- New York Independent System Operator, Inc. (New York ISO)
- New York Electric & Gas Corporation and Rochester Gas & Electric Corporation (NYSEG and RGE)
- Northeast Utilities (NU)
- NorthWestern Corporation (NorthWestern)
- NSTAR Electric & Gas Corporation (NSTAR)
- Pacific Gas and Electric Company (PG&E)
- PacifiCorp
- Pepco Holdings, Inc., et al. (Pepco)
- PJM Interconnection, LLC (PJM)
- PJM Transmission Owners (PJM TOs)
- Progress Energy, Inc. (Progress Energy)
- PSEG Companies (PSEG)
- Public Service Company of New Mexico and Texas-New Mexico Power Company (PNM and TNMP)
- San Diego Gas & Electric Company (SDG&E)
- Southern California Edison Company (SCE)
- Southern Company Services, Inc. (Southern Companies)
- Trans-Elect, Inc. (Trans-Elect)
- United Illuminating Company (United Illuminating)
- WPC Companies (WPS)
- Xcel Energy Services, Inc. (Xcel)

Public Power Entities and Associations

- American Municipal Power-Ohio, Inc. (AMP-Ohio)
- American Public Power Association (APPA)
- Bonneville Power Administration (Bonneville)
- California Department of Water Resources State Water Project (CADWR)
- CAPX Utilities (CAPX Utilities)
- Community Power Alliance
- Dairyland Power Cooperative (Dairyland)
- East Texas Cooperatives (East Texas)
- Hamilton, Ohio, et al. (Municipal Commenters)
- Imperial Irrigation District (Imperial)
- Los Angeles Department of Water and Power (LADWP)
- National Rural Electric Cooperative Association (NRECA)
- New England Consumer-Owned Entities (NECOE)
- New York Association of Public Power (NY Association)
- Public Power Council (PPC)
- Public Utility District No. 1 of Snohomish County, Washington (Snohomish)
- Sacramento Municipal Utility District (SMUD)
- Transmission Access Policy Study Group (TAPS)
- Transmission Agency of Northern California (TANC)

Transmission Dependent Utility Systems (TDU Systems)	National Association of State Regulatory Consumer Advocates (NASUCA)	Energy Capital
Upper Great Plains Transmission Coalition (Upper Great Plains)	New England Conference of Public Utility Commissioners (NECPUC)	Energy Financing, Inc. (Energy Financing)
Wyoming Infrastructure Authority	New Jersey Board of Public Utilities (New Jersey Board)	Industrial Consumers [ELCON, et al.] (Industrial Consumers)
State Commissions and Other State Entities	New Mexico Attorney General (New Mexico AG)	JH2 Risk Advisors (JH2)
California Electricity Oversight Board (California Oversight Board)	New York Public Service Commission (New York Commission)	Kohlberg Kravis Roberts & Co. (KKR)
Public Utilities Commission of the State of California (California Commission)	North Dakota Industrial Commission (North Dakota Commission)	National Electrical Manufacturers Association (NEMA)
Committee on Regional Electric Power Cooperation (CREPC)	Oklahoma Corporation Commission (Oklahoma Commission)	Norton Energy Storage (Norton)
Connecticut Attorney General (Connecticut AG)	Organization of MISO States (MISO States or OMS)	Powder River Energy Corporation (Powder River)
Connecticut Department of Public Utility Control (Connecticut DPUC)	Pennsylvania Public Utility Commission (Pennsylvania Commission)	Sabey Corporation (Sabey)
Delaware Public Service Commission (Delaware Commission)	Wyoming Office of Consumer Advocate (Wyoming Consumer Advocate)	Semantic Applications, Inc. (Semantic)
Kentucky Public Service Commission (Kentucky Commission)	Others	Siemens Power Transmission & Distribution (Siemens)
Long Island Power Authority and Long Island Lighting Company (LIPA)	American Superconductor Corporation (American Superconductor)	Steel Manufacturers Association (Steel Manufacturers)
Maryland Public Service Commission (Maryland Commission)	American Wind Energy Association (AWEA)	TransCanada Pipelines Limited (TransCanada)
Missouri Public Service Commission (Missouri Commission)	Babcock & Brown, L.P. (Babcock & Brown)	UTC Power
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		KKR
		National Grid
		[FR Doc. 06-6495 Filed 7-28-06; 8:45 am]
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LIST OF PUBLIC LAWS

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Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 (July 27, 2006; 120 Stat. 577)

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Adam Walsh Child Protection and Safety Act of 2006 (July 27, 2006; 120 Stat. 587)

H.R. 5117/P.L. 109-249

To exempt persons with disabilities from the prohibition against providing section 8 rental assistance to college students. (July 27, 2006; 120 Stat. 651)

H.R. 5865/P.L. 109-250

To amend section 1113 of the Social Security Act to temporarily increase funding for the program of temporary assistance for United States citizens returned from foreign countries, and for other purposes. (July 27, 2006; 120 Stat. 652)

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1-39, Vol. II		19.00	² July 1, 1984	18, Vol. III, Parts 20-52		13.00	³ July 1, 1984
1-39, Vol. III		18.00	² July 1, 1984	19-100		13.00	³ July 1, 1984
1-190	(869-056-00119-3)	61.00	July 1, 2005	1-100	(869-056-00169-0)	24.00	July 1, 2005
191-399	(869-056-00120-7)	63.00	July 1, 2005	101	(869-056-00170-3)	21.00	July 1, 2005
400-629	(869-056-00121-5)	50.00	July 1, 2005	102-200	(869-056-00171-1)	56.00	July 1, 2005
630-699	(869-056-00122-3)	37.00	July 1, 2005	201-End	(869-056-00172-0)	24.00	July 1, 2005
700-799	(869-056-00123-1)	46.00	July 1, 2005	42 Parts:			
800-End	(869-056-00124-0)	47.00	July 1, 2005	1-399	(869-056-00173-8)	61.00	Oct. 1, 2005
33 Parts:				400-429	(869-056-00174-6)	63.00	Oct. 1, 2005
1-124	(869-056-00125-8)	57.00	July 1, 2005	430-End	(869-056-00175-4)	64.00	Oct. 1, 2005
125-199	(869-056-00126-6)	61.00	July 1, 2005	43 Parts:			
200-End	(869-056-00127-4)	57.00	July 1, 2005	1-999	(869-056-00176-2)	56.00	Oct. 1, 2005
34 Parts:				1000-end	(869-056-00177-1)	62.00	Oct. 1, 2005
1-299	(869-056-00128-2)	50.00	July 1, 2005	44	(869-056-00178-9)	50.00	Oct. 1, 2005
300-399	(869-056-00129-1)	40.00	⁷ July 1, 2005	45 Parts:			
400-End & 35	(869-056-00130-4)	61.00	July 1, 2005	1-199	(869-056-00179-7)	60.00	Oct. 1, 2005
36 Parts:				200-499	(869-056-00180-1)	34.00	Oct. 1, 2005
1-199	(869-056-00131-2)	37.00	July 1, 2005	500-1199	(869-056-00171-9)	56.00	Oct. 1, 2005
200-299	(869-056-00132-1)	37.00	July 1, 2005	1200-End	(869-056-00182-7)	61.00	Oct. 1, 2005
300-End	(869-056-00133-9)	61.00	July 1, 2005	46 Parts:			
37	(869-056-00134-7)	58.00	July 1, 2005	1-40	(869-056-00183-5)	46.00	Oct. 1, 2005
38 Parts:				41-69	(869-056-00184-3)	39.00	⁹ Oct. 1, 2005
0-17	(869-056-00135-5)	60.00	July 1, 2005	70-89	(869-056-00185-1)	14.00	⁹ Oct. 1, 2005
18-End	(869-056-00136-3)	62.00	July 1, 2005	90-139	(869-056-00186-0)	44.00	Oct. 1, 2005
39	(869-056-00139-1)	42.00	July 1, 2005	140-155	(869-056-00187-8)	25.00	Oct. 1, 2005
40 Parts:				156-165	(869-056-00188-6)	34.00	⁹ Oct. 1, 2005
1-49	(869-056-00138-0)	60.00	July 1, 2005	166-199	(869-056-00189-4)	46.00	Oct. 1, 2005
50-51	(869-056-00139-8)	45.00	July 1, 2005	200-499	(869-056-00190-8)	40.00	Oct. 1, 2005
52 (52.01-52.1018)	(869-056-00140-1)	60.00	July 1, 2005	500-End	(869-056-00191-6)	25.00	Oct. 1, 2005
52 (52.1019-End)	(869-056-00141-0)	61.00	July 1, 2005	47 Parts:			
53-59	(869-056-00142-8)	31.00	July 1, 2005	0-19	(869-056-00192-4)	61.00	Oct. 1, 2005
60 (60.1-End)	(869-056-00143-6)	58.00	July 1, 2005	20-39	(869-056-00193-2)	46.00	Oct. 1, 2005
60 (Apps)	(869-056-00144-4)	57.00	July 1, 2005	40-69	(869-056-00194-1)	40.00	Oct. 1, 2005
61-62	(869-056-00145-2)	45.00	July 1, 2005	70-79	(869-056-00195-9)	61.00	Oct. 1, 2005
63 (63.1-63.599)	(869-056-00146-1)	58.00	July 1, 2005	80-End	(869-056-00196-7)	61.00	Oct. 1, 2005
63 (63.600-63.1199)	(869-056-00147-9)	50.00	July 1, 2005	48 Chapters:			
63 (63.1200-63.1439)	(869-056-00148-7)	50.00	July 1, 2005	1 (Parts 1-51)	(869-056-00197-5)	63.00	Oct. 1, 2005
63 (63.1440-63.6175)	(869-056-00149-5)	32.00	July 1, 2005	1 (Parts 52-99)	(869-056-00198-3)	49.00	Oct. 1, 2005
				2 (Parts 201-299)	(869-056-00199-1)	50.00	Oct. 1, 2005
				3-6	(869-056-00200-9)	34.00	Oct. 1, 2005
				7-14	(869-056-00201-7)	56.00	Oct. 1, 2005
				15-28	(869-056-00202-5)	47.00	Oct. 1, 2005

Title	Stock Number	Price	Revision Date
29-End	(869-056-00203-3)	47.00	Oct. 1, 2005
49 Parts:			
1-99	(869-056-00204-1)	60.00	Oct. 1, 2005
100-185	(869-056-00205-0)	63.00	Oct. 1, 2005
186-199	(869-056-00206-8)	23.00	Oct. 1, 2005
200-299	(869-056-00207-6)	32.00	Oct. 1, 2005
300-399	(869-056-00208-4)	32.00	Oct. 1, 2005
400-599	(869-056-00209-2)	64.00	Oct. 1, 2005
600-999	(869-056-00210-6)	19.00	Oct. 1, 2005
1000-1199	(869-056-00211-4)	28.00	Oct. 1, 2005
1200-End	(869-056-00212-2)	34.00	Oct. 1, 2005
50 Parts:			
1-16	(869-056-00213-1)	11.00	Oct. 1, 2005
17.1-17.95(b)	(869-056-00214-9)	32.00	Oct. 1, 2005
17.95(c)-end	(869-056-00215-7)	32.00	Oct. 1, 2005
17.96-17.99(h)	(869-056-00215-7)	61.00	Oct. 1, 2005
17.99(i)-end and 17.100-end	(869-056-00217-3)	47.00	Oct. 1, 2005
18-199	(869-056-00218-1)	50.00	Oct. 1, 2005
200-599	(869-056-00218-1)	45.00	Oct. 1, 2005
600-End	(869-056-00219-0)	62.00	Oct. 1, 2005
CFR Index and Findings			
Aids	(869-060-00050-0)	62.00	Jan. 1, 2006
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¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

⁵ No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

⁶ No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

⁷ No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

⁸ No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

⁹ No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.

¹⁰ No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2005 should be retained.