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Federal Register

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# Part II

# Department of the Interior

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding and Proposed Rule To List the Polar Bear (Ursus maritimus) as Threatened Throughout Its Range; Proposed Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AV19**

## Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding and Proposed Rule To List the Polar Bear (Ursus maritimus) as Threatened Throughout Its Range

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule and notice of 12-month finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the polar bear (*Ursus maritimus*) as threatened with critical habitat under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing the polar bear as a threatened species under the Act is warranted. Accordingly, we herein propose to list the polar bear as threatened throughout its range pursuant to the Act. This proposed rule, if made final, would extend the Act's protections to this species. Critical habitat for the polar bear is not determinable at this time. The Service seeks data and comments from the public on this proposed listing rule.

**DATES:** We will consider all comments on this proposed rule received by the close of business (5 p.m.) Alaska Local Time on April 9, 2007. Requests for a public hearing must be received by the Service on or before close of business (5 p.m.) Alaska Local Time on February 23, 2007.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials concerning this proposed rule by any one of several methods:

1. You may submit written comments to the Supervisor, U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503.

2. You may hand deliver written comments to the Marine Mammals Management Office at the above address.

3. You may send comments by electronic mail (e-mail). You may send your comments by electronic mail (e-mail) directly to the Service at: *Polar_Bear_Finding@fws.gov* or to the Federal eRulemaking Portal at *http://www.regulations.gov.* See the Public Comments Solicited section below for file format for electronic filing and other information.

The complete file for this finding and proposed rule is available for inspection, by appointment, during normal business hours at the above address. These documents are also available on the Service's Marine Mammal Web site located at: *http://alaska.fws.gov/fisheries/mmm/polarbear/issues.htm.*

**FOR FURTHER INFORMATION CONTACT:** Scott Schliebe, Marine Mammals Management Office (see **ADDRESSES** section) (telephone 907/786–3800). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

### Public Comments Solicited

We intend that any final action resulting from this proposed rule will be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Information on taxonomy, distribution, habitat selection (especially denning habitat), food habits, population density and trends, habitat trends, and effects of management on polar bears;

(2) Information on the effects of sea ice change on the distribution and abundance of polar bears and their principal prey over the short and long term;

(3) Information on the effects of other potential listing factors, including oil and gas development, contaminants, ecotourism, hunting, poaching, on the distribution and abundance of polar bears and their principal prey over the short and long term;

(4) Information on regulatory mechanisms and management programs for polar bear conservation, including mitigation measures related to oil and gas exploration and development, hunting conservation programs, anti-poaching programs, and any other private, tribal, or governmental conservation programs which benefit polar bears;

(5) The specific physical and biological features to consider, and specific areas that may meet the definition of critical habitat and that should or should not be considered for a proposed critical habitat designation as provided by section 4 of the Act;

(6) Information relevant to whether any populations of the species may qualify as distinct population segments; and

(7) The data and studies refered to within this proposal.

If you wish to comment, you may submit your comments and materials concerning this proposed rule by any one of several methods, as listed above in the **ADDRESSES** section. If you submit comments by e-mail, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: Polar Bear Finding'' and your name and return address in your e-mail message. Please note that the e-mail address will be closed at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of 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 U.S. Fish and Wildlife Service Office at the address listed in **ADDRESSES.**

### Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 et seq. requires that, for any petition to add a species to, remove a species from, or reclassify a species on one of the Lists of Endangered and Threatened Wildlife and Plants, we first make a determination whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this determination is to be made within 90 days of receipt of the petition, and published promptly in the **Federal Register**.

If the petition is found to present substantial information, section

4(b)(3)(A) of the Act requires us to commence a status review of the species, and section 4(b)(3)(B) of the Act requires us to make a second finding, this one within 12 months of the date of receipt of the petition, on whether the petitioned action is: (a) Not warranted; (b) warranted; or (c) warranted but precluded (i.e., the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants). This determination is likewise to be published promptly in the **Federal Register**.

Species for which listing is warranted but precluded are considered to be ''candidates'' for listing. Section 4(b)(3)(C) of the Act requires that a petition for which the requested action is found to be warranted but precluded be treated as though resubmitted on the date of such finding, i.e., requiring a subsequent finding to be made within 12 months. Each subsequent 12-month finding is also to be in the **Federal Register**. We typically publish these findings in our Candidate Notice of Review (CNOR). Our most recent CNOR was published on September 12, 2006 (71 FR 53756).

**Previous Federal Action**

On February 17, 2005, we received a petition from the Center for Biological Diversity, dated February 16, 2005, requesting that we list the polar bear as threatened throughout its range, and that critical habitat be designated concurrently with the listing. The petition was clearly identified as such, and contained the name, authorized signature, and address of the requesting party. Included in the petition was supporting information regarding the species' taxonomy and ecology, historical and current distribution, present status, and actual and potential causes of decline. We acknowledged the receipt of the petition in a letter dated July 1, 2005. In that letter, we also advised the petitioners that, due to funding constraints in fiscal year (FY) 2005, and the need to comply with court orders and settlement agreements, we would not be able to begin processing the petition at that time.

In a letter dated July 5, 2005, the petitioner informed us that two additional parties were joining as petitioners: the Natural Resources Defense Council and Greenpeace, Inc. In the same letter, the petitioners informed us of two new scientific articles, Hansen et al. (2005) and Stroeve et al. (2005), that they wanted us to consider when conducting our evaluation of the petition to list the polar bear. In a letter we received on December 27, 2005, the petitioners submitted additional new information to be considered, along with the information in the initial petition, in making our 90-day finding.

On December 15, 2005, the petitioners filed a complaint for declaratory and injunctive relief in the United States District Court for the Northern District of California, challenging our failure to issue a 90-day finding in response to the petition as required by section 4(b)(3) of the Act. On February 7, 2006, we made our 90-day finding that the petition presented substantial scientific information indicating that listing the polar bear may be warranted; the finding and our initiation of a status review was published in the **Federal Register** on February 9, 2006 (71 FR 6745). In a stipulated settlement agreement approved by the Court on July 5, 2006, we agreed to submit a 12-month finding to the **Federal Register** by December 27, 2006. This notice constitutes our 12-month finding for the petition to list the polar bear as threatened, in fulfillment of the stipulated settlement agreement.

**Status Assessment**

Pursuant to section 4(b)(3)(A) of the Act, we conducted a status review of the polar bear. With this notice we announce the completion and availability of the Polar Bear Status Assessment (Status Assessment or Schliebe et al. (2006a)). The Status Assessment was compiled and edited by staff of the Service's Marine Mammals Management Office of Region 7 (Scott Schliebe; Thomas Evans; Kurt Johnson, Ph.D.; Michael Roy, Ph.D.; Susanne Miller; Charles Hamilton; Rosa Meehan, Ph.D.; and Sonja Jahrsdoerfer). Information contained in the original petition, as well as additional information provided by the petitioners, was considered during the development of the Status Assessment. In addition, all comments received from the public during the open public comment period were considered. To ensure that the Status Assessment would be complete and based on the best available scientific and commercial information, we solicited information from the public on the status of the polar bear in two separate public comment periods announced in the **Federal Register** (February 9, 2006; 71 FR 6745) and (May 17, 2006; 71 FR 28653). In addition, all available scientific and commercial information on polar bears and threats to polar bears was reviewed and considered during development of the the Status Assessment and proposed rule.

In accordance with Service policies, peer review of the draft Status Assessment was sought from 12 independent experts in the fields of polar bear ecology, contaminants and physiology, climatic science and physics, and traditional ecological knowledge. Comments were received from 10 peer reviewers, and those comments were addressed in revisions to the draft Status Assessment. The Status Assessment, a list of peer reviewers, and comments received from peer reviewers are available upon request from the Marine Mammals Management Office as well as on the Service's Marine Mammal Web site located at: *http://alaska.fws.gov/fisheries/mmm/polarbear/issues.htm.* Literature cited in the Status Assessment serves as the basis for the 12-month finding and proposed rule.

**Species Biology**

Information presented in this section is summarized from the Status Assessment (Schliebe et al. 2006a). For more detailed information on the biology of the polar bear, please consult the Status Assessment.

**Taxonomy and Evolution**

Throughout the Arctic, polar bears are known by a variety of common names, including nanook, nanuq, ice bear, sea bear, isbjørn, white bears, and eisbär. Phipps (1774) first proposed and described polar bear as a species distinct from other bears and provided a scientific name *Ursus maritimus.* A number of alternative names followed, but Harington (1966), Manning (1971, p. 9), and Wilson (1976) (all three references cited in Amstrup 2003, p. 587) subsequently promoted the name *Ursus maritimus* that has been used since. The polar bear is usually considered a marine mammal since its primary habitat is the sea ice (Amstrup 2003, p. 587), and it is evolutionarily adapted to life on sea ice (see further discussion under General Description section). The polar bear was included on the list of species covered under the U.S. Marine Mammal Protection Act of 1972 as amended (16 U.S.C. 1361 et seq.) (MMPA).

Genetic research has confirmed that polar bears evolved from grizzly (brown) bears (*Ursus arctos*) 250 to 300 thousand years ago (Cronin et al. 1991, p. 2990; Talbot and Shields 1996a, p. 574). Only in portions of northern Canada and northern Alaska do the ranges of polar bears and grizzly bears overlap. Cross-breeding of grizzly bears and polar bears in captivity has produced

reproductively viable offspring (Gray 1972; Stirling 1988, p. 23). The first documented case of cross-breeding in the wild was reported in the spring of 2006.

**General Description**

Polar bears are the largest of the living bear species (DeMaster and Stirling 1981 p. 1; Stirling and Derocher 1990 p. 190). They are characterized by large body size, a stocky form, and fur color that varies from white to yellow. They are sexually dimorphic; females weigh 181 to 317 kilograms (kg) (400 to 700 pounds (lbs)) and males up to 654 kg (1,440 lbs). Polar bears have a longer neck and a proportionally smaller head than other members of the bear family (Ursidae), and are missing the distinct shoulder hump common to grizzly bears. The nose, lips, and skin of polar bears are black (Demaster and Stirling 1981 p. 1; Amstrup 2003 p. 588).

Polar bears are evolutionarily adapted to life on sea ice. Adaptations to this life include: (1) White pelage with water-repellent guard hairs and dense underfur; (2) a short furred snout; (3) small ears for reduced surface area; (4) teeth specialized for a carnivorous rather than an omnivorous diet; and (5) feet with tiny papillae and ''suction cups'' on the underside, for increased traction on ice (Stirling 1988, p. 24). Additional adaptations include large, paddle-like feet (Stirling 1988, p. 24), and claws that are shorter and more strongly curved than those of grizzly bears, and larger and heavier than those of black bears (*Ursus americanus*) (Amstrup 2003, p. 589).

**Distribution and Movements**

Polar bears evolved to utilize the Arctic sea ice niche and are distributed throughout most ice-covered seas of the Northern Hemisphere. They are generally limited to areas where the sea is ice-covered for much of the year; however, polar bears are not evenly distributed throughout their range. They are most abundant near the shore in shallow-water areas, and in other areas where currents and ocean upwelling increase marine productivity and serve to keep the ice cover from becoming too solidified in winter (Stirling and Smith 1975, p. 132; Stirling et al. 1981, p. 49; Amstrup and DeMaster 1988, p. 44; Stirling 1990, pp. 226–227; Stirling and Øritsland 1995, p. 2607; Amstrup et al. 2000b, p. 960). Over most of their range, polar bears remain on the sea ice year-round or spend only short periods on land. They occur throughout the East Siberian, Laptev, and Kara Seas of Russia; Fram Strait, Greenland Sea, and Barents Sea of northern Europe (Norway and Greenland (Denmark)); Baffin Bay, which separates Canada and Greenland, through most of the Canadian Arctic archipelago and the Canadian Beaufort Sea; and in the Chukchi and Beaufort Seas located west and north of Alaska.

The distribution of polar bears in most areas varies seasonally with the seasonal extent of sea ice cover and availability of prey. In Alaska in the winter, sea ice may extend 400 kilometers (km) (248 miles (mi)) south of the Bering Strait, and polar bears will extend their range to the southernmost proximity of the ice (Ray 1971, cited in Amstrup 2003, p. 587). Sea ice disappears from the Bering Sea and is greatly reduced in the Chukchi Sea in the summer, and polar bears occupying these areas move as much as 1,000 km (621 mi) to stay with the pack ice (Garner et al. 1990, p. 222; Garner at al. 1994b, pp. 407–408). Throughout the polar basin during the summer, polar bears generally concentrate along the edge of or into the adjacent persistent pack ice. Significant northerly and southerly movements of polar bears appear to depend on seasonal melting and refreezing of ice (Amstrup et al. 2000, p. 142). In other areas, for example, when the sea ice melts in Hudson Bay, James Bay, Davis Strait, Baffin Bay, portions of the Canadian High Arctic, and some portions of the Barents Sea, polar bears remain on land for up to several months while they wait for winter and new ice to form (Jonkel et al. 1976; Schweinsburg 1979; Prevett and Kolenosky 1982; Schweinsburg and Lee 1982; Ferguson et al. 1997; Lunn et al. 1997 all cited in Amstrup 2003, p. 587; Mauritzen et al. 2001, p. 1710).

The distribution patterns of some polar bear populations during the open water and early fall seasons have changed in recent years. In the Beaufort Sea, for example, greater numbers of polar bears are being found on shore during this period than recorded at any previous time (Schliebe et al. 2006b, p. 559). In Baffin Bay, Davis Strait, western Hudson Bay and other areas of Canada, Inuit hunters are reporting an increase in the numbers of bears present on land during summer and fall (Dowsley and Taylor 2005, p. 2; Dowsley 2005, p. 2). The exact reasons for changes may involve a number of factors, including changes in sea ice (Stirling and Parkinson 2006, p. 272).

Data from telemetry studies of adult female polar bears show that they do not wander aimlessly on the ice, nor are they carried passively with the ocean currents as previously thought (Pedersen 1945 cited in Amstrup 2003, p. 587). Results show strong fidelity to activity areas that are used over multiple years. Some polar bear populations are closely associated with pack ice. In the Chukchi and Beaufort Sea areas of Alaska and northwestern Canada, less than 10 percent of the polar bear locations obtained were on land (Amstrup 2000, p. 137; Amstrup, USGS, unpublished data); the majority of the land locations were locations with bears occupying maternal dens during the winter. A similar pattern was found in East Greenland (Wiig et al. 2003, p. 511). In the absence of ice during the summer season, some populations of polar bears in eastern Canada, Hudson Bay, and the Barents Sea are remaining on land for protracted periods of time until ice again forms and provides a platform for them to move to sea ice.

**Food Habits**

Polar bears are carnivorous and an upper level predator of the Arctic marine ecosystem. Polar bears prey heavily throughout their range on ringed seals (*Phoca hispida*) and, to a lesser extent, bearded seals (*Erignathus barbatus*) and in some locales, other seal species. On average, an adult polar bear needs approximately 2 kg (4.4 lbs) of seal fat per day to survive (Best 1985, p. 1035). Sufficient nutrition is critical and may be obtained and stored as fat when prey is abundant.

Although seals are their primary prey, polar bears also have been known to kill much larger animals such as walruses (*Odobenus rosmarus*), narwhal (*Monodon monoceros*), and belugas (*Delphinapterus leucas*) (Kiliaan et al. 1978; Smith 1980, p. 2206; Smith 1985; Lowry et al. 1987, p. 141; Calvert and Stirling 1990, p. 352; Smith and Sjare 1990, p. 99). In some areas and under some conditions, prey and carrion other than seals may be quite important to polar bear sustenance. Stirling and Øritsland (1995, p. 2609) suggested that in areas where ringed seal populations were reduced, other prey species were being substituted. Like other ursids, polar bears will eat human garbage (Lunn and Stirling 1985, p. 2295), and when confined to land for long periods they will consume coastal marine and terrestrial plants and other terrestrial foods (Russell 1975, p. 122; Derocher et al. 1993, p. 252), but the significance of other terrestrial foods to polar bears may be limited (Lunn and Stirling 1985, p. 2296; Ramsay and Hobson 1991, p. 600; Derocher et al. 2004, p. 169).

**Reproduction**

Polar bears are characterized by a late age at sexual maturity, small litter sizes, and extended parental investment in raising young, factors that combine to contribute to a very low reproductive

rate. Reproduction in the female polar bear is similar to that in other ursids (bears).

Females generally mature and breed for the first time at 4 or 5 years and give birth at 5 or 6 years of age. Litters of two cubs are most common, but litters of three cubs are seen sporadically across the Arctic. When foraging conditions are difficult, polar bears may ''defer'' reproduction in favor of survival (Derocher et al. 1992, p. 564).

Polar bears enter a prolonged estrus between March and June, when breeding occurs. Ovulation is thought to be induced by mating (Wimsatt 1963; Ramsay and Dunbrack 1986; Derocher and Stirling 1992; all cited in Amstrup 2003, p. 599), and implantation is delayed until autumn. The total gestation period is 195 to 265 days (Uspenski 1977 cited in Amstrup 2003, p. 599), although active development of the fetus is suspended during most of this period. The timing of implantation, and therefore the timing of birth, is likely dependent on body condition of the female, which depends on a variety of environmental factors.

Newborn polar bears are helpless, have hair, but are blind and weigh only 0.6 kg (1.3 lb) (Blix and Lentfer 1979, p. 68). Cubs grow rapidly, and may weigh 10 to 12 kg (22 to 26 lbs) by the time they emerge from the den in the spring. Young bears will stay with their mothers until weaning, which occurs most commonly in early spring when the cubs are 2.3 years of age. Female polar bears are available to breed again after their cubs are weaned, so the reproductive interval for polar bears is 3 years.

Polar bears are long-lived mammals not generally susceptable to disease, parasites, or injury. The oldest known female in the wild was 32 years of age and the oldest known male was 28, though few polar bears in the wild live to be older than 20 (Stirling 1988, p. 139; Stirling 1990, p. 225). Due to extremely low reproductive rates, polar bears require a high rate of survival to maintain population levels. Survival rates increase up to a certain age, with cubs-of-the-year having the lowest rates and prime age adults (between 5 and 20 years of age) having survival rates that can exceed 90 percent.

**Polar Bear—Sea Ice Habitat Relationships**

Polar bears are distributed throughout the ice-covered waters of the circumpolar Arctic (Stirling 1988, p. 61), and are reliant on the sea ice as their primary habitat (Amstrup 2003, p. 587). Polar bears depend on sea ice for a number of purposes, including as a platform from which to hunt and feed upon seals; as habitat on which to seek mates and breed; as a platform to move to terrestrial maternity denning areas, and sometimes for maternity denning; and as a substrate on which to make long-distance movements (Stirling and Derocher 1993, p. 241). Mauritzen et al. (2003, p. 123) indicated that habitat use by polar bears during certain seasons may involve a trade-off between selecting habitats with abundant prey availability versus the use of safer retreat habitats with less prey. Their findings indicate that polar bear distribution may not be solely a reflection of prey availability, but other factors such as energetic costs or risk may be involved.

Stirling et al. (1993, p. 15) defined seven types of sea ice habitat and classified polar bear use of these ice types based on the presence of bears or tracks in order to determine habitat preferences. The seven types of sea ice were: stable fast ice with drifts; stable fast ice without drifts; floe edge ice; moving ice; continuous stable pressure ridges; coastal low level pressure ridges; and fiords and bays. Polar bears were not evenly distributed over these sea ice habitats, but concentrated on the floe ice edge, on stable fast ice with drifts, and on areas of moving ice (Stirling 1990 p. 226; Stirling et al. 1993, p. 18). In another assessment, categories of ice types included: pack ice; shore-fast ice; transition zone ice; and polynyas (*i.e.*, open water areas within the ice); and leads (USFWS 1995, p. 9). Pack ice, which consists of annual and multi-year ice in constant motion due to winds and currents, is the primary summer habitat for Alaskan polar bears. Shore-fast ice is used for feeding on seal pups, movements, and occasionally for maternity denning. Open water at leads and polynyas attracts seals and other marine mammals and provides preferred hunting habitats during winter and spring.

Polar bears must move throughout the year to adjust to the changing distribution of sea ice and seals (Stirling 1988, p. 63; USFWS 1995, p. 4). In some areas, such as Hudson Bay and James Bay, polar bears remain on land when the sea ice retreats in the spring and they fast for several months (up to 8 months for pregnant females) before fall freeze-up (Stirling 1988, p. 63; Derocher et al. 2004, p. 163). Some populations unconstrained by land masses, such as those in the Barents, Chukchi and Beaufort Seas, spend each summer on the multiyear ice of the polar basin (Derocher et al. 2004, p. 163). In intermediate areas such as the Canadian Arctic, Svalbard, and Franz Josef Land archipelagos, bears stay with the ice most of the time, but in some years they may spend up to a few months on land (Mauritizen et al. 2001, p. 1710). Most populations use terrestrial habitat partially or exclusively for maternity denning; therefore, females must adjust their movements in order to access land at the appropriate time (Stirling 1988, p. 64; Derocher et al. 2004, p. 166).

Sea ice changes between years in response to environmental factors may have consequences to the distribution and productivity of polar bears as well as their prey. In the southern Beaufort Sea, anomalous heavy ice conditions in the mid-1970s and mid-1980s (thought to be roughly in phase with a similar variation in runoff from the MacKenzie River) caused significant declines in productivity of ringed seals (Stirling 2002, p. 68). Each event lasted approximately three years and caused similar declines in the natality of polar bears and survival of subadults, after which reproductive success and survival of both species increased again.

**Maternal Denning Habitat**

Throughout the species' range, most pregnant female polar bears excavate dens in snow located on land in the fall-early winter period (Harington 1968, p. 6; Lentfer and Hensel 1980, p. 102; Ramsay and Stirling 1990, p. 233; Amstrup and Gardner 1994, p. 5). The only known exceptions are in Western and Southern Hudson Bay, where polar bears first excavate earthen dens and later reposition into adjacent snow drifts (Jonkel et al 1972, p. 146; Ramsey and Stirling 1990, p. 233), and in the southern Beaufort Sea, where a portion of the population dens in snow caves located on pack and shorefast ice. Successful denning by polar bears requires accumulation of sufficient snow for den construction and maintenance. Adequate and timely snowfall combined with winds that cause snow accumulation leeward of topographic features create denning habitat (Harington 1968, p.12).

A great amount of polar bear denning occurs in core areas (Harington 1968, pp. 7–8) which show high use over time. In some portions of the species' range, polar bears den in a more diffuse pattern, with dens scattered over larger areas at lower density (Lentfer and Hensel 1980, p. 102; Stirling and Andriashek 1992, p. 363; Amstrup 1993, p. 247; Amstrup and Gardner 1994, p. 5; Messier et al. 1994, p. 425; Born 1995, p. 81; Ferguson et al. 2000a, p. 1125; Durner et al. 2001, p. 117; Durner et al. 2003, p. 57).

Habitat characteristics of denning areas vary substantially from the rugged

mountains and fjordlands of the Svalbard archipelago and the large islands north of the Russian coast (Lønø 1970, p. 77; Uspenski and Kistchinski 1972, p. 182; Larsen 1985, pp. 321–322) to the relatively flat topography of areas such as the west coast of Hudson Bay (Ramsay and Andriashek 1986, p. 9; Ramsay and Stirling 1990, p. 233) and north slope of Alaska (Amstrup 1993, p. 247; Amstrup and Gardner 1994, p. 7; Durner et al. 2001, p. 119; Durner et al. 2003, p. 61), to offshore pack ice-pressure ridge habitat. The key characteristic of all denning habitat is topographic features that catch snow in the autumn and early winter (Durner et al. 2003, p. 61). Across the range, most polar bear dens occur relatively near the coast. The main exception to coastal denning occurs in the western Hudson Bay area, where bears den further inland in traditional denning areas (Kolenosky and Prevett 1983, pp. 243–244; Stirling and Ramsay 1986, p. 349).

Polar bears are largely food deprived while on land in the ice-free period; during this time they survive on stored fat reserves. Pregnant females that spend the late summer on land prior to denning may not feed for 8 months (Watts and Stirling 1988, p. 627). This may be the longest period of food deprivation of any mammal, and it occurs at a time when the female gives birth to and then nourishes new cubs.

**Current Population Status and Trend**

The total number of polar bears worldwide is estimated to be 20,000–25,000. Polar bears are not evenly distributed throughout the Arctic, nor do they comprise a single nomadic cosmopolitan population, but rather occur in 19 relatively discrete populations (Figure 1). The boundaries of these populations are based on behavioral and ecological factors and were developed from decades of intensive scientific studies as well as traditional knowledge (Lunn et al. 2002, p. 41). Although there is overlap in areas occupied by members of the populations, with the exception of the Arctic Basin population, these boundaries are sufficiently discrete to manage the populations independently. Correspondence between genetic data and movement data reinforces current population designations (Paetkau et al. 1999, p. 1571; Amstrup 2003, p. 590).

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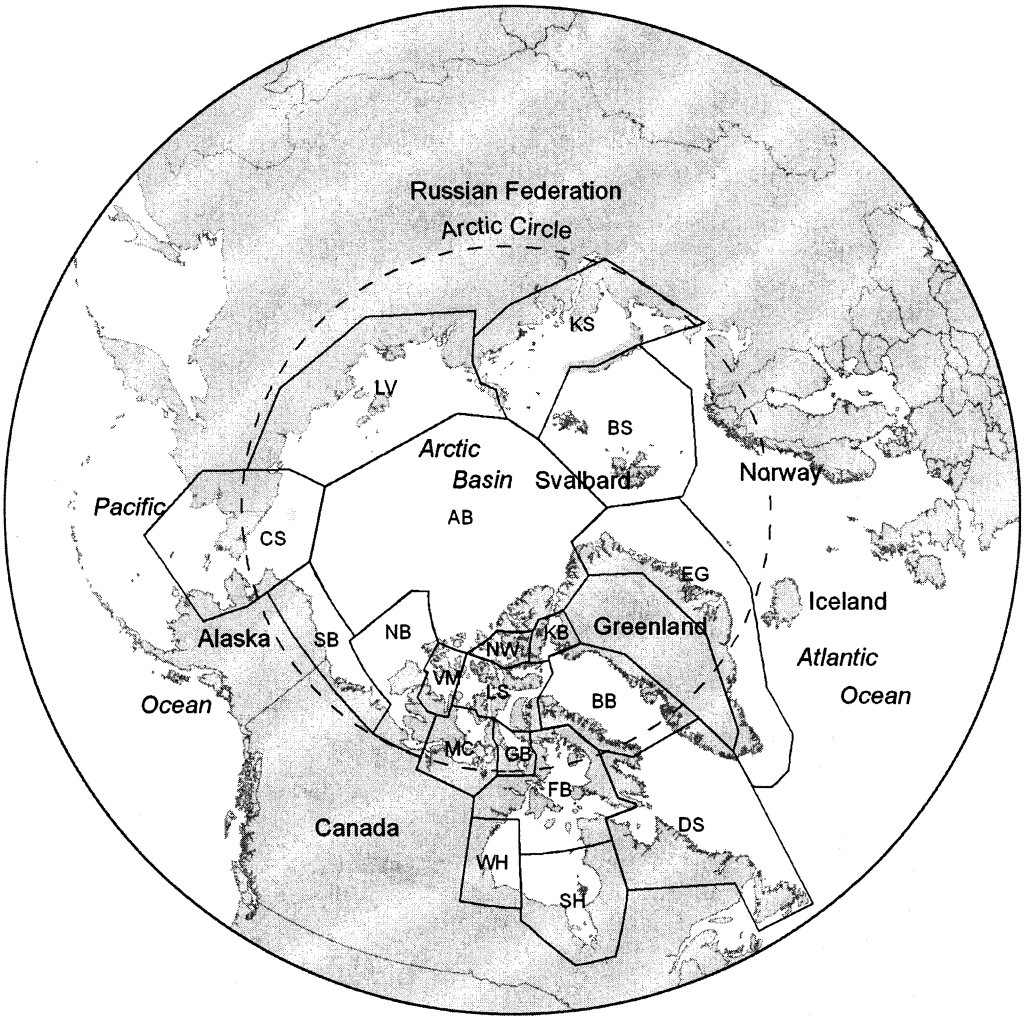
# Figure 1. Distribution of Polar Bear Populations

## Throughout the Arctic Circumpolar Basin




Legend: CS = Chukchi Sea; SB = Southern Beaufort Sea; NB = Northern Beaufort Sea; VM = Viscount Melville Sound, NW = Norwegian Bay; LS = Lancaster Sound; MC = M'Clintock Channel; GB = Gulf of Boothia; FB = Foxe Basin; WH = Western Hudson Bay; SH = Southern Hudson Bay; KB = Kane Basin; BB = Baffin Bay; DS = Davis Strait; EG = East Greenland; BS = Barents Sea; KS = Kara Sea; LV = Laptev Sea; AB = Arctic Basin

Population size estimates and qualitative categories of the current trend and status data for each polar bear population are discussed below. This discussion was derived from information presented at the World Conservation Union—International Union for Conservation of Nature and Natural Resources, Species Survival Commission (IUCN/SSC) Polar Bear Specialist Group (PBSG) meeting held in Seattle, Washington, in June 2005, and updated with results that became available as of October 2006 (PBSG 2006). The information on each

population is based on the available status reports and revisions given by each nation. Categories of status include an assessment of whether populations are not reduced, reduced, or severely reduced from historic levels of abundance, or if insufficient data are available to estimate status. Categories of trend include an assessment of whether the population is currently increasing, stable, or declining, or if insufficient data are available to estimate trend. The current status and trend assessments do not consider the various factors that have been determined to threaten the species within the foreseeable future, as discussed later in this document in the five-factor analysis sections.

The East Greenland population number is unknown since no population surveys have been conducted in the past. The status and trend have not been determined due to the absence of abundance data. The Barents Sea population was estimated to comprise 3,000 animals based on the only population survey conducted in this vast area during 2004. Because only one abundance estimate is available, the status and trend cannot yet be determined. The Kara Sea population number is unknown because population surveys have not been conducted; thus status and trend of this population cannot yet be determined. The Laptev Sea population is estimated to comprise 800 to 1,200 animals, based on an extrapolation of historical aerial den survey data. Status and trend cannot yet be determined for this population. The Chukchi Sea population is estimated to comprise 2,000 animals based on extrapolation of aerial den surveys. Status and trend cannot yet be determined for this population. The Southern Beaufort Sea population is comprised of 1,500 animals based on conclusion of a recent population inventory. The predicted trend is declining and the status is designated as reduced. The Northern Beaufort Sea population is comprised of 1,200 animals. The trend is designated as stable and status is determined to be not reduced, although a new abundance estimate will be developed in the near future. The Viscount-Melville population is estimated to comprise 215 animals. The trend is increasing although the status is designated as severely reduced from prior excessive harvest. The Norwegian Bay population number is 190 animals and the trend is noted as declining while the status is listed as not reduced. The Lancaster Sound population is estimated to be 2,541 animals and the trend is stable and status is not reduced. The M'Clintock Channel population is estimated at 284 animals and the trend is increasing although the status is severely reduced from excessive harvest. The Gulf of Boothia population abundance estimate is 1,523 animals and the trend is stable and status is designated as not reduced. The Foxe Basin population comprises 2,197 animals and the population trend is stable and the status is not reduced. The Western Hudson Bay population estimate is 935 animals and the trend is declining and the status is reduced. The Southern Hudson Bay population estimate is 1,000 animals and the trend is stable and status is not reduced. The Kane Basin population is comprised of 164 animals and its trend is declining and status is reduced. The Baffin Bay population is estimated to be 2,074 animals and the trend is declining and status is reduced. The Davis Strait population is estimated at 1,650 animals based on traditional ecological knowledge (TEK) and data are unavailable to assess trends or status. The Arctic Basin population estimate, trend, and status are unknown.

For populations with long-term data we can establish trends, but cannot do so for populations with short-term or lack of data. Of the populations for which data are available to assess status and trend, two are noted to be increasing (Viscount Melville and M'Clintock Channel). Both of these populations were severely reduced in the past and are recovering under conservative harvest limits. The two populations with the most extensive time series of data, Western Hudson Bay and Southern Beaufort Sea, are both declining. However, based on environmental factors and observed patterns of population trends for some populations it is likely that most populations will exhibit declines in the future.

**Summary of Factors Affecting the Polar Bear**

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations at 50 CFR part 424, set forth procedures for adding species to the Federal List of Endangered and Threatened Species. Under section 4(a) of the Act, we may list a species on the basis of any of five factors, as follows: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, information regarding the status and trends of the polar bear is considered in relation to the five factors provided in section 4(a)(1) of the Act.

In the context of the Act, the term ''threatened species'' means any species or subspecies or, for vertebrates, Distinct Population Segment (DPS) that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The term ''endangered species'' means any species that is in danger of extinction throughout all or a significant portion of its range. The Act does not define the term ''foreseeable future.'' The PBSG, when they reassessed the status of polar bears globally in June 2005, used the criteria described in the IUCN/SSC Red List process (IUCN 2004) to determine which Red List category the polar bear should be assigned. The criteria, used for all species that IUCN assesses in the Red List process, use observed, estimated, inferred or suspected population size reductions of a certain percentage over the last 10 years or three generations, whichever is the longer to categorize species. A generation, as defined by IUCN, is calculated as the age of sexual maturity (5 years) plus 50 percent of the length of the lifetime reproductive period (20 years). Based on these calculations, the projected length of 1 generation for a polar bear was calculated at 15 years, and the projected period for 3 generations was calculated as 45 years.

For another species evaluated for listing as threatened, the Yellowstone cutthroat trout (*Oncorhynchus clarki bouvieri*), the status assessment report (May et al. 2003 p. 10) considered the ''foreseeable future'' to be 2–3 decades (4 to 10 generations), depending on the productivity of the environment. For the greater sage grouse (*Centrocercus urophasianus*) the status reviewers agreed that given all of the uncertainties, a reasonable timeframe for ''foreseeable future'' for the threatened definition was approximately 30 to 100 years [approximately 10 greater sage-grouse generations or 2 sagebrush habitat regeneration cycles (70 FR 2244)].

Given the IUCN criteria, the life-history and population dynamics of polar bears, documented changes to date in both multi-year and annual sea ice, and the direction of projected rates of change of sea ice in future decades, we consider the three generation timespan used in the IUCN Red List criteria to be a reasonable projection of foreseeable future and provides a time frame for analysis of whether polar bears are likely to become endangered. Therefore,

45 years is the ''foreseeable future'' for the polar bear. This time frame is long enough to take into account multi-generational population dynamics and the capacity for ecological adaptation (Schliebe et al. 2006a).

We considered all relevant, available information under each of the listing factors in the context of present-day polar bear distribution. Our evaluation of the five factors with respect to polar bear populations is presented below. While the polar bear can be delineated into 19 populations, and population-specific interaction of various listing factors may affect these populations at different levels or rates, in this 12-month finding and proposed rule we evaluated the status of the species throughout its entire range because we find that the entire species meets the definition of a threatened species under the Act. Accordingly, we have not considered the petitioners' alternative of assessing whether listing of particular distinct population segments is warranted.

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

Polar bears are believed to be completely dependent upon Arctic sea ice for survival (Moore and Huntington, in press; Laidre et al. in prep.). They need sea ice as a platform for hunting, for seasonal movements, for travel to terrestrial denning areas, for resting, and for mating. Some polar bears use terrestrial habitats seasonally, such as pregnant females for denning and some bears, all sex and age classes, for resting during open water periods. While open water may not be an essential habitat for polar bears because life functions such as feeding, reproduction or resting do not occur in open water, open water is a fundamental part of the marine system that supports seal species, the principal prey of polar bears, and seasonally returns to ice in the form needed by the bears. Further, the open water interface with sea ice is an important habitat in that it is used to a great extent by polar bears. The extent of open water is important because vast areas of open water may limit a bear's ability to access sea ice or land. Snow cover is also an important component of polar bear habitat in that it provides insulation and cover for young polar bears and ringed seals in snow dens or lairs.

Overview of Arctic Sea Ice Change

Initial syntheses of climate models and environmental change data have identified potentially significant changes to the landscapes and biota in Arctic regions as a consequence of climate change (ACIA 2005, p. 1017; IPCC 2001a, p. 920). Climate trends are not occurring evenly or in a linear fashion throughout the world; Arctic regions are being disproportionately affected by higher levels of warming (Overpeck 2006, p. 1749). Observations of Arctic changes, including diminishing sea ice, shrinking glaciers, thawing permafrost, and Arctic greening, validate earlier findings (Morison et al. 2000, p. 360; Sturm et al. 2003, pp. 63–65; Comiso and Parkinson 2004, pp. 38–43; Parkinson in press).

Additional studies indicate that previous projections regarding the rate and extent of climate change underestimated the temperature trend, reductions to annual sea ice during the summer and winter periods, reductions to multi-year pack ice, and reductions in thickness (Rothrock et al. 2003, p. 3471; Stroeve et al. 2005, p. 2). Overpeck et al. (2005, p. 309) indicated that the Arctic is moving toward a new ''super interglacial'' state that falls outside of natural glacial-interglacial periods that have characterized the past 800,000 years. These changes appear to be driven largely by the albedo effect (see explanation in following paragraph), and there are few, if any, processes that are capable of altering this trajectory. There is no paleoclimatic evidence for a seasonally ice-free Arctic during the past 800,000 years (Overpeck et al. 2005, p. 309).

The National Snow and Ice Data Center (NSIDC is part of the University of Colorado Cooperative Institute for Research in Environmental Sciences, and is affiliated with the National Oceanic and Atmospheric Administration National Geophysical Data Center through a cooperative agreement) reported that the amount of sea ice in 2006 was the second lowest on record (since satellites began recording sea ice extent measurements via passive microwave imagery in 1978), and the pace of melting was accelerating. The latest sea ice measurements are thought to indicate that ice melt is accelerating due to a positive feedback loop. The albedo effect involves reduction of the extent of lighter-colored sea ice or snow, which reflects solar energy back into the atmosphere, and a corresponding increase in the extent of darker-colored water or land that absorbs more of the sun's energy. This greater absorption of energy causes faster melting, which in turn causes more warming, and thus creates a self-reinforcing cycle that becomes amplified and accelerates with time. Lindsay and Zhang (2005, p. 4892) suggest that feedback mechanisms caused a tipping point in Arctic sea ice thinning in the late 1980s, sustaining a continual decline in sea ice cover that cannot easily be reversed. Results of a new study by a team of scientists from the National Center for Atmospheric Research and two universities, using projections from a state-of-the-art community climate system model, suggest that abrupt reductions in the extent of summer ice are likely to occur over the next few decades, and that near ice-free September conditions may be reached as early as 2040 (Holland et al, 2006).

Observed and Projected Changes in Arctic Sea Ice

Sea ice is the defining characteristic of the marine Arctic and has a strong seasonal cycle (ACIA 2005, p. 30). It is typically at its maximum extent in March and minimum extent in September (Parkinson et al. 1999, p. 20, 840). There is considerable inter-annual variability both in the maximum and minimum extent of sea ice. In addition, there are decadal and inter-decadal fluctuations to sea ice extent due to changes in atmospheric pressure patterns and their associated winds, continental discharge, and influx of Atlantic and Pacific waters (Gloersen 1995, p. 505; Mysak and Manak 1989, p. 402; Kwok 2000, p. 776; Parkinson 2000b, p. 10; Polyakov et al. 2003, p. 2080; Rigor et al. 2002, p. 2660; Zakharov 1994, p. 42).

Observations have shown a decline in late summer Arctic sea ice extent of 7.7 percent per decade and in the perennial sea ice area of up to 9.8 percent per decade since 1978 (Stroeve et al. 2005, p.1; Comiso 2006, p. 75). A lesser decline of 2.7 percent per decade has been observed in yearly averaged sea ice extents (Parkinson and Cavalieri 2002, p. 441). The rate of decrease appears to be accelerating, with record low minimum extents in the sea ice cover recorded during 2002 through 2005 (Stroeve et al. in press; Comiso 2006, p. 75). Average air temperatures across most of the Arctic Ocean from January to August 2006 were about 2 to 7 degrees Fahrenheit (°F) warmer than the long-term average across the region during the preceding 50 years, indicating that ice melt is accelerating due to a positive feedback loop that enhances warming through the albedo effect. Observations have likewise shown a thinning of the Arctic sea ice of 32 percent or more from the 1960s and 1970s to the 1990s in some local areas (Rothrock et al. 1999, p. 3471; Yu et al. 2004, p. 11). The length of the melt period affects sea ice cover and ice thickness (Hakkinen and Mellor 1990; Laxon et al. 2003, cited in Comiso 2005,

p. 50). Earlier melt onset and lengthening of the melt season result in decreased total ice cover at summer's end (Stroeve et al. 2005, p. 3). For 2002 through 2005, the NSIDC reported a trend of earlier onset of melt season in all four years; in 2005 the melt season arrived the earliest, occurring approximately 17 days before the mean melt onset date (NSIDC 2005, p. 6). The result of longer melt season is that the ice season is decreasing by as much as 8 days per year in the eastern Barents Sea, and by lesser amounts throughout much of the rest of the Arctic (Parkinson 2000a, p. 351). Comiso (2003, p. 3506) calculated an increase in the sea ice melt season of 10 to 17 days per decade. Subsequently, Comiso (2005, p. 50) included additional data from recent years and ice-free periods and determined that the length of the melt season is increasing at a rate of approximately 13.1 days per decade. Comiso (2005, p. 50) stated that the increasing melt periods were likely reasons for the current rapid decline of the perennial ice cover. Belchansky et al. (2004, p. 1) found that changes in January multiyear ice volume were significantly correlated with duration of the intervening melt season.

Projected Changes in Sea Ice Cover

A number of climate models have been developed that project future conditions in the Arctic, as well as globally (ACIA 2005, p. 99; IPCC 2001b, p. 471). All models predict continued Arctic warming and continued decreases in the Arctic sea ice cover in the 21st century (Johannessen 2004, p. 328) due to increasing global temperatures, although the level of increase varies between models. Comiso (2005, p. 43) found that for each 1°Centigrade (C) (1.6 °F) increase in surface temperature (global average) there is a corresponding decrease in perennial sea ice cover of about 1.48 million $km^2$ (.57 million $mi^2$). Further, due to increased warming in the Arctic region, accepted models project almost no sea ice cover during summer in the Arctic Ocean by the end of the 21st century (Johannessen et al. 2004, p. 335). More recently, the NSIDC cautioned that the Arctic will be ice-free by 2060 if current warming trends continue (Serreze 2006, p. 2).

The winter maximum sea ice extent in 2005 and 2006 were both about 6 percent lower than average values, indicating significant decline in the winter sea ice cover. In both cases, the observed surface temperatures were also significantly warmer and the onset of freeze-up was later than normal. In both years, onset of melt also happened early (Comiso in press). A continued decline would mean an advance to the north of the 0 °C (32 °F) isotherm temperature gradient, and a warmer ocean in the peripheral seas of the Arctic Ocean. This in turn may result in a further decline in winter ice cover.

Predicted Arctic atmospheric and oceanographic changes for time periods through the year 2080 include increased air temperatures, increased precipitation and run-off, and reduced sea ice extent and duration (ACIA 2005, tables on pp. 470 and 476).

Effects of Sea Ice Habitat Change on Polar Bears

Observed and predicted changes in sea ice cover, characteristics, and timing have profound effects on polar bears. Sea ice is a highly dynamic habitat with different types, forms, stages, and distributions of ice that all operate as a complex matrix in determining biological productivity and use by marine organisms, including polar bears and their primary prey base—ice seal species. Polar bear use of sea ice is not uniform. Their preferred habitat is the annual ice located over continental shelf and inter-island archipelagos that circle the Arctic basin. Ice seals demonstrate a similar preference to these ice habitats.

Hudson Bay in Canada typifies change in the Arctic due to its southern location and occurrence on a divide between a warming and a cooling region (AMAP 2003, p. 22). It is therefore an ideal area to study the impacts of climate change. In addition, Hudson Bay has the most significant long-term time series of data on the ecology of polar bears and is the site of the first documented evidence of major and ongoing impacts to polar bears from sea ice changes. Many researchers over the past 40 years have predicted an array of impacts to polar bears from climatic change that include adverse effects on denning, food chain disruption, and prey availability (Budyko 1966; Vibe 1967, cited in Derocher et al. 2004, p. 164; Lentfer 1972, p. 169; Tynan and DeMaster 1997, p. 315; Stirling and Derocher 1993, pp. 241–244). Stirling and Derocher (1993, p. 240) first noted changes in polar bears in Western Hudson Bay such as declining body condition, lowered reproductive rates, and reduced cub survival; they attributed these changes to a changing ice environment. Subsequently, Stirling et al. (1999, p. 303) established a statistically significant link between climate warming in Western Hudson Bay, reduced ice presence, and observed declines in polar bear physical and reproductive parameters, including body condition (weight) and natality.

Increased Polar Bear Movements

Polar bears are inefficient moving on land; they expend approximately twice the average energy use of other mammals when walking (Best 1982, p. 63; Hurst et al. 1982, p. 273). Sea ice circulation in the Arctic is clockwise, and polar bears tend to walk against this movement to maintain a position near preferred habitat within large geographical home ranges (Mauritzen et al. 2003a, p. 111). Currently, ice thickness is diminishing and there is increased transport of multi-year ice from the polar region. This increased rate and extent of ice movements requires additional efforts and energy expenditure for polar bears to maintain their position near preferred habitats (Derocher et al. 2004, p.167). Ferguson et al. (2001, p. 51) found that polar bears inhabiting areas of highly dynamic ice had much larger activity areas and movement rates compared to those bears inhabiting more stable, persistent ice habitat. Although polar bears are capable of living in areas of highly dynamic ice movement, they show inter-annual fidelity to the general location of preferred habitat (Mauritzen et al. 2003b, p. 122).

As sea ice moves more quickly or becomes more fragmented, polar bears would likely use more energy to maintain contact with consolidated ice, because moving through highly fragmented sea ice is difficult and likely more energy-intensive than walking over consolidated sea ice (Derocher et al. 2004, p. 167). During summer periods the remaining ice in much of the central Arctic is now positioned away from more productive continental shelf waters and over much deeper, less productive waters, such as in the Beaufort and Chukchi Seas of Alaska. If the width of leads or extent of open water increases, the transit time for bears and the need to swim or to travel will increase (Derocher et al. 2004, p. 167). Derocher et al. (2004, p. 167) suggests that as habitat patch sizes decrease, available food resources are likely to decline, resulting in reduced residency time and thus increased movement rates. The consequences of increased energetic costs to polar bears are reduced weight and condition and corresponding reduction in survival and recruitment rates (Derocher et al. 2004, p. 167).

Additionally, as movement of sea ice increases and areas of unconsolidated ice increase, some bears will lose contact with the main body of ice and drift into unsuitable habitat from which

it may be difficult to return (Derocher et al. 2004, p. 167). This already occurs in some areas such as Southwest Greenland and offshore from the island of Newfoundland (Derocher et al. 2004, p. 167). Increased frequency of such events could negatively impact survival rates and contribute to population declines (Derocher et al. 2004, p.167).

Polar Bear Distribution Changes

Recent studies indicate that polar bear distributions are changing and that these changes are strongly correlated to similar changes in sea ice and the ocean-ice system. Specifically, in Western Hudson Bay, breakup of the annual sea ice now occurs approximately 2.5 weeks earlier than it did 30 years ago (Stirling et al. 1999, p. 299). The earlier spring breakup was highly correlated with dates that female polar bears came ashore (Stirling et al. 1999, p. 299). Declining reproductive rates, subadult survival, and body mass (weights) have resulted from longer periods of fasting on land as a result of the progressively earlier breakup of the sea ice caused by an increase in spring temperatures (Stirling et al. 1999, p. 304; Derocher et al. 2004, p. 165).

Stirling et al. (1999, p. 304) reported a significant decline in the condition (weights) of both male and female adult polar bears since the 1980s in Western Hudson Bay, as well as lower natality rates. A positive relationship between body mass of females with cubs and survival of cubs was also established; survival of cubs of mothers in better condition (heavier) was greater than survival of cubs from lighter mothers (Derocher and Stirling 1996, p. 1248).

Stirling et al. (1999, p. 304) cautioned that although downward trends in the size of the Western Hudson Bay population had not been detected, if trends in life history parameters continued downward ''they will eventually have a detrimental effect on the ability of the population to sustain itself.'' Population declines have now been determined based on a recent analysis of an ongoing mark-recapture population study, and the earlier predictions of Stirling et al. (1999; p. 304) have been proven. Between 1987 and 2004, the number of polar bears in the Western Hudson Bay population declined from 1,194 to 935, a reduction of about 22 percent (Regehr et al. in prep.). Progressive declines in the condition and survival of cubs, subadults, and bears 20 years of age and older, likely initiated the decline in the size of the Westen Hudson Bay population; these declines appear to have been initiated by progressively earlier sea ice breakup. Once the population began to decline, existing harvest rates of this population contributed to the reduction in the size of the population (Regehr et al. in prep.).

Starting in the 1990s, Schliebe (unpublished data) has observed a trend of increasing use of coastal areas by polar bears during the fall open water period in the Southern Beaufort Sea. High numbers of bears were found to be using coastal areas during some years, where previously observations of polar bears on the coast were rare. The study period included record minimal ice conditions for the month of September in four of the six survey years. There was a significant relationship between the mean distance from the coast to the edge of pack ice and the numbers of bears observed on the coast. As the distance to the edge of the ice increased, the number of bears near shore increased. Conversely, as ice advanced toward shore, the number of bears near shore decreased. These results suggest that environmental factors, possibly similar to those observed in Western Hudson Bay, are influencing the distribution of polar bears in the southern Beaufort Sea. They also suggest that increased polar bear use of coastal areas may continue if the summer retreat of the sea ice continues to receed in the future as predicted (Serreze et al. 2000, p. 159; Serreze and Barry 2005).

Gleason et al. (2006, p. 1) also found a shift in polar bear distributions in the southern Beaufort Sea. Their study evaluated polar bear distribution during three periods (1979 to 1986, 1987 to 1996, and 1997 to 2005), and found that the September distribution of polar bears was primarily associated with offshore sea ice during the earlier two periods, but land and open water during the later period. These findings coincide with the lack of pack ice (concentrations of greater than 50 percent) caused by a retraction of ice in the study area during the latter period (Stroeve et al. 2005, p. 2; Comiso 2002 in Comiso 2005, p. 46; Comiso 2003, p. 3509; Comiso 2005, p. 52).

The findings of Gleason et al. (2006 p. 1) are consistent with those reported by Schliebe et al. (2006b, p. 559), and confirm an increasing trend in use of coastal areas by polar bears in the southern Beaufort Sea in recent years and a decline in ice habitat near shore. The proximate causes for changes in polar bear distribution are thought to be (1) retraction of pack ice far to the north for greater periods of time in the fall and (2) later freeze-up of coastal waters.

Other polar bear populations exhibiting distribution changes with larger numbers of bears onshore include the Chukchi Sea (Kochnev 2006, p. 162), Baffin Bay, Davis Strait, Foxe Basin, and Hudson Bay populations (Stirling and Parkinson 2006). Stirling and Parkinson (2006, p. 261–275) provide an analysis of pack ice and distribution changes for the Baffin Bay, Davis Strait, Foxe Basin, and Hudson Bay populations. They indicate that earlier sea ice breakup will likely result in longer periods of fasting for polar bears during the extended open-water season and this is why more polar bears have been observed near communities and hunting camps in recent years. Distribution changes of polar bears have been noted during a similar period of time for the northern coast of Chukotka (Kochnev 2006, p. 162) and on Wrangel Island, Russia (Kochnev 2006, p. 162; N. Ovsyanikov, pers. comm.). The relationship between the maximum number of polar bears, the number of dead walruses, quantity of accessible food, and the distance of the ice-edge from Wrangel Island was evaluated. The regression analysis revealed that the strongest correlation was between bear numbers and distance to the ice-edge (Kochnev 2006, p. 162).

In Baffin Bay, traditional Inuit knowledge studies and anecdotal reports indicate in many areas that greater numbers of bears are being encountered on land during the summer and fall open-water seasons. Interviews with elders and senior hunters in three communities in Nunavut, Canada, revealed that most respondents (83 percent) believed that the population of polar bears had increased. The increase was attributed to more bears seen near communities, cabins, and camps, and hunters encountering bear sign in areas not previously used by bears. Some people interviewed noted that these observations could reflect a change in bear behavior rather than an increase in population.

Stirling and Parkinson (2006, p. 263) evaluated sea ice conditions and distribution of polar bears in five populations in eastern Canada: Western Hudson Bay, Eastern Hudson Bay, Baffin Bay, Foxe Basin, and Davis Strait. Their analysis of satellite imagery beginning in the 1970s indicates that the sea ice is breaking up at progressively earlier dates, so that bears must fast for longer periods of time during the open water season. Stirling and Parkinson (2006, pp. 271–272) point out that long-term data on population size and body condition of bears from the Western Hudson Bay, and population and harvest data from the Baffin Bay population indicate that these populations are declining or likely to be declining. The authors indicate that as

bears in these populations become more nutritionally stressed, the numbers of animals will decline and the declines will probably be significant. Based on the recent findings of Holland et al. (2006) these events are predicted to occur within the foreseeable future as defined in this rule (Stirling, pers. comm. 2006).

Seasonal polar bear distribution changes noted above and the negative effect of prolonged use of terrestrial habitat are a concern for populations. Although polar bears have been observed using terrestrial food items such as blueberries, snow geese (*Anser caerulescens*), and reindeer (*Rangifer tarandus*), these alternate foods are not believed to represent significant sources of energy (Derocher et al. 2004, p. 169). Also, the inefficiency of polar bear locomotion noted above likely explains why polar bears are not known to hunt musk oxen (*Ovibos moschatus*) or snow geese, potential prey species that co-occur with the polar bear in many areas (Lunn and Stirling 1985, p. 2295). The energy needed to catch such species would almost certainly exceed the amount of energy a kill would provide (Lunn and Stirling 1985, p. 2295). Consequently, adaptive behaviors of using terrestrial habitat instead of sea ice will not offset energy losses from decreased seal consumption, and nutritional stress will result.

*Effects of Sea Ice Habitat Changes on Polar Bear Prey*

Reduced Seal Productivity

Ringed seals in many areas prefer stable, shore-fast ice for construction of birth lairs. Pups are born between mid-March and mid-April, nursed for about 6 weeks, and weaned prior to spring breakup in June (Smith 1980, p. 2201; Stirling 2002, p. 67). During this time period, both ringed seal pups and adults are hunted by polar bears (Smith 1980, p. 2201). Ferguson et al. (2005, pp. 130–131) demonstrated that decreased snow depth in April and May, possibly influenced by the timing of spring breakup, may have a detrimental effect on ringed seal recruitment in Western Hudson Bay. Reduced snowfall results in less snow drift accumulation to the leeward side of pressure ridges; pups in lairs with thin snow roofs are more vulnerable to predation than pups in lairs with thick roofs (Ferguson et al 2005, p. 131). Access to birth lairs for thermoregulation is considered crucial to the survival of nursing pups when air temperatures fall below 0 °C (32 °F) (Stirling and Smith 2004, p. 65). Warming temperatures that melt snow-covered birth lairs contributed to pups being exposed to ambient conditions and suffering from hypothermia (Stirling and Smith 2004, p. 63). Ferguson et al. (2005, p. 121) concluded that ''earlier spring breakup of sea ice together with snow trends suggest continued low pup survival in western Hudson Bay.''

Harwood et al. (2000, pp. 11–12) reported that an early spring breakup negatively impacted the growth, condition, and probably the survival of unweaned ringed seal pups. Early breakup was believed to have interrupted lactation in adult females, which in turn, negatively affected the condition and growth of pups. Earlier ice breakups similar to those documented by Harwood et al. (2000, p. 11) and Ferguson et al. (2005, p. 131) are predicted to occur more frequently, and as a result a decrease in productivity and abundance of ringed seals is predicted (Ferguson et al. 2005, p. 131). Similar to earlier spring breakup or reduced snow cover, increased rain on snow events during the late winter also negatively impact ringed seal recruitment by damaging or eliminating snow-covered pupping lairs, increasing exposure and the risk of hypothermia, and facilitating predation by polar bears and Arctic foxes (*Alopex lagopus*) (Stirling and Smith 2004, p. 65). Stirling and Smith (2004, p. 64) document the collapse of the snow roofs of ringed seal birth lairs near southeastern Baffin Island and the resultant exposure of adult seals and pups to hypothermia. Predation of pups by polar bears was observed and the researchers suspect that most of the pups in these areas were eventually killed by polar bears (Stirling and Archibald 1977, p. 1127), Arctic foxes (Smith 1976 cited in Stirling and Smith 2004, p. 65) or possibly gulls (Lydersen and Smith 1989 cited in Stirling and Smith 2004, p. 66). Stirling and Smith (2004, p. 66) postulated that should early season rain become regular and widespread in the future, mortality of ringed seal pups will increase, especially in more southerly parts of their range, and local populations may be significantly reduced. Any significant decline in ringed seal numbers, especially in the production of young, could affect reproduction and survival of polar bears (Stirling and Smith 2004, p. 66).

**Reduced Prey and Availability**

Ringed seals are the primary prey of the polar bear in most areas, though bearded seals, walrus, harbor seals (*Phoca vitulina*), harp seals (*Phoca greenlandica*), hooded seals (*Crystophora cristata*), and beluga whales are sometimes taken and may be locally important to some populations (Stirling and Archibald 1977, p. 1129; Smith 1980, p. 2206; Smith and Sjare 1990, p. 100; Iverson et al. 2006, p. 114). Ice-associated seals, including the ringed seal, are vulnerable to habitat loss from changes in the extent or concentration of Arctic ice because they depend on pack-ice habitat for pupping, foraging, molting, and resting (Tynan and DeMaster 1997, p. 312; Derocher et al. 2004, p. 168).

Polar bear populations are known to fluctuate based on prey availability (Stirling and Lunn 1997, p. 177). For example, declines in ringed and bearded seal numbers and productivity have resulted in marked declines in polar bear populations (Stirling 1980, p. 309; Stirling and Øslashritsland 1995, p. 2609; Stirling 2002, p. 68). Ringed seal young-of-the-year represented the majority of the polar bear diet, and fluctuations in the productivity of ringed seal pups will likely be reflected immediately in polar bear reproduction and cub survival (Stirling and Lunn 1997, p. 177). For polar bears, the most critical factor which affects reproductive success, subsequent condition, and survival is the availability of ringed seal pups from about mid-April to ice break up sometime in July (Stirling and Lunn 1997, p. 176).

Thus, major declines in sea ice habitat as projected will likely result in a decline in polar bear abundance over time due to reduced prey availability (Derocher et al. 2004, p. 167). The effects of declining ice habitat on seals will vary depending on the location, timing and extent of reductions, based on the information presented by Derocher et al. (2004). While it is possible that reduced ice cover along with increased open and warmer water will enhance primary productivity of seal prey items, and thus seal productivity, ultimately such a regime will negatively impact polar bears. An increased area and duration of open water will result in polar bears having reduced access to prey during critical periods of the year and physical condition of bears will decline. Further, reductions in sea ice cover will result in diminished productivity and distribution changes of ringed seals over time because seals depend on sea ice for pupping and resting. Thus a reduction in sea ice is likely to result in a net reduction in abundance of ringed seals (ACIA 2005, p. 520).

Grebmeier et al. (2006, p. 1461) found that a major ecosystem shift is occurring in the Northern Bering Sea indicated by a decrease in benthic (bottom-dwelling) prey populations, which could affect Pacific walrus and bearded seal

populations and result in an increase in pelagic fish. Arctic cod (*Boreogadus saida*), one of the primary prey species of ringed seals, is strongly associated with sea ice throughout its range and uses the underside of the ice to escape from predators (Craig et al. 1982 and Sekerak 1982 cited in Gaston et al. 2003, p. 230). It is therefore likely that a decrease in seasonal ice cover could have adverse effects on Arctic cod (Tynan and DeMaster 1997, p. 314; Gaston et al. 2003, p. 231). Sea ice regime changes in the Arctic have been implicated in distribution changes of other species as well. Cooper et al. (2006, p. 98) observed orphaned Pacific walrus in waters as deep as 3,000 m (9,843 ft) in the Canada Basin of the Arctic Ocean. These observations indicate that the Pacific walrus population may be ill-adapted to rapid seasonal sea ice retreat off Arctic continental shelves.

Several species of seals that currently occur at the southern edge of the range of polar bears could also expand their range northward. In the north Pacific, this could include harbor seals (*Phoca vitulina*), spotted seals (*Phoca largha*), and ribbon seals (*Phoca fasciata*). In the north Atlantic, harp and hooded seals could expand northward and become available as prey, particularly if their pupping (natal) grounds located on heavy, thicker ice are only available in more northern latitudes (Derocher et al. 2004, p. 168). A study of seals preyed upon by polar bears in three major regions of the Canadian Arctic, Davis Strait, western Hudson Bay, and the Beaufort Sea, revealed that diets differed among the regions, and within the region for Davis Strait. These differences were thought to be based on different rates of availability of the different seal species, as determined by their abundance.

The absence of ice in southerly pupping areas or the relocation of pupping areas to more northerly areas could affect seal production. Repeated years of little or no ice in the Gulf of St. Lawrence resulted in almost zero production of harp seal pups, compared to hundreds of thousands in good ice years (ACIA 2005, p. 510). Marginal ice conditions and early ice breakup during harp seal whelping are believed to have resulted in increased juvenile mortality from starvation and cold stress and an overall reduction in this age class (Johnston et al. 2005, pp. 215–216). Northerly shifts of whelping areas for hooded seals were reported to occur during periods of warmer climate and diminished ice (Burns 2002 p. 42). In recent years, the position of the hooded seal whelping patch near Jan Mayen has changed position, likely in response to decreased sea ice in East Greenland; the number of seal also decreased (T. Haug, pers. comm. 2005). Marginal sea ice cover may have significant effects on harp and hooded seals since the amount and quality of ice suitable for whelping may be greatly reduced, resulting in higher density whelping areas (Johnston et al. 2005, p. 218). Crowding in whelping areas may increase the risks of disease transmissions and epizootics (Fay 1974, p. 394), but the effects of crowding at the harp and hooded seal whelping patches are largely unknown (Johnston et al. 2005, p. 218). Born (2005a) indicated that early ice breakup in years with ''light'' ice conditions may influence seals other than ringed seals. Other ice breeding seals, ribbon and spotted seals, may also be similarly affected by marginal ice conditions and early breakup (Born 2005a). It is unlikely that increased take of other species such as bearded seals, walrus, or harbor seals, even where they are available, could compensate for reduced availability of ringed seals (Derocher et al. 2004, pp. 168–169).

Changes in prey availability may have especially large impacts on immature bears. Polar bears feed preferentially on blubber, and adult bears often leave much of a kill behind. Younger bears, which are not as efficient at taking seals, are known to utilize these kills to supplement their diet (Derocher et al. 2004, p. 168). Younger bears may be disproportionately impacted if there are fewer kills or greater consumption of kills by adults, resulting in less prey to scavenge (Derocher et al. 2004, pp. 167–168). Altered prey distribution would also likely lead to increased competition for prey between dominant and subordinate bears, resulting in subordinate or sub-adult bears having reduced access to prey (Derocher et al. 2004, p. 167). Thus, a decrease in ringed seal abundance and availability would result in a concomitant decline in polar bear populations.

Demographic Effects on Polar Bears

The potential effects of sea ice changes on population size are difficult to quantify, especially for a long-lived and widely dispersed species like the polar bear. The key demographic factors for polar bears are physical condition, reproduction, and survival. Alteration of these characteristics has been associated with elevated risks of extinction for other species (McKinney 1997; Beissinger 2000; Owens and Bennett 2000 all cited in Derocher et al. 2004, p. 170).

Physical condition of polar bears has been shown to determine the welfare of individuals, and ultimately, through their reproduction and survival, the welfare of populations (Stirling et al. 1999, p. 304; Regehr et al. in prep). Declines in fat reserves during critical times in the polar bear life cycle are likely to lead to an array of impacts including a delay in the age of first reproduction, decrease in the proportion of females with adequate fat stores to complete successful denning, decline in litter sizes with more single cub litters and fewer cubs overall, as well as lower cub body weights and lower survival rates (Derocher et al. 2004, p. 170). Derocher and Stirling (1998, pp. 255–256) demonstrated that body mass of adult females is correlated with cub mass at den emergence, with heavier females producing heavier cubs and lighter females producing lighter cubs. Heavier cubs have a higher rate of survival (Derocher and Stirling 1996, p. 1249). Females in poor condition will result in a higher proportion that do not initiate denning or are likely to abandon their den and cub(s) mid-winter (Derocher et al. 2004, p. 170). Females with insufficient fat stores or in poor hunting condition in the early spring after den emergence could lead to increased cub mortality (Derocher et al. 2004, p. 170). In the southern Beaufort Sea, Regehr et al. (2006, p. 20) recently found that survival rates for cubs were significantly lower than estimates from earlier studies. The lower survival rate of cubs coincided with warming temperatures and altered atmospheric circulation starting in the winter of 1989–1990 that caused an abrupt change in sea ice conditions in the Arctic basin. In addition, sea ice conditions that include broken or more fragmented ice may require young cubs to enter water more frequently and for more prolonged periods of time, thus increasing mortality from hypothermia. Blix and Lenter (1979, p. 72) and Larsen (1985, p. 325) indicate that cubs are unable to survive immersion in icy water for more than approximately 10 minutes. This is due to cubs having little insulating fat, their fur losing its insulating ability when wet (though the fur of adults sheds water and recovers its insulating properties quickly), and the core body temperature dropping rapidly when they are immersed in icy water (Blix and Lenter 1979, p. 72).

Reductions in sea ice, as discussed above, will alter ringed seal distribution, abundance, and availability for polar bears. Such reductions will, in turn, decrease polar bear body condition (Derocher et al. 2004, p. 165). Derocher et al. (2004, p. 165) projected that most females in the Western Hudson Bay

population may be unable to reach the minimum 189 kg (417 lbs) body mass required to successfully reproduce by the year 2012.

Furthermore, with the extent of winter sea ice projected to be reduced in the future, opportunities for increased feeding to recover fat stores during this season may be limited. Mortality of polar bears is thought to be the highest in winter when fat stores are low and energetic demands are greatest. Pregnant females are in dens during this period using fat reserves and not feeding. Polar bears hunt seals at their breathing holes, however, increased open water or fragmented ice will provide seals alternatives to establishing breathing holes, likely reducing their availability to polar bears and decreasing bear hunting success (Derocher et al. 2004, p. 167).

In general, Derocher et al. (2004, p. 170) predict demographic impacts will adversely affect female reproductive rates and juvenile survival first while adult female survival rates would be affected under severe conditions. Regehr et al. (2005, p. 233) showed that while the Western Hudson Bay population has declined 22 percent since 1987, this decline was not uniform across all age classes of bears. Survival of prime-adult polar bears (age 5 to 19 years) was stable over the course of the study; however, survival of juvenile, subadult, and past prime age polar bears declined as a function of earlier spring sea ice breakup date.

The Southern Beaufort Sea population has also been subject to dramatic changes in the sea ice environment beginning in the winter of 1989 to 1990 (Regehr et al. 2006, p. 2). These changes were linked initially through direct observation of distribution changes during the fall open water period. With the exception of the Western Hudson Bay population, the Southern Beaufort Sea population has the most complete and extensive time series of life history data, dating back to the late 1960s. A 5-year coordinated capture-recapture study of this population to evaluate changes in the health and status of polar bears and life history parameters such as reproduction, survival, and abundance was completed in 2006. Results of this study indicate that the estimated population size has gone from 1,800 bears (Amstrup et al. 1986, p. 244; Amstup 2000, p. 146) to 1,526 polar bears in 2006 (Regehr et al. 2006, p. 16). The precision of the earlier estimate of 1,800 polars was low, and consequently the 2006 estimate of 1,526 is not statistically significantly different. Amstrup et al. (2001, p. 230) provides an additional population estimate of as many as 2,500 bears for this population in the late 1980s, although the statistical variance could not be calculated and thus precludes comparative value of the estimate. Survival rates, weights, and skull sizes were compared for 2 periods of time, 1967 to 1989 and 1990 to 2006. In the later period, estimates of total survival for cubs declined significantly from .65 (Amstrup and Durner 1995, p. 1316) to .43. Cub weights also decreased slightly. The authors believed that poor survival of new cubs may have been related to declining physical condition of females entering dens and consequently of the cubs born during recent years as reflected by smaller skull measurements. Also, between years during the 5-year study, a general decline in survival rates for cubs, females older than cubs, and males older than cubs was noted. In addition, body weights for adult males decreased significantly and skull measurements were reduced since 1990. Since male polar bears continue to grow into their teen years (Derocher et al. 2005, p. 898), if nutritional intake was similar since 1990, the size of males should have increased (Regehr et al. 2006, p. 18). The observed changes reflect a trend toward smaller size adult male bears. Although a number of the indices of population status were not independently significant, nearly all of the indices illustrated a declining trend. In the case of Western Hudson Bay, declines in cub survival and physical stature were recorded for a number of years (Stirling et al. 1999, p. 300; Derocher et al. 2004, p. 165) before a statistically significant decline in the population size was confirmed (Regehr et al. in prep.). Amstrup (pers. comm. 2006) indicates that if the trends in loss of sea ice continue as predicted, then, similar to the conditions for the Western Hudson Bay population, the ultimate effect will be a significant decline in the population trend for the Southern Beaufort Sea population. This declining trend will occur within the 45-year period determined to be the foreseeable future.

In further support of the interaction of environmental factors, nutritional stress and their effect on polar bears, several unusual mortality events have been documented in the southern Beaufort Sea. During the winter and early spring of 2004, three observations of polar bear cannibalism were recorded (Amstrup et al. 2006, p. 1). Similar observations had not been recorded in that region despite studies extending back for decades. In the fall of 2004, four polar bears were observed to have drowned while attempting to swim between shore and distant pack ice in the Beaufort Sea. Despite offshore surveys extending back to 1987, similar observations had not previously been recorded (Monnett and Gleason 2006, p. 3). In spring of 2006, three adult female polar bears and one yearling were found dead. Two of these females and the yearling had no fat stores and apparently starved to death, while the third adult female was too heavily scavenged to determine a cause of death. This mortality is suspicious because prime age females have had very high survival rates in the past (Amstrup and Durner 1995, p. 1315). Similarly, the yearling that was found starved was the offspring of another radio-collared prime age female whose collar had failed prior to her yearling being found dead. Annual survival of yearlings, given survival of their mother, was previously estimated to be 0.86 (Amstrup and Durner 1995, p. 1316). The probability, therefore, that this yearling died while its mother was still alive was only approximately 14 percent. Regehr et al. (2006, p. 27) indicate that these anecdotal observations, in combination with changes in survival of young and declines in size and weights reported above suggest mechanisms by which a changing sea ice environment can affect polar bear demographics and population status.

Open Water Habitat

As indicated earlier, open water is not considered essential habitat to polar bear life functions because activities such as feeding, reproduction, or resting do not occur on the open water and are limited when only open water is available. However, the extent of open water is important in that vast areas of open water present a barrier or hazard under certain circumstances for polar bears to access sea ice or land. Diminished sea ice cover will also increase the energetic cost to polar bears for travel, pose potential for drowning that may occur during long distance swimming or swimming under unfavorable sea wave conditions, and may result in hypothermia for young cubs as previously discussed. Under diminishing sea ice scenarios (IPCC 2001, p. 489; ACIA 2005, p. 192; Serreze 2006), ice-dependent seals, the principal prey of polar bears will also be affected through distribution changes and reductions in productivity, ultimately translating into reductions in population size.

Reduced Feeding Opportunities

Polar bears are capable of swimming great distances, but exhibit a strong preference for sea ice (Mauritzen et al.

2003b, pp. 119–120). However, polar bears will also quickly abandon sea ice for land once the sea ice concentration drops below 50 percent. This is likely due to reduced hunting success in broken ice with significant open water (Derocher et al. 2004, p. 167; Stirling et al. 1999, pp. 302–303). Bears have only rarely been reported to capture ringed seals in open water (Furnell and Oolooyuk 1980 cited in Derocher et al. 2004, p. 167), therefore it is unlikely that hunting in ice-free water would be able to compensate for the corresponding loss of sea ice and the access sea ice affords polar bears to hunt ringed seals (Stirling and Derocher 1993, p. 241; Derocher et al. 2004, p. 167).

Overall, a reduction in sea ice and corresponding increase in open water is likely to result in a net reduction in ringed and bearded seals, and Pacific walrus abundance (ACIA 2005, p. 510) as well as a reduction in ribbon and spotted seals (Born 2005a). While harp and hooded seals may change their distribution and potentially serve as a prey for polar bears, it appears unlikely that these species can successfully redistribute in a rapidly changing environment and reproduce and survive at former levels. Loss of southern pupping areas due to inadequate or highly variable ice conditions may also serve to reduce these species as a potential polar bear prey (Derocher et al. 2004, p. 168). It is also unlikely that increased take of other species such as bearded seals, walrus, harbor seals, or harp and hooded seals regionally if they are available, could compensate for reduced availability of ringed seals (Derocher et al. 2004, p. 168).

Open Water Swimming

Open water is considered to present a potential hazard to polar bears required to make long distance transits of that open water seeking sea ice or land habitat. As indicated previously, four polar bears drowned in open water while attempting to swim between shore and distant ice in 2004 (Monnett and Gleason 2006, p. 5). Because the survey area covered 11 percent of the study area, an extrapolation of the survey data to the entire study area indicates that up to 36 bears may have been swimming and 27 of these may have drowned during this event. Seas during this period were rough and extensive areas of open water persisted between pack ice and land. Mortalities due to offshore swimming during late-ice (or mild ice) years may also be an important and unaccounted source of natural mortality given energetic demands placed on individual bears engaged in long-distance swimming (Monnett and Gleason 2006, p. 6). This evidence suggests that drowning-related deaths of polar bears may increase in the future if the observed trend of regression of pack ice and/or longer open water periods continues.

Wave height (sea state) increases as a function of the amount of open water surface area. Thus ice reduction not only increases areas of open water across which polar bears must swim, but may have an influence on the size of wave action. Considered together these may result in over-all increases in bear mortality associated with swimming when there is little sea ice to buffer wave action (Monnett and Gleason 2006, p. 5). Evidence of such mortality has also been reported by Julian Dowdeswell, Head of the Scott Polar Research Institute of England, who observed one exhausted and one apparently dead polar bear apparently stranded at sea east of Svalbard in 2006.

Terrestrial Habitat

Although sea ice is the polar bear's principal habitat, terrestrial habitat serves a vital function seasonally for denning. In addition, use of terrestrial habitat is seasonally important for resting and feeding in the absence of suitable sea ice. This habitat may take on a more prominent role in maintaining the health and condition of polar bears in future years. The following section describes the effects or potential effects of climate change and other factors on polar bear use of terrestrial habitat. It focuses on access to or changes in the quality of denning habitat, and on distribution changes and corresponding increases in polar bear-human interactions in coastal areas. Also discussed are the potential consequences of and potential concerns for development, primarily oil and gas exploration and production that occurs in polar bear habitat (marine and terrestrial).

Access to and Alteration of Denning Areas

Many female polar bears repeatedly return to specific denning areas on land (Harrington 1968, p. 11; Schweinsburg et al. 1984, p. 169; Garner et al. 1994b, p. 401; Ramsay and Stirling 1990, p. 233). To access preferred denning areas, pack ice must drift close enough or must freeze sufficiently early in the fall to allow pregnant females to walk or swim to the area by late October or early November (Derocher et al. 2004, p. 166). Under likely climate change scenarios, the distance between the edge of the pack ice and land will increase (ACIA 2005, pp. 456–459). As distance increases between the southern edge of the pack ice and coastal denning areas, it will become increasingly difficult for females to access preferred denning locations. Most high-density denning areas are located at more southerly latitudes (Figure 2). For populations that den at high latitudes in the Canadian archipelago islands, the effects may be less or may become evident later in time than for more southerly populations.

The most recent study based on updated modeling suggests that near ice-free September conditions may be reached as early as 2040 (Holland et al., 2006). Derocher et al. (2004, p. 166) predicted that under these climate change scenarios, pregnant female polar bears will likely be unable to reach many of the most important denning areas in the Svalbard Archipelago, Franz Josef Land, Novaya Zemlya, Wrangel Island, Hudson Bay, and the Arctic National Wildlife Refuge and north coast of the Beaufort Sea (Figure 2).

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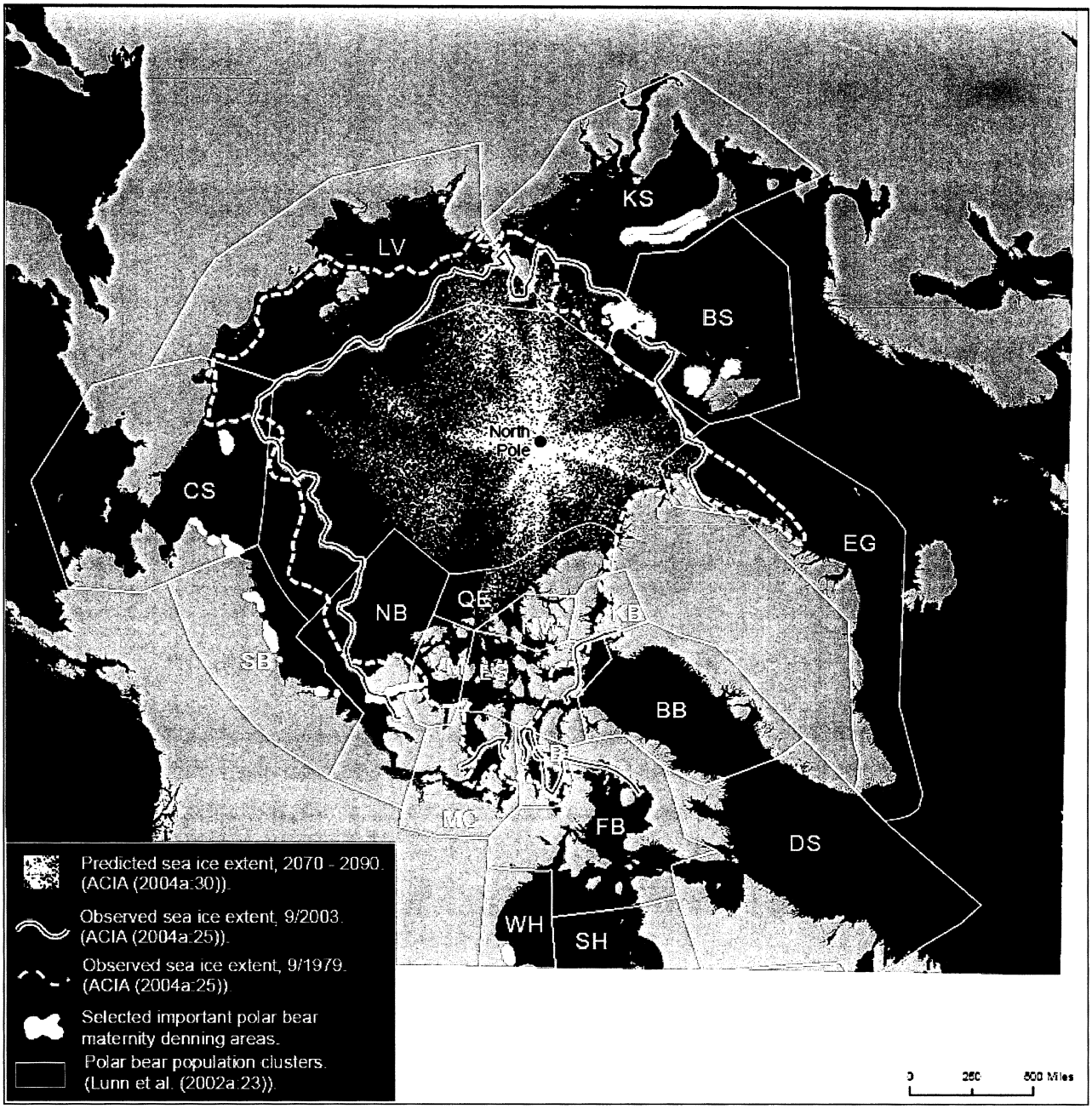
**Figure 2. Selected Polar Bear Terrestrial Denning Areas Compared to Past, Present, and Predicted Future Summer Sea-Ice Extent**




Polar Bear Population Abbreviations. CS = Chukchi Sea; SB = Southern Beaufort Sea; NB = Northern Beaufort Sea; QE = Queen Elizabeth Islands; VM = Viscount Melville Sound; NW = Norwegian Bay; LS = Lancaster Sound; MC = M'Clintock Channel; GB = Gulf of Boothia; FB = Foxe Basin; WH = Western Hudson Bay; SH = Southern Hudson Bay; KB = Kane Basin; BB = Baffin Bay; DS = Davis Strait; EG = East Greenland; BS = Barents Sea; KS = Kara Sea; LV = Laptev Sea; Arctic Basin is the unlabelled area centered on the North Pole

Source: Adapted from Lunn et al. (2002a:23) and ACIA (2004:25, 30).

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Increased drift rates of ice floes that may serve as a platform for denning are of concern (Derocher et al. 2004, p. 166). In northern Alaska, polar bear maternity

dens were found on drifting multiyear ice several hundred km north of the coast (Amstrup and Gardner 1994, p. 5). Although use of pelagic denning habitat is not widespread, in the past it has provided important habitat for some populations. Though the stability of pack ice and corresponding use for denning in the future under projected diminishing sea ice scenarios are uncertain, recent findings by Fishbach et al. (2005, p. 1) indicate an increasing trend for a greater proportion of polar bears dens in northern Alaska to be located on land and fewer to be located on pack ice. The findings indicate that changes in the character and suitability of sea ice have resulted in the detected shift of denning on land.

In some locations, bears may adopt the denning strategy used by the Western Hudson Bay population, where pregnant females leave the ice in the spring at breakup and summer in locations near where they ultimately den (Derocher et al. 2004, p. 166). Under such a scenario females must accumulate sufficient fat stores to fast for 8, or more, months before they can return to sea ice to resume feeding on seals (Derocher et al. 2004, p. 166). While this strategy may be used more frequently in the future, its usefulness in maintaining populations is questionable. The results of Regehr et al. (in press) indicate that the Western Hudson Bay population has been in decline over the past 19 years, with the physical condition of bears declining due to greater periods of fasting on land caused by earlier spring breakup (Stirling et al. 1999, p. 300).

Climate change also impacts the quality of snow for denning (Derocher et al. 2004, p. 166). Insufficient snow limits den construction (Derocher et al. 2004, p. 166). Changes in the amount and timing of snowfall also impact the thermal properties of the dens (Derocher et al. 2004, p. 166). Because polar bear cubs are born helpless and nurse up to 3 months before emerging from the den; major changes in the thermal properties of dens could negatively impact cub survival (Derocher et al. 2004, p. 167). For example two cubs born to a captive held female without a den and exposed to temperatures of approximately −43 °C (−45 °F), both died within 2 days (Blix and Lentfer 1979, p. 67).

Finally, the occurrences of rain events are projected to increase throughout the Arctic in winter (ACIA 2005, p. 993). Increased rain in late winter and early spring can result in both polar bear natal den collapses as well as ringed seal den collapses (Stirling and Smith 2004, p. 64). Polar bear den collapse following a warming period in the Beaufort Sea resulted in the death of a mother and her two young cubs (Clarkson and Irish 1991, p. 83). In another instance, unseasonable rain south of Churchill, Manitoba, caused large snow banks along creeks and rivers used for denning to collapse from the weight of the wet snow (Stirling and Derocher 1993, p. 244).

Oil and Gas Exploration, Development, and Production

Each of the Parties to the 1973 Polar Bear Agreement (see International Agreements and Oversight section below), have developed detailed regulations pertaining to the extraction of oil and gas within their countries. The greatest level of oil and gas activity within polar bear habitat is currently occurring in the United States (Alaska). Exploration and production activities are also actively underway in Russia, Canada, Norway, and Denmark (Greenland). In the United States, all such leasing and production activities are required to comply with the National Environmental Policy Act (42 U.S.C. 4321 et seq. (NEPA), and numerous other statutes, which guide exploration, development and production so as to minimize possible environmental impacts. In Alaska, the majority of oil and gas development is on land, however, some offshore production sites have been developed, and others are planned.

Historically, oil and gas activities have resulted in little direct mortality to polar bears, and that mortality which has occurred, has been associated with human bear interactions as opposed to a spill event. However, oil and gas activities are increasing as development continues to expand throughout the United States Arctic and internationally, including in polar bear terrestrial and marine habitats. The greatest concern for future oil and gas development is the effect of an oil spill or discharges in the marine environment impacting polar bears or their habitat. Much of the north slope of Alaska contains habitat suitable for polar bear denning (Durner et al. 2001, p. 119). Further, in northern Alaska and elsewhere, distribution of polar bears appears to be changing to use of land areas during the open water season. Some of these areas coincide with areas that have been developed for oil and gas production. This increases the potential for interactions with humans (Durner et al. 2001, p. 115; National Research Council (NRC) 2003, p. 168).

The National Research Council (2003, p. 169) evaluated the cumulative effects of oil and gas development in Alaska and concluded the following relates to polar bears and ringed seals:

- ''Industrial activity in the marine waters of the Beaufort Sea has been limited and sporadic and likely has not caused serious cumulative effects to ringed seals or polar bears.
- Careful mitigation can help to reduce the effects of oil and gas development and their accumulation, especially if there is no major oil spill. However, the effects of full-scale industrial development of waters off the North Slope would accumulate through the displacement of polar bears and ringed seals from their habitats, increased mortality, and decreased reproductive success.
- A major Beaufort Sea oil spill would have major effects on polar bears and ringed seals.
- Climatic warming at predicted rates in the Beaufort Sea region is likely to have serious consequences for ringed seals and polar bears, and those effects will accumulate with the effects of oil and gas activities in the region.
- Unless studies to address the potential accumulation of effects on North Slope polar bears or ringed seals are designed, funded, and conducted over long periods of time, it will be impossible to verify whether such effects occur, to measure them, or to explain their causes.''

There is the potential for alteration of polar bear habitat from oil and gas development, exploration (seismic) or other activities in denning areas, and potential oil spills in the marine environment. Any such impacts would be additive to other factors already or potentially affecting polar bears and their habitat.

Documented impacts on polar bears by the oil and gas industry during the past 30 years are minimal. Polar bears spend a limited amount of time on land, coming ashore to feed, den, or move to other areas. At times, fall storms deposit bears along the coastline where bears remain until the ice returns. For this reason, polar bears have mainly been encountered at or near most coastal and offshore production facilities, or along the roads and causways that link these facilities to the mainland. During those periods, the likelihood of interactions between polar bears and industry activities increases. We have found that the polar bears interaction planning and training requirements set forth in these regulations and required through the letters of authorization (LOA) process have increased polar bear awareness and minimized these encounters. LOA requirements have also increased our knowledge of polar bear activity in the developed areas.

No lethal take associated with industry has occurred during the period covered by incidental take regulations. Prior to issuance of regulations, lethal takes by industry were rare. Since 1968, there have been two documented cases of lethal take of polar bears associated with oil and gas activities. In both instances, the lethal take was reported to be in defense of human life. In the winter of 1968–1969, an industry employee shot and killed a polar bear. In 1990, a female polar bear was killed at a drill site on the west side of Camden Bay. In contrast, 33 polar bears were killed in the Canadian Northwest Territories from 1976 to 1986 due to encounters with industry. Since the beginning of the incidental take program, which includes measures that minimize impacts to the species, no polar bears have been killed due to encounters associated with the current industry activities on the North Slope of Alaska.

However, based on mitigation measures in place now and likely to be used in the future, historical information on the level of oil and gas development activities occurring within polar bear habitat within the Arctic, the lack of direct quantifiable impacts to polar bear habitat from these activities noted to date, and because of the localized nature of the development activities, or possible events such as oil spills, they do not threaten the species throughout all or a significant portion of its range.

Conclusion for Factor A

Polar bears have evolved in a sea ice environment and sea ice serves as an essential platform from which they meet life functions. Polar bear populations throughout the Arctic are being affected by changes in their sea ice habitat. Increased temperatures, earlier onset of and longer melting periods, increased rain-on-snow events, and positive feedback systems which amplify these phenomena will all operate to decrease the extent of sea ice during all seasons. This will result in fragmentation of habitat, increase the extent of open water areas in all seasons, reduce the amount of heavier and more stable multi-year ice, and affect the quality of shore fast ice. In turn, these factors will negatively impact polar bears by increasing the energetic demands of movement in seeking prey, redistributing substantial portions of populations seasonally into terrestrial habitats with marginal values for feeding, and increasing levels of negative bear-human interactions. As the sea ice edge retracts to deeper, less productive polar basin waters, polar bears will face increased intraspecific competition for limited food resources and increased open water swimming. We expect similar reductions in productivity for most ice seal species (decreasing availability or timing of availability for polar bears as food), composition changes of seal species in some areas, and eventually decreased levels of seal abundance. Prey species, such as ringed seals, will likely remain distributed in shallower, more productive southerly areas characterized by vast expanses of open water. These factors will, in turn, result in the reduced physical condition of polar bears, which leads to population-level demographic declines through reduction of survival and recruitment rates. The ultimate effect of these inter-related events, factors, and effects (Table 1) will be that polar bear populations will decline or continue to decline. Not all populations will be affected evenly in the level, rate, and timing of impact, but within the foreseeable future, it is predicted that all populations will be either directly or indirectly impacted.

TABLE 1.—LIKELY IMPACTS TO THE POLAR BEAR FROM RECESSION OF THE SEA ICE—ADAPTED AND MODIFIED FROM DEROCHER ET AL. (2004, P. 171)

| Characteristic | Time frame [1] | Projected change |
|---|---|---|
| Body weight/condition | Short | Decline, increased variation. |
| Movement patterns | Short | Increased, alteration of existing patterns. |
| Cub survival | Short | Decline, increased variation. |
| Reproductive rates | Short | Variable, increased variation. |
| Bear-human interactions | Variable | Increase. |
| Den areas | Medium | Reduced access, modification of areas used. |
| Growth rates | Medium | Variable, downward trend. |
| Prey composition | Medium | Change in species, utilization, age of prey. |
| Population boundaries | Medium | Mixing of adjacent populations. |
| Population size | Medium | Variable downward trend. |
| Intraspecific aggression | Variable | Increased. |
| Cannibalism | Variable | Possible increase. |
| Adult survival | Medium-Long | Decline, Increased variation. |

[1] Short = <10 years, Medium = 10–20 years, Long = >20 years. Time frame of impact will vary between populations and is dependent upon rate of change in a given population.

The southerly populations of Western Hudson Bay, Southern Hudson Bay, Foxe Basin, Davis Strait, and Baffin Bay, where bears already experience stress from seasonal ice retreat fasting, will be affected earliest (Stirling and Parkinson 2006). Earlier melt periods and increased open water periods will result in lengthened seasonal use of land and increased period of fasting, resulting in decreased physical condition for bears in these populations. Other populations including the Chukchi Sea, Barents Sea, Southern Beaufort Sea and possibly the Kara Sea and Laptev Sea (these are characterized as open Arctic Basin populations) will, or are currently, experiencing initial effects of changes in sea ice. These populations are vulnerable to large-scale dramatic seasonal fluctuations in ice movements, decreased abundance and access to prey, and increased energetic costs of hunting. We expect that the polar bear populations inhabiting the central island archipelago of Canada will be affected later. These more northerly populations are expected to be affected last due to the buffering effects of the island archipelago complex, which lessens effects of oceanic currents and seasonal retractions of ice and retains a higher proportion of heavy, more stable multi-year sea ice. These populations include Norwegian Bay, Lancaster Sound, M'Clintock Channel, Viscount-Melville, Kane Basin, and the Gulf of Boothia.

For polar bears, current and anticipated changes to the sea ice habitat are expected to threaten the species (Aars et al. 2006). This

conclusion is consistent with the 2006 finding by the World Conservation Union (IUCN). The IUCN, based on the PBSG assessment, reclassified polar bears as ''vulnerable.'' The basis for the classification was the projected change in sea ice, effect of climatic warming on polar bear distribution and condition, and corresponding effect on reproduction and survival.

Some scientists conclude that the ''future persistence of polar bears is tenuous'' (Derocher et al. 2004, p. 172), reinforcing their earlier warnings that ''[u]ltimately, if sea ice disappeared altogether, polar bears would become extinct'' (Stirling and Derocher 1993, p. 243). Changes in the timing of sea ice formation and break-up and the loss of the polar bear's sea ice habitat will pose increasing risk to polar bears as the climate continues to warm (Derocher et al. 2004, p. 164), and ultimately all polar bear populations will suffer. Rosentrater (2005, p. 3) notes ''if current trends continue, polar bears and other species that require a stable ice platform for survival could become extinct by the end of the century.''

This opinion is not universally shared. Other polar bear biologists have indicated that it is possible, even with the total loss of summer sea ice, that a small number of polar bears would survive semi-indefinitely and not go extinct provided there is still some ice cover during the winter and marine mammals continued to be available for capture or scavenging. As a species, polar bears have survived at least two warming periods, the Eem Interglacial period (140,000–115,000 years Before Present (BP)), and the Holocene ''climate optimum'' (ca 8000–4000 BP) (Dansgaard et al. 1993, p. 218; Dahl-Jensen et al. 1998, p. 268). Greenland ice cores revealed that the climate was much more variable in the past and some of the historical shifts between the warm and cold periods were rapid, suggesting that the recent relative climate stability seen during the Holocene may be an exception (Dansgaard et al. 1993, p. 218). The precise impacts of these warming periods on polar bears and the Arctic sea ice habitat are unknown.

A recent study of the Bering Sea, one of the most productive marine ecosystems on the planet, concluded ''[a] change from arctic to subarctic conditions is underway in the northern Bering Sea'' (Grebmeier et al. 2006, p. 1461). This is being caused by warmer air and water temperatures, and less sea ice. ''These observations support a continued trend toward more subarctic ecosystem conditions in the northern Bering Sea, which may have profound impacts on Arctic marine mammal and diving seabird populations as well as commercial and subsistence fisheries'' (Grebmeier et al. 2006, p. 1463).

As the changes in marine ecosystems continue, polar bear populations are expected to experience impacts comparable to those already observed in the Western Hudson Bay (Stirling et al. 1999, p. 304) as well as in the Southern Beaufort Sea (Regehr et al. 2006, p.14). Changes in the timing of sea ice formation and break up will pose increasing risk to polar bears as the climate continues to warm (Derocher et al. 2004, p. 173), and ultimately affect all polar bear populations and threaten the species throughout all or a significant portion of its range in the foreseeable future.

We find that polar bear populations throughout their distribution in the circumpolar Arctic are threatened by ongoing and projected changes in their sea ice habitat.

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

Use of polar bears for commercial, recreational, scientific, and education purposes is generally low, with the exception of harvest. Use for non-lethal scientific purposes is highly regulated and does not pose a threat to populations. Similarly, the regulated, low-level of use for educational purpose through placement of cubs or orphaned animals into zoos or public display facilities or through public viewing is not a threat to populations. Sport harvest of polar bears in Canada is discussed in the harvest section below. For purposes of population assessment, no distinction is made between harvest uses for sport or subsistence purposes. Take associated with defense of life, scientific research, illegal take, and other forms of take are generally included in harvest management statistics so this section also addresses all forms of take including bear-human interactions.

Overview of Harvest

Polar bears historically have been and continue to be an important renewable resource for coastal communities throughout the Arctic (Lentfer 1976, p. 209: Amstrup and DeMaster 1988, p. 41; and IUCN 1999, p. 257 Table 14.1). Polar bears and polar bear hunting remain an important part of indigenous peoples' myths and legends and polar bear hunting is a source of pride, prestige, and accomplishment. Polar bears provide a source of meat and raw materials for handicrafts, including functional clothing such as mittens, boots (mukluks), parka ruffs, and pants (Nageak et al. 1988, p.6; Marine Mammal Commission 1995, p. 18).

Prior to the 1950s, most hunting was by indigenous people for subsistence purposes. Increased sport hunting in the 1950s and 1960s, however, resulted in population declines (Prestrud and Stirling 1994). International concern about the overall status of polar bears resulted in biologists from the five polar bear range nations forming the Polar Bear Specialist Group (PBSG) within the IUCN Species Survival Commission (SSC) structure (IUCN 1999, p. 262). The PBSG was largely responsible for the development and ratification of the 1973 International Agreement on the Conservation of Polar Bears (1973 Agreement) (Prestrud and Stirling 1994, p. 114) (see Section D—Adequacy of existing regulatory mechanisms below for details).

Harvest Management by Nation

Canada

Canada manages or shares management responsibility for 13 of the world's 19 polar bear populations (Kane Basin, Baffin Bay, Davis Strait, Foxe Basin, Western Hudson Bay, Southern Hudson Bay, Gulf of Boothia, Lancaster Sound, Norwegian Bay, M'Clintock Channel, Viscount Melville Sound, Northern Beaufort Sea, and Southern Beaufort Sea) Wildlife management is a shared responsibility of the Provincial and Territorial governments. The Federal government (Canadian Wildlife Service) has an ongoing research program and is involved in management of wildlife populations shared with other jurisdictions, especially ones with other nations (e.g., where a polar bear stock ranges across an international boundary). To facilitate and coordinate management of polar bears, Canada has formed the Federal Provincial Technical Committee for Polar Bear Research and Management (PBTC) and the Federal Provincial Administrative Committee for Polar Bear Research and Management (PBAC). These committees include Provincial, Territorial, and Federal representatives who meet annually to review research and management activities.

Polar bears are harvested in Canada. All human-caused mortality (i.e., hunting, defense of life, and incidental kills) are included in a total allowable harvest. Inuit people from communities in Nunavut, Northwest Territories (NWT), Manitoba, Labrador, Newfoundland, and Quebec conduct hunting. In Ontario, the Cree as well as the Inuit can harvest polar bears. In Nunavut and NWT, each community

obtains an annual harvest quota that is based on the best available scientific information and monitored through distribution of harvest tags to local hunter groups, who work with scientists to help set quotas. Native hunters may use their harvest tags to guide sport hunts. The majority of sport hunters in Canada are U.S. citizens, and in 1994 an amendment to the MMPA was made to allow these hunters to import their trophies into the United States if the bears had been taken in a legal manner from approved populations.

The Canadian system has resulted in tight controls on the size of harvest and high quality harvest reporting. It allows reduction of quotas in response to population declines resulting from over-hunting (PBSG 1995, p. 11). In 2004, existing polar bear harvest practices became questionable when Nunavut identified quota increases for 8 populations, 5 of which are shared with other jurisdictions (Lunn et al. 2005, p. 3). Quota increases were largely based on indigenous knowledge (the Nunavut equivalent of traditional ecological knowledge) and the perception that some populations are increasing from historic levels. Nunavut did not coordinate these changes with adjacent jurisdictions that share management responsibility for populations that range between the two jurisdictions. This action resulted in an overall increase in the quota from 398 bears in 2003–2004 to 507 bears in 2004–2005 (Lunn et al. 2005, p. 14, Table 6).

Greenland

The management of polar bear harvest in Greenland is through a system introduced in 1993 that allows only full-time hunters living a subsistence lifestyle to hunt polar bears. Licenses are issued annually for a small fee contingent upon reporting harvest during the prior 12 months. Until 2006, no quotas were in place but harvest statistics were collected through Piniarneq, a local reporting program (Born and Sonne 2005 in PBSG 2006, p. 137). In January 2006, a new harvest monitoring and quota system was implemented (Lønstrup 2005 in PBSG 2006, p. 133). Annual quotas are determined in consideration of international agreements, biological advice, user knowledge, and consultation with the Hunting Council. Part of the quota may be used for sport hunting (Lønstrup 2005 in PBSG 2006, p. 133).

Norway

Norway and Russia share jurisdiction over the Barents Sea population of polar bears. Management in Norway is the responsibility of the Ministry of the Environment (Wiig 1995, p.110). The commercial, subsistence or sport hunting of polar bears in Norway is prohibited (Wiig 1995, p.110). Bears may only be killed in self-defense, protection of property, and ''mercy'' kills and kills must be reported and recorded (Gjertz and Scheie 1998, p. 337).

Russia

The commercial, subsistence or sport hunting of polar bears in Russia is prohibited. Some bears are killed in defense of life, and a small number of cubs are taken annually for zoos. Despite the 1956 ban on hunting polar bears in Russia, illegal harvest is occurring in the Chukchi Sea region and elsewhere where there is limited monitoring or enforcement of this prohibition (PBSG 1995, p. 9; Belikov et al. 2005 in PBSG 2006, p. 153). There is also a significant interest in re-opening a subsistence hunt by indigenous people in Russia. The combined ongoing illegal hunting in Russia and legal subsistence harvest in Alaska is a concern for the Chukchi Sea polar bear population, which may be in decline (USFWS 2003, p.1). Full implementation of the Agreement between the United States of America and the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population (Bilateral Agreement) is attended to rectify this situation, but such implementation has not yet occurred (Schliebe et al. 2005 in PBSG 2006, p. 75). Accordingly, we have not relied on implementation of the Bilateral Agreement in our assessment of the threat of overutilization to polar bears. (see International Agreements and Oversight section below).

United States

Polar bear subsistence hunting has been done by Alaska Natives for centuries (Lentfer 1976, p. 209). Polar bear hunting and the commercial sale of skins took on increasing economic importance to Alaskan Natives when whaling began in the 1850s (Lentfer 1976, p. 209) Trophy hunting using aircraft began in the late 1940s. In the 1960s, State of Alaska hunting regulations became more restrictive, and in 1972 aircraft-assisted hunting was stopped altogether (Lentfer 1976, p. 209). Between 1954 and 1972, an average of 222 polar bears was harvested per year, resulting in a decline in polar bear populations in Alaska (Amstrup et al.1986, p. 246).

Passage of the Marine Mammal Protection Act (MMPA) in 1972 established a prohibition on the sport or commercial hunting of polar bears in Alaska. However, within the MMPA a provision allows for continued harvest of polar bears by coastal dwelling Alaska Natives for subsistence and handicraft purposes. The MMPA also prohibits the commercial sale of any marine mammal parts or products except those that have been significantly altered into handicrafts or clothing by Alaska Natives. Currently, the subsistence harvest of polar bears by Alaska Natives, provided it is conducted in a non-wasteful manner, cannot be restricted unless a population is designated as depleted (i.e., below the optimum sustainable population level). The ability to avoid depletion through cooperative management agreements between Alaska Native Organizations and the Service to regulate subsistence take is an amendment to the MMPA that has been proposed, yet remains to be adopted. The Service cooperates with the Alaska Nanuuq Commission, a non-profit organization that represents interests of Alaska Native polar bear users, to address polar bear subsistence harvest issues. In addition, for the Southern Beaufort Sea population, hunting is regulated voluntarily and effectively through an agreement between the Inuvialuit of Canada and the Inupiat of Alaska (Brower et al 2002) (see International Agreements and Oversight section below). The harvest is monitored by the Service's marking and tagging program. Illegal take or trade is monitored by the Service's law enforcement program.

The MMPA was amended in 1994 to provide for the import into the United States of sport-hunted polar bear trophies legally taken by the importer in Canada. Prior to approving a polar bear population for import of such trophies, the Service must find that Canada has a monitored and enforced sport-hunting program consistent with the 1973 Agreement on the Conservation of Polar Bears (1973 Polar Bear Agreement) and that the program is based on scientifically sound quotas ensuring the maintenance of the population at a sustainable level. Currently, six populations are approved for import of polar bears trophies (62 FR 7302, February 18, 1997; 64 FR 1529, January 11, 1999; 66 FR 50843, October 5, 2001).

Harvest Summary

A thorough review and evaluation of past and current harvest, including other forms of removal, for all populations has been described in the Polar Bear Status Assessment (Schliebe et al. 2006a). The Status Assessment is available on the Service's Marine

Mammal Web site located at: *http://alaska.fws.gov/fisheries/mmm/polarbear/issues.htm.* Table 2 provides a summary of harvest statistics from the populations and is included herein as a reference. The total harvest and other forms of removal were considered in the summary analysis.

Five populations (including four that are hunted) have no estimate of potential risk from overharvest, since adequate demographic information necessary to conduct a population viability analysis and risk assessment are not available (Table 1). For one of the populations, Chukchi Sea, severe overharvest was suspected to have occurred during the past 10–15 years, and anecdotal information was that the trend of population size was believed to be in decline (Aars et al. 2006, pp. 34–35). The Chukchi Sea, Baffin Bay, Kane Basin and Western Hudson Bay populations may be being overharvested (Aars et al. 2006, pp. 40, 44–46). In other populations, including East Greenland and Davis Strait, substantial harvest occurs annually in the absence of scientifically-derived population estimates (Aars et al. 2006, pp. 39, 46). Considerable debate has occurred regarding the recent changes in population estimates based on indigenous or local knowledge (Aars et al. 2006, p. 57) and subsequent quota increases for some populations in Nunavut (Lunn et al. 2005, p. 20). Increased polar bear observations along the coast may be attributed to changes in bear distribution due to lack of suitable ice habitat rather than to increased population size (Stirling and Parkinson 2006). Additional inventories are needed to reconcile these differing interpretations.

TABLE 2.—POLAR BEAR HARVEST STATISTICS, ADAPTED FROM THE PBTC STATUS TABLE

| Population | Aerial survey/M–R | | 5 yr mean kill | | 3 yr mean kill | | 1 yr mean kill | | Identified permitted harvest [b] | Estimated maximum sustainable yield [c] | Observed or predicted trend [d] | Status [e] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Number (year of estimate) | ±2 SE | Actual removals | Likelihood of decline (next 10 years) [a] | Actual removals | Likelihood of decline (next 10 years) [a] | Actual removals | Likelihood of decline (next 10 years) [a] | | | | |
| Southern Beaufort Sea | 1500 (2006) | 1000–2000 | 57.8 | No Estimate | 59.3 | No Estimate | 44 | No Estimate | 81 | 84 | Decline | Reduced. |
| Northern Beaufort Sea | 1200 (1986) | 133–2097 | 36.2 | No Estimate | 38 | No Estimate | 36 | No Estimate | 65 | 56 | Stable | Not reduced. |
| Viscount Melville | 161 (1992) | 121–201 | 4.4 | 5.6% | 4.7 | 6.5% | 5 | 6.8% | 7 | 10 | Increase | Severely reduced. |
| Norwegian Bay | 190 (1998) | 102–278 | 2.6 | 70.5% | 2.7 | 73.1% | 4 | 84.4% | 4 | 9 | Decline | Not reduced. |
| Lancaster Sound | 2541 (1998) | 1759–3323 | 74 | 67.0% | 79 | 74.0% | 87 | 80.6% | 85 | 119 | Stable | Not reduced. |
| M'Clintock Channel | 284 (2000) | 166–402 | 3 | 2.5% | 1 | 1.0% | 2 | 1.8% | 3 | 13 | Increase | Severely reduced. |
| Gulf of Boothia | 1528 (2000) | 953–2093 | 45.8 | 3.3% | 48.3 | 4.3% | 66 | 12.9% | 74 | 72 | Increase | Not reduced. |
| Foxe Basin | 2197 (1994) | 1677–2717 | 97.2 | 14.0% | 96 | 12.1% | 97 | 13.1% | 106 + Quebec. | 108 | Stable | Not reduced. |
| Western Hudson Bay | 935 (2004) | 791–1079 | 44.8 | 99.9% | 46.3 | 99.9% | 43 | 99.9% | 62 | 44 | Decline | Reduced. |
| Southern Hudson Bay | 1000 (1988) | 784–1216 | 36.6 | 0.1% | 36.7 | 0.1% | 27 | 0.1% | 25 + Ontario, Quebec. | 47 | Increase? | Not reduced. |
| Kane Basin | 164 (1998) | 94–234 | 10.8 | 99.9% | 10.3 | 99.9% | 11 | 99.9% | 5 + Greenland. | 8 | Decline | Reduced. |
| Baffin Bay | 2074 (1988) | 1544–2604 | 216.8 | 99.9% | 251.7 | 99.9% | 252 | 99.9% | 105 + Greenland. | 72 | Decline | Reduced. |
| Davis Strait | | | 64.8 | 12.9% | 67.3 | 17.1% | 70 | 18.9% | 46 + Greenland, Quebec, Labrador. | 77 | Stable | Not reduced. |
| East Greenland | Unknown | | 70 | No Estimate | | | | | 50 | No Estimate | Data Deficient | Data Deficient. |
| Barents Sea | 3000 (2004) | | | | | | | | | | Data Deficient | Data Deficient. |
| Kara Sea | | | | | | | | | | | Data Deficient | Data Deficient. |
| Laptev Sea | 800–1200 (1993). | | | | | | | | | | Data Deficient | Data Deficient. |
| Chukchi Sea | 2000 (1993) | | 43–AK. Unk # in Chukotka. | No Estimate | Unknown | No Estimate | 43++ | No Estimate | Unknown | Unknown. | Data Deficient | Data Deficient. |

[a] Presented is the proportion of simulation runs using the RISKMAN model and vital rates presented in natural survival and recruitment tables resulting in any decline after 10 years of simulation, assuming minimum 2M:1F in the harvest. One-minus this value represents the proportion of simulations resulting in population increase.

[b] The identified permitted harvest includes the maximum harvest that is presently allowed by jurisdictions with an identified quota.

[c] The estimated maximum sustainable yield (MSY) is based on a meta-analysis of the 1990s that assumed mean reproduction and survival for polar bears across their range in Canada (given information available at the time). MSY = N * 0.0156/Pr[F], where N = total population number, 0.0156 is a constant derived from a meta-analysis to estimate survival and recruitment rates for Canadian polar bears, and Pr[F] = proportion of the harvest that is female (assumed to be 0.333, i.e., 2M:1F sex-selective harvest).

[d] Observed or predicted status as suggested by PVA results and, where vital rates are not sufficient for analysis, anectodatal information.

[e] Current status relative to probable historic numbers.

Bear-Human Interactions

Polar bears come into conflict with humans when they scavenge for food at sites of human habitation, and also because they occasionally prey or attempt to prey upon humans (Stirling 1988, p.182). ''Problem bears'' are most often sub-adults, because they are inexperienced hunters and because their feeding habits include more scavenging than adult bears (Stirling 1988, p. 182). Following sub-adults, females with cubs are most likely to interact with humans, because females with cubs are likely to be thinner and hungrier than single adult bears, and starving bears are more likely to interact with humans in their pursuit of food (Stirling 1988, p. 182). For example, in Churchill, Manitoba, Canada, an area of high polar bear use generally, the occurrence of females with cubs feeding at the town's garbage dump in the fall increased during years when bears came ashore in poorer condition (Stirling 1988, p. 182). Other factors that may influence bear-human encounters include increased land use activities, increased human populations in areas of high polar bear activity, increased polar bear population size, and earlier polar bear departure from ice habitat to terrestrial habitats.

Increased interactions and defense kills may occur under predicted climate change scenarios (Derocher et al. 2004, p.169). Direct interactions between people and bears in Alaska have increased markedly in recent years and this trend is expected to continue (Amstrup 2000, p. 153). Since the late 1990s, the timing of complete ice formation in the fall has occurred later in November or early December than it formerly did (which was in September and October), resulting in an increased amount of time polar bears spend on land, which consequently increases the probability of bear-human interactions occurring in coastal villages. Adaptive management programs focusing on the development of community or ecotourism based polar bear-human interaction plans that include polar bear patrols, deterrent and hazing programs, efforts to manage and minimize sources of attraction, and programs to educate residents of polar bear behavior and ecology are needed and should be developed in the future.

Conclusion for Factor B

Polar bears are harvested in Canada, Alaska, Greenland, and Russia. Active harvest management programs are in place for populations in Canada, Greenland, and Alaska. Principles of sustainable yield are instituted through harvest quotas or guidelines; other forms of removal, such as for defense of life, are considered through management actions by the responsible jurisdictions. Hunting or killing polar bears is illegal in Russia although an unknown level of harvest occurs. While overharvest occurs for some populations, laws and regulations for most management programs have been instituted to ensure harvests result in healthy and sustainable populations. These actions are largely viewed as having been successful in reversing wide spread overharvests by many jurisdictions that resulted in population depletion during the period prior to signing of the multi-lateral 1973 Agreement on the Conservation of Polar Bears (Prestrud and Stirling 1994) (Discussed further in Factor D). For the internationally-shared populations in the Chukchi Sea, Baffin Bay, Kane Basin, and Davis Strait, conservation agreements have been developed (United States-Russia) or are in development (Canada-Greenland). These agreements have not yet been implemented and therefore are not being relied upon in our evaluation of Factor B.

We conclude that harvest, increased bear-human interaction levels, defense of life take, illegal take, and take associated with scientific research programs are occurring regionally for some populations. However, we find that overutilization as a singular factor does not threaten the species throughout all or a significant portion of its range. Continued harvest and increased mortality from bear-human encounters or other forms of mortality, however, may become a more significant threat factor in the future for polar bear populations experiencing nutritional stress or declining population numbers as a consequence of habitat change. The PBSG 2006 (Aars et al. 2006) through resolution urged that a precautionary approach be instituted when setting harvest limits in a warming Arctic. Continued efforts are necessary to ensure that harvest or other forms of removal do not exceed sustainable levels and thus do not threaten the species in the foreseeable future.

*C. Disease and Predation*

Disease

Except for the presence of trichinella larvae, the occurrence of diseases and parasites in polar bears is rare compared to other bears. Trichinella has been documented in polar bears throughout their range and although infestations can be quite high they are normally not fatal (Rausch 1970, p. 360; Dick and Belosevic 1978, p. 1143; Larsen and Kjos-Hanssen 1983, p. 95; Taylor et al. 1985, p. 303; Forbes 2000, p. 321). Although rabies is commonly found in Arctic foxes, there has been only one confirmed instance of rabies in polar bears (Taylor et al. 1991, p. 337). Morbillivirus has been documented in polar bears from Alaska and Russia (Garner et al. 2000, p. 477; C. Kirk, University of Alaska, Fairbanks, pers. comm. 2006). Antibodies to the protozoan parasite, *Toxoplasma gondii*, were found in Alaskan polar bears; however, it is not known if this is a health concern for polar bears (C. Kirk, University of Alaska, Fairbanks, pers. comm. 2006).

It is unknown whether polar bears are more susceptible to new pathogens due to their lack of previous exposure to disease and parasites. Many different pathogens and viruses have been found in seal species that are polar bear prey (Duignan et al. 1997, p. 7; Measures and Olson 1999, p. 779; Dubey et al. 2003, p. 278; Hughes-Hanks et al. 2005, p. 1226), so the potential exists for transmission of these diseases to bears. As polar bears become more stressed, they may eat more of the intestines and internal organs than they do presently, thus increasing their potential exposure to parasites and viruses (Derocher et al. 2004, p. 170; Amstrup et al. 2006b, p. 3). In addition, pathogens may expand their range northward from more southerly areas under projected climate change scenarios (Harvell et al. 2002, p. 60).

Intraspecific Predation

Intraspecific killing has been reported among all North American bear species (Derocher and Wiig 1999, p. 307; Amstrup et al. 2006, p. 1). Reasons for intraspecific predation in bear species is poorly understood but thought to include population regulation, nutrition, and enhanced breeding opportunities in the case of predation of cubs. Although infanticide by male polar bears has been well documented (Hansson and Thomassen 1983, p. 248; Larsen 1985, p. 325; Taylor et al. 1985, p. 304; Derocher and Wiig 1999, p. 307), it is thought that this activity accounts for a small percentage of the cub mortality.

Cannibalism has also been documented in polar bears (Derocher and Wiig 1999, p. 307; Amstrup et al. 2006b, p. 1). Amstrup et al. (2006b, p. 1) observed three instances of cannibalism in the southern Beaufort Sea during the spring of 2004 involving two adult females—one an unusual mortality of a female in a den and another a yearling. This is notable because, throughout a combined 58

years of research, there are no similar observations. Active stalking or hunting preceded the attacks, and both of the killed bears were eaten. Adult males were believed to be the predator in both attacks. Amstrup et al. (2006b, p. 3) indicated that in general a greater portion of polar bears in the area where the predation occurred were in poor physical condition compared to other years. The authors hypothesized that changes would be expected to occur first in more southerly areas, due to significant ice retreat (Skinner et al.1988, p. 3; Comiso and Parkinson 2004, p. 43; Stroeve et al. 2005, p. 1). Adult males may be the first to show the effects of nutritional stress since they feed little during the spring mating season and enter the summer in poorer condition than other sex/age classes. Derocher and Wiig (1999 p. 308) documented a similar intra-specific killing and consumption of another polar bear in Svalbard, Norway, which was attributed to relatively high population densities and food shortages. Taylor et al. (1985, p. 304) documented that a malnourished female killed and consumed her own cubs, and Lunn and Stenhouse (1985, p. 1516) found an emaciated male consuming an adult female polar bear.

The potential importance of cannibalism and infanticide for polar bear population regulation is unknown. However, given our current knowledge of disease and predation, we do not believe that these factors are currently having population level effects.

Conclusion for Factor C

Although disease pathogen titers are present in polar bears, no epizootic outbreaks have been detected. Although there are limited indications that intraspecific stress through cannibalism may be increasing, population level effects are not believed to have resulted. We find that disease and predation (including intraspecific predation) do not threaten the species throughout all or a significant portion of its range. Potential for disease outbreaks or increased mortality from cannibalism warrants continued monitoring and may become a more significant threat factor in the future for polar bear populations experiencing nutritional stress or declining population numbers.

*D. Inadequacy of Existing Regulatory Mechanisms*

Regulatory mechanisms directed specifically at managing threats to polar bears exist in all of the range states where the species occurs, as well as between (bilateral and multilateral) range states. There are no known regulatory mechanisms effectively addressing reductions in sea ice habitat at this time.

*International Agreements*

International Agreement on the Conservation of Polar Bears

Canada, Denmark (on behalf of Greenland), Norway, the Russian Federation, and the United States are parties to the Agreement on the Conservation of Polar Bears (1973 Polar Bear Agreement) singed in 1973; by 1978 the Agreement was ratified by all parties. The 1973 Polar Bear Agreement requires the parties to take appropriate action to protect the ecosystem of which polar bears are a part, with special attention to habitat components such as denning and feeding sites and migration patterns, and to manage polar bear populations in accordance with sound conservation practices based on the best available scientific data. The 1973 Polar Bear Agreement relies on the efforts of each party to implement conservation programs and does not preclude a party from establishing additional controls (Lentfer 1974, p.1).

The 1973 Polar Bear Agreement is viewed as a success in that polar bear populations recovered from excessive harvests and severe population reductions in many areas (Prestrud and Stirling 1994). At the same time, implementation of the terms of the 1973 Polar Bear Agreement vary across the member parties. Efforts are needed to improve current harvest management practices, such as restricting harvest of females and cubs, establishing sustainable harvest limits, and controlling illegal harvests (PBSG 1998, pp. 47–48). In addition, a lack of protection of key habitats by member parties, with few notable exceptions for some denning areas, is a weakness (Prestrud and Stirling 1994, p. 118).

IUCN/SSC Polar Bear Specialist Group

As previously mentioned, the Polar Bear Specialist Group (PBSG) operates under the IUCN Species Survival Commission (SSC). The PBSG was formed in 1968 and contributed to the negotiation and development of the 1973 Polar Bear Agreement. The PBSG meets periodically at 3-to 5-year intervals in compliance with Article VII of the 1973 Polar Bear Agreement; said article instructs member parties to conduct national research programs on polar bears, particularly research relating to the conservation and management of the species and, as appropriate, coordinate such research with the research carried out by other parties, consult with other parties on management of migrating polar bear populations, and exchange information on research and management programs, research results, and data on bears taken. The PBSG first evaluated the status of all polar bear populations in 1980. In 1993, 1997, and 2001 the PBSG conducted circumpolar status assessments of polar bear populations, and the results of those assesments were published as part of the proceedings of the relevant PBSG meeting. The PBSG conducted its fifth polar bear status assessment in June 2005.

The PBSG also evaluates the status of polar bears under the IUCN Red List criteria. Previously, polar bears were classified under the IUCN Red List program as: ''Less rare but believed to be threatened-requires watching'' (1965); ''Vulnerable'' (1982, 1986, 1988, 1990, 1994); and ''Lower Risk/Conservation Dependent'' (1996). During the 2005 PBSG working group meeting the PBSG re-evaluated the status of polar bears and unanimously agreed that a status designation of ''Vulnerable'' was warranted. The PBSG based this reevaluation on projected changes in sea ice on polar bear distribution and condition including effects on reproduction and survival.

Inupiat-Inuvialuit Agreement for the Management of Polar Bears of the Southern Beaufort Sea

In January 1988, the Inuvialuit of Canada and the Inupiat of Alaska, groups that both harvest polar bears for cultural and subsistence purposes, signed a management agreement for polar bears of the southern Beaufort Sea. This agreement, based on the understanding that the two groups harvested animals from a single population shared across the international boundary, provides a joint responsibility for conservation and harvest practices (Treseder and Carpenter 1989, p. 4; Nageak et al. 1991, p. 341). Provisions of the agreement include: annual quotas (which may include problem kills); hunting seasons; protection of bears in dens or while constructing dens, and protection of females accompanied by cubs and yearlings; collection of specimens from killed bears to facilitate monitoring of the sex and age composition of the harvest; agreement to meet annually to exchange information on research and management and to set priorities; to agree on quotas for the coming year; and prohibition of hunting with aircraft or large motorized vessels and of trade in products taken in violation of the agreement. In Canada, recommendations and decisions from the Commissioners are then implemented through

Community Polar Bear Management Agreements, Inuvialuit Settlement Region Community Bylaws, and NWT Big Game Regulations; in the United States this agreement is implemented at the local level. There are no Federal, state, or local regulations that limit the number or type (male, female, cub) of polar bear that may be taken. Adherence to the agreement's terms in Alaska is voluntary, and levels of compliance may vary. However, Brower et al. (2002) analyzed the overall effectiveness of this agreement and found that it had been successful in maintaining the total harvest and the proportion of females in the harvest within sustainable levels. The authors noted the need to improve harvest monitoring in Alaska and increase awareness of the need to prevent overharvest of females for both countries.

Agreement Between the United States of America and the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population

On October 16, 2000, the United States and the Russian Federation signed a bilateral agreement for the conservation and management of polar bear populations shared between the two countries. The Agreement between the United States of America and the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population (Bilateral Agreement) expands upon the progress made through the multilateral 1973 Polar Bear Agreement by implementing a unified conservation program for this shared population. The Bilateral Agreement reiterates requirements of the 1973 Polar Bear Agreement and includes restrictions on harvesting denning bears, females with cubs or cubs less than one year old, and prohibitions on the use of aircraft, large motorized vessels, and snares or poison for hunting polar bears. The Bilateral Agreement does not allow hunting for commercial purposes or commercial uses of polar bears or their parts. It also commits the parties to the conservation of ecosystems and important habitats, with a focus on conserving polar bear habitats such as feeding, congregating, and denning areas. The Russian government has indicated that it is prepared to implement the Bilateral Agreement. On December 9, 2006, the Congress of the United States passed the ''United States—Russia Polar Bear Conservation and management Act of 2006.'' This Act provides the necessary authority to regulate and manage the harvest of polar bears from the Chukchi Sea population, an essential conservation measure. However, the Act does not provide authority or mechanisms to address ongoing loss of sea ice.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is a treaty aimed at protecting species at risk from international trade. CITES regulates international trade in animals and plants by listing species in one of its three appendices. The level of monitoring and control to which an animal or plant species is subject depends on which appendix the species is listed in. Appendix I includes species threatened with extinction which are or may be affected by trade; trade of Appendix I species is only allowed in exceptional circumstances. Appendix II includes species not necessarily now threatened with extinction, but for which trade must be regulated in order to avoid utilization incompatible with their survival. Appendix III includes species that are subject to regulation in at least one country, and for which that country has asked other CITES Party countries for assistance in controlling and monitoring international trade in that species.

Polar bears were listed in Appendix II of CITES on July 7, 1975. As such, CITES parties must determine, among other things, that any polar bear, polar bear part, or product made from polar bear was legally obtained and that the export will not be detrimental to the survival of the species, prior to issuing a permit authorizing the export of the animal, part or product. The CITES does not itself regulate take or domestic trade of polar bears, however, through its process of monitoring trade in wildlife species and requisite findings prior to allowing international movement of listed species and monitoring programs, the CITES is effective in ensuring the international movement of listed species does not contribute to the detriment of wildlife populations. All polar bear range states are members to the CITES and have in place the Convention required Scientific Management Authorities. The Service therefore has determined that the CITES is effective in regulating the trade in polar bear, or polar bear parts or products, and provides conservation measures to minimize the threats to the species.

Mechanisms To Regulate Sea Ice Recession

Regulatory mechanisms directed specifically at managing threats to polar bears exist in all of the range states where the species occurs, as well as between (bilateral and multilateral) range states. There are no known regulatory mechanisms effectively addressing reductions in sea ice habitat at this time.

*Domestic Regulatory Mechanisms*

United States

Marine Mammal Protection Act of 1972, as Amended

The MMPA (16 U.S.C. 1361 *et seq.*) was enacted in response to growing concerns among scientists and the general public that certain species and populations of marine mammals were in danger of extinction or depletion as a result of human activities. The goal of the MMPA is to protect and conserve marine mammals so that they continue to be significant functioning elements of the ecosystem of which they are a part. The MMPA set forth a national policy to prevent marine mammal species or population stocks from diminishing to the point where they are no longer a significant functioning element of the ecosystems.

The MMPA places an emphasis on habitat and ecosystem protection. The habitat and ecosystem goals set forth in the MMPA include: (1) Management of marine mammals (inclusion of polar bears) to ensure they do not cease to be a significant element of the ecosystem to which they are a part; (2) protection of essential habitats, including rookeries, mating grounds, and areas of similar significance ''from the adverse effects of man's action;'' (3) recognition that marine mammals ''affect the balance of marine ecosystems in a manner that is important to other animals and animal products'' and that marine mammals and their habitats should therefore be protected and conserved; and (4) directing that the primary objective of marine mammal management is to maintain ''the health and stability of the marine ecosystem.'' Congressional intent to protect marine mammal habitat is also reflected in the definitions section of the MMPA. The terms ''conservation'' and ''management'' of marine mammals are specifically defined to include habitat acquisition and improvement.

The MMPA includes a general moratorium on the taking and importing of marine mammals, which is subject to a number of exceptions. Some of these exceptions include take for scientific purposes, for purpose of public display, subsistence use by Alaska Natives, and unintentional incidental take coincident with conducting lawful activities. The Service, prior to issuing a permit

authorizing the taking or importing of a polar bear, or a polar bear part or product, for scientific or public display purposes submits each request to a rigorous review, including an opportunity for public comment and consultation with the U.S. Marine Mammal Commision, as described at 50 CFR 18.31. In addition, in 1994, Congress amended the MMPA to allow for the import of polar bear trophies taken in Canada for personal use providing certain requirements are met. Import permits may only be issued to U.S. hunters for trophies they have legally taken from those Canadian polar bear populations the Service has approved as meeting the MMPA requirements, as described at 50 CFR 18.30. The Service has determined that there is sufficient rigor under the regulations at 50 CFR 18.30 and 18.31 to ensure that any activities so authorized are consistent with the conservation of this species and are not a threat to the species.

Take is defined in the MMPA to include the ''harassment'' of marine mammals. ''Harassment'' includes any act of pursuit, torment, or annoyance which ''has the potential to injure a marine mammal or marine mammal stock in the wild'' (Level A harassment), or ''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).

The Secretaries of Commerce and of the Interior have primary responsibility for implementing the MMPA. The Department of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), has authority with respect to whales, porpoises, seals, and sea lions. The remaining marine mammals, including polar bears, walruses, and sea otters, are managed by the Department of the Interior through the U.S. Fish and Wildlife Service. Both agencies are ''* * * responsible for the promulgation of regulations, the issuance of permits, the conduct of scientific research, and enforcement as necessary to carry out the purposes of [the MMPA]''.

U.S. citizens who engage in a specified activity other than commercial fishing (which is specifically and separately addressed under the MMPA) within a specified geographical region may petition the Secretary of the Interior to authorize the incidental, but not intentional, taking of small numbers of marine mammals within that region for a period of not more than five consecutive years (16 U.S.C. 1371(a)(5)(A)). The Secretary ''shall allow'' the incidental taking if the Secretary finds that ''the total of such taking during each five-year (or less) period concerned will have a negligible impact on such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses * * *''. If the Secretary makes the required findings, the Secretary also prescribes regulations that specify (1) Permissible methods of taking, (2) means of affecting the least practicable adverse impact on the species, their habitat, and their availability for subsistence uses, and (3) requirements for monitoring and reporting. The regulatory process does not authorize the activities themselves, but authorizes the incidental take of the marine mammals in conjunction with otherwise legal activities described within the regulations.

Similar to promulgation of incidental take regulations, the MMPA also established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals where the take will be limited to harassment (16 U.S.C. 1371(a)(5)(D)). These authorizations are limited to one-year and as with incidental take regulations the Secretary must find that the total of such taking during the period will have a negligible impact on such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses. The Service refers to these authorizations as Incidental Harassment Authorizations.

Examples and descriptions of how the Service has analyzed the effects of oil and gas activities and applied the general provisions of the MMPA described above to polar bear conservation programs in the Beaufort and Chukchi seas follows. These regulations include an evaluation of the cumulative effects of oil and gas industry activities on polar bears from noise, physical obstructions, human encounters, and oil spills. The likelihood of an oil spill occurring and the risk to polar bears is modeled quantitatively and factored into the evaluation. The results of previous industry monitoring programs, and the effectiveness of past detection and deterrent programs that have a beneficial record of protecting polar bears as well as providing for the safety of oil field workers are also considered. Based on the low likelihood of an oil spill occurring and the effectiveness of industry mitigation measures within the Beaufort Sea region, the Service has found that oil and gas industry activities have not affected the rates of recruitment or survival for the polar bear populations.

General operating conditions in specific authorizations include the following: (1) Protection of pregnant polar bears during denning activities (den selection, birthing, and maturation of cubs) in known and confirmed denning areas; (2) restrictions on industrial activities, areas, time of year; and (3) development of a site-specific plan of operation and a site-specific polar bear interaction plan. Additional requirements may included: pre-activity surveys (e.g., aerial surveys, infra-red thermal aerial surveys, or polar bear scent-trained dogs) to determine the presence or absence of dens or denning activity and, in known denning areas enhanced monitoring or flight restrictions, such as minimum flight elevations. These and other safeguards and coordination with industry have served to minimize industry effects on polar bears.

National Environmental Policy Act

The National Environmental Policy Act (NEPA) requires Federal agencies to consider the environmental impacts of their proposed actions and reasonable alternatives to those actions. To meet this requirement, Federal agencies conduct environmental reviews, including Environmental Impact Statement and Environmental Assessments. NEPA does not itself regulate polar bears, but it does require full evaluation and disclosure of information regarding the effects of contemplated Federal actions on polar bears and their habitat.

Outer Continental Shelf Lands Act

The Outer Continental Shelf Lands Act (43 U.S.C. 331 et seq.) (OCSLA) established Federal jurisdiction over submerged lands on the Outer Continental Shelf (OCS) seaward of the State boundaries (3-mile limit) in order to expedite exploration and development of oil/gas resources on the OCS. Implementation of OCSLA is delegated to the Minerals Management Service (MMS) of the Department of the Interior. OCS projects that could adversely impact the Coastal Zone are subject to Federal consistency requirements under terms of the Coastal Zone Management Act, as noted below. OCSLA also mandates that orderly development of OCS energy resources be balanced with protection of human, marine and coastal environments. The OCSLA does not itself regulate the take of polar bears, although through

consistency determinations it helps to ensure that OCS projects do not adversely impact polar bears or their habitats.

Coastal Zone Management Act

The Coastal Zone Management Act [16 U.S.C. 1451 et seq.) (CZMA) was enacted to ''preserve, protect, develop, and where possible, to restore or enhance the resources of the Nation's coastal zone.'' The CZMA is a State program subject to Federal approval. The CZMA requires that Federal actions be conducted in a manner consistent with the State's CZM plan to the maximum extent practicable. Federal agencies planning or authorizing an activity that affects any land or water use or natural resource of the coastal zone must provide a consistency determination to the appropriate State agency. The CZMA applies to polar bear habitats of northern and western Alaska. The North Slope Borough and Alaska Coastal Management Programs assist in protection of polar bear habitat through the project review process. The CZMA does not itself regulate the take of polar bears.

Alaska National Interest Lands Conservation Act

The Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) (ANILCA) created or expanded National Parks and Refuges in Alaska, including the Arctic National Wildlife Refuge (NWR). One of the establishing purposes of the Arctic NWR is to conserve polar bears. Most of the Arctic NWR is Federally designated Wilderness, and is therefore off limits to oil and gas development. The coastal plain of Arctic NWR (Section 1002 of ANILCA designated lands), which provides important polar bear denning habitat, does not have Wilderness status; oil and gas development could be authorized by an Act of Congress. The ANILCA does not itself regulate the take of polar bears, although through its designations has provided recognition and various levels of protection for polar bear habitat. ANILCA also designated other lands for management by other Federal agencies. In the case of polar bear habitat, the Bureau of Land Management is responsible for vast land areas on the north slope including the National Petroleum Reserve, Alaska (NPRA). Habitat suitable for polar bear denning and den sites have been identified within NPRA. The Bureau of Land Management (BLM) considers fish and wildlife values under its multiple use mission in evaluating land use authorizations and prospective oil and gas leasing actions. Provisions of the MMPA regarding the incidental take of polar bears on land areas within U.S. jurisdiction continue to apply to activities conducted by the oil and gas industry on BLM lands.

Marine Protection, Research and Sanctuaries Act

The Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1401 et seq.) (MPRSA) was enacted in part to ''prevent or strictly limit the dumping into ocean waters of any material that would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.'' The MPRSA does not itself regulate the take of polar bears, although it operates to protect the quality of marine habitats that polar bears rely upon.

Canada

Canada's constitutional arrangement specifies that the Provinces and Territories have the authority to manage terrestrial wildlife, including the polar bear, which is not defined as a marine mammal in Canada. The Canadian Federal Government is responsible for CITES-related programs and provides both technical (long-term demographic, ecosystem, and inventory research) and administrative (Federal/Provincial Polar Bear Technical Committee, Federal/Provincial Polar Bear Administrative Committee, and the National Database) support to the Provinces and Territories. The Provinces and Territories have the ultimate authority for management, although in several areas, the decision-making process is shared with aboriginal groups as part of the settlement of land claims. Regulated hunting by aboriginal people is permissible under Provincial and Territorial statutes (Derocher et al. 1998, p. 32) as described in Factor B.

In Manitoba most denning areas have been protected by inclusion within the boundaries of Wapusk National Park. In Ontario, some denning habitat and coastal summer sanctuary habitat are included in Polar Bear Provincial Park. Some polar bear habitat is included in the National Parks and National Park Reserves and territorial parks in the Northwest Territories, Nunavut, and Yukon Territory (e.g., Herschel Island). Additional habitat protection measures in Manitoba include restrictions on harassment and approaching dens and denning bears, and a land use permit review that considers potential impacts of land use activities on wildlife (Derocher et al. 1998, p. 35).

Canada's Species at Risk Act

Canada's Species at Risk Act (SARA) became law on December 12, 2002, and went into effect on June 1, 2004 (Walton 2004, p. M1–17). Prior to SARA, Canada's oversight of species at risk was conducted through the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) which continued to function under SARA and through the Ministry of Environment. The Committee evaluates species status and provides recommendations to the Minister of the Environment, who makes final listing decisions and identifies species-specific management actions. SARA provides a number of protections for wildlife species placed on the List of Wildlife Species at Risk, or ''Schedule 1'' (SARA Registry 2005). The listing criteria used by COSEWIC are based on the 2001 IUCN Red List assessment criteria (Appendix 3). Currently, the polar bear is designated as a Schedule 3 species, ''Species of Special Concern,'' awaiting re-assessment and public consultation for possible up-listing to Schedule 1 (Environment Canada 2005). A schedule 3 listing under SARA does not include protection measures. A schedule 1 listing under SARA may include protection measures.

Intra-Jurisdiction Polar Bear Agreements Within Canada

Polar bears occur in the Northwest Territories (NWT), Nunavut, Yukon Territory, and in the Provinces of Manitoba, Ontario, Quebec, Newfoundland, and Labrador (see Figure 1). All 12 Canadian polar bear populations lie within or are shared with the NWT or Nunavut. The NWT and Nunavut geographical boundaries include all Canadian lands and marine environment north of the 60th parallel (except the Yukon Territory), and all islands and waters in Hudson Bay and Hudson Strait up to the low water mark of Manitoba, Ontario, and Quebec. The offshore marine areas along the coast of Newfoundland and Labrador are under Federal jurisdiction (Government of NWT). Although Canada manages each of the 12 populations of polar bear as separate units, there is a complex sharing of responsibilities. While wildlife management has been delegated to the Provincial and Territorial Governments, the Federal Government (Environment Canada's Canadian Wildlife Service) has an active research program and is involved in management of wildlife populations shared with other jurisdictions, especially ones with other nations. In the NWT, Native Land Claims resulted in Co-management

Boards for most of Canada's polar bear populations. Canada formed the Federal-Provincial Technical and Administrative Committees for Polar Bear Research and Management (PBTC and PBAC, respectively) to ensure a coordinated management process consistent with internal and international management structures and the International Agreement. The committees meet annually to review research and management of polar bears in Canada and have representation from all Provincial and Territorial jurisdictions with polar bear populations and the Federal Government. Beginning in 1984, the Service as well as biologists from Norway and Denmark, have participated in annual PBTC meetings. The annual meetings of the PBTC provide for continuing cooperation between jurisdictions and for recommending management actions to the PBAC (Calvert et al. 1995, p. 61).

The NWT Polar Bear Management Program (GNWT) manages polar bears in the Northwest Territories. A 1960 ''Order-in-Council'' granted authority to the Commissioner in Council (NWT) to pass ordinances to protect polar bear, including the establishment of a quota system. The Wildlife Act, 1988, and Big Game Hunting Regulations provide supporting legislation which addresses each polar bear population. The Inuvialuit and Nunavut Land Claim Agreements supersede the Northwest Territories Act (Canada) and the Wildlife Act. The Government of Nunavut passed a new Wildlife Act in 2004 and has management and enforcement authority for polar bears in their jurisdiction. Under the umbrella of this authority, polar bears are now co-managed through wildlife management boards made up of Land Claim Beneficiaries and Territorial and Federal representatives. The Boards may develop Local Management Agreements (LMAs) between the communities that share a population of polar bears. Management agreements are in place for all Nunavut populations. The LMAs are signed between the communities, regional wildlife organizations, and the Government of Nunavut (Department of Environment) but can be over-ruled by the Nunavut Wildlife Management Board (NWMB). In the case of populations that Nunavut shares with Quebec and Ontario the management agreement is not binding upon residents of communities outside of Nunavut jurisdiction. Regulations implementing the LMAs specify who can hunt, season timing and length, age and sex classes that can be hunted, and the total allowable harvest for a given population. The Department of Environment in Nunavut and the Department of Environment and Natural Resources in the NWT has officers to enforce the regulations in most communities of the NWT. The officers investigate and prosecute incidents of violation of regulations, kills in defense of life, or exceeding a quota (USFWS 1997). Canada's inter-jurisdictional requirements for consultation and development of LMA's and oversight through the PBTC and PBAC have resulted in conservation benefits for polar bear populations. Although there are some localized instances where changes in management agreements may be necessary, these arrangements and provisions have operated to minimize the threats to the species throughout a significant portion of its range. The Service analyzed the efficacy of Canada's management of polar bears in 1997 (62 FR 7302) and 1999 (64 FR 1529) and determined, at the time, that the species was managed by Canada using sound scientific principles and in such a manner that existing populations would be sustained. Generally we find that Canada continues to manage polar bears in an effective and sustainable manner. However, as discussed above (see Harvest Management by Nation) the Territory of Nunavut has recently adopted changes to polar bear management that may place a greater significance on indigenous knowledge than on scientific data and analysis. In instances where improvements are necessary, because of the regional or localized nature of the activities, we find the actions also do not threaten the species throughout all or a significant portion of its range. The Service will continue to monitor polar bear management in Canada and actions taken by the Nunavut Government.

Russian Federation

Polar bears are listed in the second issue of the Red Data Book of the Russian Federation (2001). The Red Data Book establishes official policy for protection and restoration of rare and endangered species in Russia. Polar bear populations inhabiting the Barents Sea and part of the Kara Sea (Barents-Kara population) are designated as Category IV (uncertain status); polar bears in the eastern Kara Sea, Laptev Sea and the western East-Siberian Sea (Laptev population) are listed as Category III (rare); and polar bears inhabiting the eastern part of the East-Siberian Sea, Chukchi Sea, and the northern portion of the Bering Sea (Chukchi population) are listed as Category V (restoring). The main government body responsible for management of species listed in the Red Data Book is the Department of Environment Protection and Ecological Safety in the Ministry of Natural Resources of the Russian Federation. Russia Regional Committees of Natural Resources are responsible for managing polar bear populations consistent with Federal legislation (Belikov et al. 2002, p. 86).

Polar bear hunting has been totally prohibited in the Russian Arctic since 1956 (Belikov et al. 2002, p. 86). The only permitted take of polar bears is catching cubs for public zoos and circuses. There are no data on illegal trade of polar bears, and parts and products derived from them, although considerable concern persists for unquantified levels of illegal harvest that is occurring (Belikov 2002, p. 87). In the Russian Arctic, Natural Protected Areas (NPAs) have been established that protect marine and associated terrestrial ecosystems, including polar bear habitats. Wrangel and Herald Islands have high concentrations of maternity dens and/or polar bears, and were included in the Wrangel Island State Nature Reserve (zapovednik) in 1976. A 1997 decree by the Russian Federation Government established a 12-nautical mile (nm) marine zone to the Wrangel Island State Nature Reserve; the marine zone was extended to 24-nm by a decree from the Governor of Chukotsk Autonomous Okruga (Belikov et al. 2002, p. 87). The Franz Josef Land State Nature Refuge was established in 1994. Special protected areas are proposed for the Russian High Arctic including the Novosibirsk Islands, Severnaya Zemlya, and Novaya Zemlya, however, because they have not yet been designated, these areas are not considered in our evaluation of the adequacy of existing regulatory mechanisms. Within these protected areas, conservation and restoration of terrestrial and marine ecosystems, and plant and animal species (including the polar bear), are the main goals. In 2001, the Nenetskiy State Reserve, which covers 313,400 hectares (774,428 acres), and includes the mouth of the Pechora River and adjacent waters of the Barents Sea, was established. In May 2001, the Federal law ''Concerning territories of traditional use of nature by small indigenous peoples of North, Siberia, and Far East of the Russian Federation'' was passed. This law established areas for traditional use of nature (TTUN) within NPAs of Federal, regional, and local levels to support traditional life styles and traditional subsistence use of nature resources for indigenous peoples. This law and the Law ''Concerning

natural protected territories'' (1995) regulate protection of plants and animals on the TTUNs. The latter also regulates organization, protection and use of other types of NPAs: State Nature Reserves (including Biosphere Reserves), National Parks, Natural Parks, and State Nature Refuges. Special measures on protection of polar bears or other resources may be governed by specific regulations of certain NPAs. Outside NPAs, protection and use of marine renewable natural resources are regulated by Federal legislation, Acts of the President of the Russian Federation, regulations of State Duma, Government, and Federal Senate of the Russian Federation, and through regulations issued by appropriate governmental departments. The most important Federal laws for nature protection are: ''About environment protection'' (1991), ''About animal world'' (1995), ''About continental shelf of the Russian Federation'' (1995), ''About exclusive economical zone of the Russian Federation'' (1998), and ''About internal sea waters, territorial sea, and adjacent zone of the Russian Federation'' (1998) (Belikov 2002, p. 87).

Norway

According to the Svalbard Treaty of February 9, 1920, Norway exercises full and unlimited sovereignty over the Svalbard Archipelago. The Svalbard Treaty applies to all the islands situated between 10° and 35° East longitude and between 74° and 81° North latitude, and includes the waters up to four nautical miles offshore. Beyond this zone, Norway claims an economic zone to the continental shelf areas to which Norwegian Law applies. Under Norwegian Game Law, all game, including polar bears, are protected unless otherwise stated (Derocher et al. 2002b, p. 75). The main responsibility for the administration of Svalbard lies with the Norwegian Ministry of Justice. Norwegian civil and penal laws and various other regulations are applicable to Svalbard. The Ministry of Environment deals with matters concerning the environment and nature conservation. The Governor of Svalbard (Sysselmannen), who has management responsibilities for freshwater-fish and wildlife, pollution and oil spill protection and environmental monitoring, is the cultural and environmental protection authority in Svalbard (Derocher et al. 2002b, p. 75). Polar bears have complete protection from harvest under the Svalbard Treaty (Derocher et al. 2002b, p. 75).

Approximately 65 percent of the land area of Svalbard is totally protected, including all major regions of denning by female bears; however, protection of habitat is only on land and to 4 nautical miles offshore. Marine protection was increased in 2004 when the territorial border of the existing protected areas was increased to 12 nautical miles (Aars et al. 2006, p. 145). Norway claims control of waters out to 200 nautical miles and regards polar bears as protected within this area.

In 2001, the Norwegian Parliament passed a new Environmental Act for Svalbard which went into effect in July 2002. This Act was designed to ensure that wildlife is protected, with exceptions made for hunting. The regulations included specific provisions on harvesting, motorized traffic, remote camps and camping, mandatory leashing of dogs, environmental pollutants and on environmental impact assessments in connection with planning development or activities in or near settlements. Some of these regulations were specific to the protection of polar bears, e.g., through enforcement of temporal and spatial restrictions on motorized traffic and giving provisions on how and where to camp to ensure adequate bear security (Aars et al. 2006, p. 145).

In 2003, Svalbard designated six new protected areas, two nature reserves, three national parks and one ''biotope protection area''. The new protected areas are mostly located around Isfjord, the most populated fjord on the west side of the archipelago. Another protected area, Hopen, has special importance for denning bears and is an important denning area (Aars et al. 2006, p. 145). Kong Karls Land is the main denning area and has the highest level of protection under the Norwegian land management system. These new protected areas cover 4,449 $km^2$ (1,719 $mi^2$) which is 8 percent of the Archipelago's total area, and increase the total area under protection to 65 percent of the total land area (*http://www.norway.org/News/archive/2003/200304svalbard.htm*).

Denmark/Greenland

Under terms of the Greenland Home Rule (1979) the government of Greenland is responsible for management of all renewable resources including polar bears. Greenland is also responsible for providing scientific data for sound management of polar bear populations and for compliance with terms of the 1973 Agreement on the Conservation of Polar Bears. Regulations for the management and protection of polar bears in Greenland that were introduced in 1994 have been amended several times (Jensen 2002, p. 65). Hunting and reporting regulations include who can hunt polar bears, protection of family groups with cubs of the year, prohibition of trophy hunting, mandatory reporting requirements, and regulations on permissible firearms and means of transportation (Jensen 2002, p. 65). In addition, there are specific regulations which apply to traditional take within the National Park of North and East Greenland and the Melville Bay Nature Reserve. A large amount of polar bear habitat occurs within the National Park of North and East Greenland. During the fall of 2000, the Greenland Home Rule Government signed an agreement with the Government of Nunavut concerning shared populations. Greenland introduced a quota system which took effect on January 1, 2006 (Lønstrup 2005, p. 133)

Conclusion for Factor D

Our review of the regulatory mechanisms in place at the national and international level demonstrates that the short-term, site-specific threats to polar bears from direct take, disturbance by humans, and incidental or harassment take are, for the most part, adequately addressed through range state laws, statutes, and other regulatory mechanisms. As decribed under Factor A, the primary threat with the greatest severity and magnitude of impact to the species is loss of habitat due to sea ice retreat, however there are no known regulatory mechanisms currently in place at the national or international level effectively adressing threats to polar bear habitat.

*E. Other Natural or Manmade Factors Affecting the Polar Bear's Continued Existence*

Contaminants

Understanding the potential effects of contaminants on polar bears in the Arctic is confounded by the wide range of contaminants present, each with different chemical properties and biological effects, and the differing geographic, temporal, and ecological exposure regimes impacting each of the 19 polar bear populations. Further, contaminant concentrations differ with age, sex, reproductive status, and other factors. Contaminant sources and transport, geographical, temporal patterns and trends, and biological effects are detailed in several recent Arctic Monitoring and Assessment Program (AMAP) publications (AMAP 1998; AMAP 2004a; AMAP 2004b; AMAP 2005). Three main groups of contaminants in the Arctic are thought to present the greatest potential threat to polar bears and other marine mammals:

Petroleum hydrocarbons, persistent organic pollutants (POPS), and heavy metals.

Petroleum Hydrocarbons

The principal petroleum hydrocarbons include crude oil, refined oil products, polynuclear aromatic hydrocarbons, and natural gas and condensates (AMAP 1998, p.661). Petroleum hydrocarbons come from both natural and anthropogenic sources. The primary natural source is oil seeps. Anthropogenic sources include activities associated with exploration, development, and production of oil (well blowouts, operational discharges), ship and land based transportation of oil (oil spills from pipelines, accidents, leaks, and ballast washings), discharges from refineries and municipal waste water, and combustion of wood and fossil fuels. In addition to direct contamination, petroleum hydrocarbons are transported from more southerly areas to the Arctic via long range atmospheric and oceanic transport, as well as by north-flowing rivers (AMAP 1998 p. 671).

Polar bears are particularly vulnerable to oil spills due to their inability to thermoregulate and to poisoning due to ingestion of oil from grooming and/or eating contaminated prey (St. Aubin 1990, p. 237). In addition, polar bears are curious and are likely to investigate oil spills and oil contaminated wildlife. Although it is not known whether healthy polar bears in their natural environment would avoid oil spills and contaminated seals, bears that are hungry are likely to scavenge contaminated seals, as they have shown no aversion to eating and ingesting oil (St. Aubin 1990, p. 237; Derocher and Stirling 1991, p. 56).

The most direct exposure of polar bears to petroleum hydrocarbons comes from direct contact with and ingestion of oil from acute and chronic oil spills. Polar bear range overlaps with many active and planned oil and gas operations within 40 km (25 miles) of the coast or offshore. To date, no major oil spills have occurred in the marine environment within the range of polar bears; however spills associated with terrestrial pipelines have occurred in the vicinity of polar bear habitat and denning areas (e.g., Russia, Komi Republic, 1994 oil spill, *http://www.american.edu/ted/KOMI.HTM*). Despite numerous safeguards to prevent spills, smaller spills do occur. The MMS (2004, pp. 10, 127) estimated an 11 percent chance of a marine spill greater than 1,000 barrels in the Beaufort Sea from the Beaufort Sea Multiple Lease Sale in Alaska. An average of 70 oil and 234 waste product spills per year occurred between 1977 and 1999 in the North Slope oil fields (71 FR14456). The largest oil spill (estimated volume of approximately 201,000 gallons) from the North Slope Oil fields in Alaska to date occurred on land in March 2006, resulting from an undetected leak in a corroded pipeline.

Spills during the fall or spring during the formation or breakup of ice present a greater risk because of difficulties associated with clean up during these periods and the presence of bears in the prime feeding areas over the continental shelf. Amstrup et al. (2000a, p. 5) concluded that the release of oil trapped under the ice from an underwater spill during the winter could be catastrophic during spring break-up. During the autumn freeze-up and spring break-up periods it is expected that any spilled oil in the marine environment would concentrate and accumulate in open leads and polynyas, areas of high activity for both polar bears and seals (Neff 1990, p. 23), resulting in oiling of both polar bears and seals (Neff 1990, pp. 23–24; Amstrup et al. 2000a, p. 3; Amstrup et al. 2006a, p. 9). Increases in Arctic oil and gas development coupled with increases in shipping and/or development of offshore and land-based pipelines increase the potential for an oil spill to negatively affect polar bears and/or their habitat. Any future declines in the Arctic sea ice may result in increased tanker traffic in high bear use areas (Frantzen and Bambulyak 2003, p. 4) which would increase the chances of an oil spill from a tanker accidents, ballast discharge, or discharges during the loading and unloading the oil at the ports.

Although there is a low probability that a large number of bears (e.g., 25–60) might be affected by a large oil spill, the impact of such a spill, particularly during the broken ice period, could be significant to the polar bear population (Amstrup et al. 2006a, pp. 7, 22; 65 FR 16833). The number of polar bears affected by an oil spill could be substantially higher if the spill spread to areas of seasonal polar bear concentrations, such as the area near Kaktovik, in the fall, and could have a significant impact to the Southern Beaufort Sea polar bear population. It seems likely that an oil spill would affect ringed seals the same way the *Exxon Valdez* oil spill affected harbor seals (Frost et al. 1994a, pp. 108–110; Frost et al. 1994b, pp. 333–334, 343–344, 346–347; Lowry et al. 1994, pp. 221–222; Spraker et al. 1994, pp. 300–305). As with polar bears, the number of animals killed would vary depending upon the season and spill size (NRC 2003, pp. 168–169).

Persistent Organic Pollutants (POPS)

Contamination of the Arctic and sub-Arctic regions through long-range transport of pollutants has been recognized for over 30 years (Bowes and Jonkel 1975, p. 2111; de March et al. 1998, p. 184; Proshutinsky and Johnson 2001, p. 68; MacDonald et al. 2003, p. 38). These compounds are transported via large rivers, air, and ocean currents from the major industrial and agricultural centers located at more southerly latitudes (Barrie et al. 1992; Li et al. 1998, pp. 39–40; Proshutinsky and Johnson 2001, p. 68; Lie et al. 2003, p. 160). The presence and persistence of these contaminants within the Arctic is dependent on many factors, including transport routes, distance from source and the quantity and chemical composition of the contaminants released to the environment. The Arctic ecosystem is particularly sensitive to environmental contamination due to the slower rate of breakdown of persistent organic pollutants, including organochlorine (OC) compounds, relatively simple food chains, and the presence of long-lived organisms with low rates of reproduction and high lipid levels. The persistence and lipophilic nature of organochlorines increase the potential for bioaccumulation and biomagnification at higher trophic levels (Fisk et al. 2001, pp. 225–226). Polar bears, because of their position at the top of the Arctic marine food chain, have some of the highest concentrations of OCs of any Arctic mammals (Braune et al. 2005, p. 23).

The most studied POPS in polar bears include polychlorinated biphenyls (PCBs), chlordanes (CHL), DDT and its metabolites, toxaphene, dieldrin, hexachloroabenzene (HCB), hexachlorocyclohexanes (HCHs), and chlorobenzenes (ClBz). Overall, the relative proportion of the more recalcitrant compounds, such as PCB 153 and β-HCH, appears to be increasing in polar bears (Braune et al. 2005, p. 50). Although temporal trend information is lacking, newer compounds, such as polybrominated diphenyl ethers (PBDEs), polychlorinated naphthalenes (PCNs), perflouro-octane sulfonate (PFOS), perfluoroalkyl acids (PFAs), and perflourocarboxylic acids (PFCAs) have been recently found in polar bears (Braune et al. 2005, p. 5). Of this relatively new suite of compounds, there is concern that both PFOS, which are increasing rapidly, and PBDEs are a potential risk to polar bears (Ikonomou et al. 2002, p. 1886; deWit 2002, p. 583; Martin et al. 2004, p. 373; Braune et al.

2005, p. 25; Smithwick et al. 2006, p. 1139). Currently the polychlorinated dibenzo-p-dioxins (PCDDs), dibenzofurans (PCDFs) and dioxin-like PCBs are at relatively low concentrations in polar bears (Norstrom et al. 1990, p. 14).

The highest PCB concentrations have been found in polar bears from the Russian Arctic (Franz Joseph Land and the Kara Sea), with decreasing concentrations to the east and west (Anderson et al. 2001, p. 231). Overall there is evidence for recent declines in PCBs for most populations. The pattern of distribution of most other chlorinated hydrocarbons and metabolites generally follows that of PCBs, with the highest concentrations of DDT-related compounds and CHL in Franz Joseph Land and the Kara Sea, followed by East Greenland, Svalbard, the eastern Canadian Arctic populations, the western Canadian populations, the Siberian Sea, and finally the lowest concentrations in Alaska populations (Bernhoft et al. 1997; Norstrom et al. 1998, p. 361; Andersen et al. 2001, p. 231; Kucklick et al. 2002, p. 9; Lie et al. 2003, p. 159; Verreault et al. 2005, pp. 369–370; Braune et al. 2005, p. 23).

Polybrominated diphenyl ethers (PBDEs) share similar physical-chemical properties with PCBs (Wania and Dugani 2003, p. 1252; Muir et al. 2006, p. 449), and are thought to be transported to the Arctic by similar pathways. Muir et al. (2006, p. 450) analyzed archived samples from Dietz et al. (2004) and Verreault et al. (2005) for PBDE concentrations, finding the highest mean PBDE concentrations in female polar bear adipose tissue from East Greenland and Svalbard. Lower concentrations of PBDE were found in adipose tissue from the Canadian and Alaskan populations (Muir et al. 2006, p. 449). Differences between the PBDE concentrations and composition in liver tissue between the Southen Beaufort Sea and the Chukchi/Bering seas populations in Alaska suggest differences in the sources of PBDE exposure (Kannan et al. 2005, p. 9057). Overall, ΣPBDEs concentrations are much lower and less of a concern compared to PCBs, oxychlordane, and some of the more recently discovered perfluorinated compounds. PBDEs are metabolized to a high degree in polar bears and thus do not bioaccumulate as much as PCBs (Wolkers et al. 2004, p. 1674).

Although baseline information on contaminant concentrations is available, determining the biological effects of these contaminants in polar bears is difficult. Field observations of reproductive impairment in females and males, lower survival of cubs, and increased mortality of females in Svalbard, Norway, however, suggest that high concentrations of PCBs may have contributed to population level effects in the past (Wiig 1998, p. 28; Wiig et al. 1998, p. 795; Skaare et al. 2000, p.107; Haave et al. 2003, pp. 431, 435; Oskam et al. 2003, p. 2134; Derocher et al. 2003, p. 163). Currently it is not thought that present PCB concentrations are having population level effects. Organochlorines may adversely affect the endocrine system as metabolites of these compounds are toxic and some have demonstrated endocrine disrupting activity (Letcher et al. 2000; Braune et al. 2005, p. 23). High concentrations of organochlorines may also affect the immune system, resulting in a decreased ability to produce antibodies (Lie et al. 2004, pp. 555–556).

Metals

Numerous essential and non-essential elements have been reported on for polar bears and the most toxic and/or abundant elements in marine mammals are mercury, cadmium, selenium, and lead. Of these, mercury is of greatest concern because of its potential toxicity at relatively low concentrations, ability to biomagnify and bioaccumulate in the food web. Polar bears from the western Canadian Arctic and southwest Melville Island, Canada (Braune et al. 1991, p. 263; Norstrom et al. 1986, p. 195; AMAP 2005, pp. 42, 62, 134), and ringed seals from the western Canadian Arctic (Wagemann et al. 1996, p. 41; Deitz et al. 1998, p. 433; Dehn et al. 2005, p. 731; Riget et al. 2005, p. 312), have some of the highest known mercury concentrations. Wagemann et al. (1996, pp. 51, 60) observed an increase in mercury from eastern to western Canadian ringed seal populations and attributed this pattern to a geologic gradient in natural mercury deposits.

Although the contaminant concentrations of mercury found in marine mammals often exceed those found to cause effects in terrestrial mammals (Fisk et al. 2003, p. 107), most marine mammals appear to have evolved effective biochemical mechanisms to tolerate high concentrations of mercury. Polar bears are able to demethylate mercury and accumulate higher levels than their terrestrial counterparts without detrimental effects (AMAP 2005, p. 123). Evidence of mercury poisoning is rare in marine mammals, but Dietz et al. (1990, p. 49) noted that sick marine mammals often have higher concentrations of methylmercury, suggesting that these animals may no longer be able to detoxify methylmercury. Hepatic mercury concentrations are well below those expected to cause biological effects in most polar bear populations (AMAP 2005, p. 118). Only two polar bear populations have concentrations of mercury close to the biological threshold levels of 60 μg wet weight reported for marine mammals (AMAP 2005, p. 121), the Viscount Melville (southwest Melville Sound), Canada and the Southern Beaufort Sea (eastern Beaufort Sea) (Dietz et al. 1998, p. 435, Figure 7–52).

Shipping and Transportation

Observations over the past 50 years show a decline in arctic sea ice extent in all seasons, with the most prominent retreat in the summer. Climate models project an acceleration of this trend with periods of extensive melting in spring and autumn, thus opening new shipping routes and extending the period that shipping is practical (ACIA 2005, p. 1002). Notably, the navigation season for the Northern Sea Route (across northern Eurasia) is projected to increase from 20–30 days per year to 90–100 days per year. Russian scientists cite increasing use of a Northern Sea Route for transit and regional development as a major source of disturbance to polar bears in the Russian Arctic (Wiig et al. 1996, p. 23–24; Belikov and Boltunov 1998, p. 113; Ovsyanikov 2005, p. 171). Commercial navigation on the Northern Sea Route could disturb polar bear feeding and other behaviors and would increase the risk of oil spills (Belikov et al. 2002, p. 87).

Increased shipping activity may disturb polar bears in the marine environment, adding additional energetic stresses. If ice breaking activities occur they may alter habitats used by polar bears, possibly creating ephemeral lead systems and concentrating ringed seals within the refreezing leads. This in turn may allow for easier access to ringed seals and may have some beneficial values. Conversely, this may cause polar bears to use areas that may have a higher incidence of human encounters as well as increased likelihood of exposure to oil, waste products or food wastes that are intentionally or accidentally placed into the marine environment. If shipping involved the tanker transport of crude oil or oil products there would be some increased likelihood of small to large volume spills and corresponding oiling of polar bears as well as potential effects on seal prey species (AMAP 2005, pp. 91, 127).

The PBSG (Aars et al. 2006, pp. 22, 58, 171) recognized the potential for

increased shipping and marine transportation in the Arctic with declining summer/fall ice conditions. The PBSG recommended that the parties to the International Agreement on the Conservation of Polar Bears take appropriate measures to monitor, regulate and mitigate ship traffic impacts on polar bear subpopulations and habitats (Aars et al. 2006, p. 58).

Ecotourism

Increasing levels of ecotourism and photography in polar bear viewing areas and natural habitats may lead to increased polar bear-human conflicts. Ecotourists and photographers may inadvertently displace bears from preferred habitats or alter natural behaviors (Lentfer 1990 p.19; Dyck and Baydack 2004 p. 344). Polar bears are inquisitive animals and often investigate novel odors or sights. This trait can lead to polar bears being killed at cabins and remote stations where they investigate food smells (Herrero and Herrero 1997 p. 11).

Conclusion for Factor E

Contaminant concentrations in most populations are presently not thought to have population level effects on polar bears. However, one or several factors acting independently or together, such as loss or degradation of the sea ice habitat, decreased prey availability and accessibility, and increased exposure to contaminants have the potential to lower recruitment and survival rates, which ultimately would have negative population level effects. Svalbard, East Greenland, and the Kara Sea populations, which currently have some of the highest contaminant concentrations and thus have the potential for population level effects, should be monitored closely.

Despite the regulatory steps taken to decrease the production or emissions of toxic chemicals, increases in hexachlorobenzene (HCB) and relatively new compounds such as PBDEs and PFOSs, are cause for concern. PBDEs, which may have impacts similar to already regulated chemicals such as PCBs, have increased in the last decade (Ikonomou et al. 2002, p. 1886; Muir et al. 2006, p. 453). PFCs remain the class of chemicals of most concern as we do not know how long it will take for voluntary phase-outs or bans to result in declines because of the widespread use of these compounds in consumer products (Braune et al. 2005, p. 5). More information is needed on the specific biological effects of many of these contaminants on Arctic marine mammals in order to assess the potential impact on polar bears, and their primary prey, ringed and bearded seals.

Increasing levels of ecotourism and shipping may lead to greater impacts on polar bears. The potential extent of impact is related to changing ice conditions and resulting changes to polar bear distribution. Such effects are difficult to quantify and need to be monitored.

We conclude that contaminants, ecotourism, and shipping as singular factors do not threaten the existence of the polar bear throughout all or a significant portion of its range. Potential for future impacts from these sources is a concern and warrants continued monitoring or additional studies. These factors may become a more significant in the future for polar bear populations experiencing nutritional stress or declining population levels.

**Finding**

We have carefully considered all scientific and commercial information available regarding the past, present, and future threats faced by the polar bear. We reviewed the petition, information available in our files, other published and unpublished information submitted to us during the public comment period following our February 9, 2006 (71 FR 6745) 90-day petition finding. In accordance with Service policies, peer review of the draft Status Assessment was sought from 12 independent experts in the fields of polar bear ecology, contaminants and physiology, climatic science and physics, and traditional ecological knowledge. Comments were received from 10 peer reviewers, and those comments were addressed in revisions to the draft Status Assessment. We also consulted with recognized polar bear experts and other Federal, State, and range state resource agencies. On the basis of the best scientific and commercial information available, we find that the listing of the polar bear as threatened under the Act throughout its range is warranted.

In making this finding, we recognize that polar bears have evolved to occur throughout the ice-covered waters of the circumpolar Arctic, and are reliant on sea ice as a platform to hunt and feed on ice-seals, to seek mates and breed, to move to feeding sites and terrestrial maternity denning area, and for long-distance movements. Under Factor A (''Present or threatened destruction, modification, or curtailment of habitat or range''), we find that the diminishing extent of sea ice in the Arctic is extensively documented. Further recession of sea ice in the future is predicted and would exacerbate the effects observed to date on polar bears. It is predicted that sea ice habitat will be subjected to increased temperatures, earlier melt periods, increased rain on snow events, and positive feed back systems. Productivity, abundance and availability of ice seals, a primary prey base, would then be diminished by changes in sea ice. Energetic requirements of polar bears would increase for movement and obtaining food. Access to traditional denning areas would be affected. In turn, these factors will cause declines in the condition of polar bears from nutritional stress and productivity. As already evidenced in the Western Hudson Bay and Southern Beaufort Sea populations, polar bears would experience reductions in survival and recruitment rates. The eventual effect would be that polar bear populations will continue to decline. Populations would be affected differently in the rate, timing, and magnitude of impact, but within the foreseeable future, the species is likely to become endangered throughout all or a significant portion of its range due to changes in habitat. This determination satisfies the definition of a threatened species under the Act.

Under Factor B (''Overutilization for commercial, recreational, scientific, or educational purposes'') we note that polar bears are harvested in Canada, Alaska, Greenland, and Russia, and we acknowledge that harvest is the consumptive use of greatest importance and potential effect to polar bear. Further we acknowledge that forms of removal other than harvest have been considered in this analysis. While overharvest occurs for some populations, laws and regulations for most management programs have been instituted to ensure harvests result in healthy and sustainable populations. If overharvest were to occur in the future and theaten populations the ability to recover populations through harvest reductions and the likely efforts of management entities to do so and to prevent the species from becoming endangered or threatened is highly probable. This ability differs markedly from the ability of management entities to recover habitat that has been lost as addressed in Factor A. Further, bilateral agreements or conservation agreements have been developed or are in development to address issues of over harvest. Conservation benefits from agreements that are in development or have not yet been implemented are not considered in our evaluation. We also acknowledge that increased levels of bear-human encounters are expected in the future and that encounters may

result in increased mortality to bears at some unknown level. Adaptive management programs, such as implementing polar bear patrols, hazing programs, and efforts to minimize attraction of bears to communities, to address future bear-human interaction issues, including on-the-land ecotourism activities are anticipated. However, potential conservation benefits from management programs that may be needed and have not yet been developed or implemented are not being considered in our evaluation. We find that overharvest and increased bear-human interaction levels as a singular factor do not threaten polar bears throughout all or a significant portion of their range. Continued overharvest or increased mortality from bear-human encounters, however, may become more significant factors in the future for polar bear populations experiencing nutritional stress or declining population levels.

Under Factor C (''Disease and predation'') we acknowledge that disease pathogen titers are present in polar bears; no epizootic outbreaks have been detected; and intra-specific stress through cannibalism may be increasing, however population level effects are not believed to have resulted. We find that disease and predation as singular factors do not threaten polar bears throughout all or a significant portion of their range. Potential for disease outbreaks or increased mortality from cannibalism may become more significant factors in the future for polar bear populations experiencing nutritional stress or declining population levels. Both stressors warrant continued monitoring.

Under Factor D (''Inadequacy of existing regulatory mechanisms'') we find that the regulatory mechanisms in place at the national and international level are effective in addressing the short-term, site-specific threats to polar bears from direct take, disturbance by humans, and incidental or harassment take. These factors are, for the most part, adequately addressed through range state laws, statutes, and other regulatory mechanisms for polar bears. The ultimate threat to the species is loss of habitat; however, this is not currently addressed at the national or international level. We conclude that inadequate regulatory mechanisms to address sea ice recession are a factor that threatens the species throughout all or a significant portion of its range.

Under Factor E (''Other natural or manmade factors affecting the polar bear's continued existence'') we reviewed contaminant concentrations and find that in most populations contaminants are not determined to have population level effects. Also, despite regulatory steps to decrease the production or emissions of toxic chemicals, increases in some contaminants, including relatively new flame retardant by-product compounds, are of concern. We further evaluated increasing levels of ecotourism and shipping that may lead to greater impacts on polar bears. The extent of the potential impact is related to changing ice conditions, polar bear distribution changes, and relative risk for a higher interaction between polar bears and ecotourism or shipping. We find that contaminants, ecotourism, and shipping, while affecting or potentially affecting polar bears, as singular factors do not threaten the existence of the species throughout all or a significant portion of its range. However, the potential for future impacts from these sources may become more significant in the future for polar bear populations experiencing nutritional stress or declining population levels and warrant continued monitoring or additional studies.

Based on our evaluation of all scientific and commercial information available regarding the past, present, and future threats faced by the polar bear, we have determined that the polar bear is threatened by habitat loss and inadequate regulatory mechanisms to address sea ice recession. Other factors, particularly overutilization, disease, and contaminants, may become more significant threats to polar bear populations, especially those experiencing nutritional stress or declining population levels, within the foreseeable future.

**Status Evaluation**

The Act defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range.

Polar bear populations throughout the Arctic are being affected by changes in climate and sea ice habitat. The effects include earlier melting periods, increased rain on snow events, and positive feed back systems which amplify the decrease in the extent, timing and quality of sea ice. These changes will negatively impact polar bears by increasing the energetic demands of movement in seeking prey, redistributing substantial portions of populations seasonally into terrestrial habitats with marginal values for feeding, and increasing levels of negative bear-human interactions. Similarly we expect reductions in productivity for most ice seal species (decreasing availability or timing of availability for polar bears as food), composition changes of seal species in some areas, and eventually decreased levels of abundance. Reduced feeding opportunities will result in the reduced physical condition of polar bears and corresponding population-level demographic declines through reduction of survival and recruitment rates as have been manifested in Western Hudson Bay and the Southern Beaufort Sea populations, the 2 populations with extensive time series of data, and forecasted for other populations. Ultimately these inter-related events, factors, and effects will result in declines or continued declines for all populations. Not all populations will be affected evenly in the level, rate, and timing of impact, but within the foreseeable future time frame of this action, all populations will be either directly or indirectly impacted.

Given current population sizes (20,000–25,000), distribution and occurrence throughout its historical range, and the finding that not all populations would be affected evenly in the timing, rate and level of impact, we do not believe the species is presently in danger of extinction throughout all or a significant portion of its range. Nor do we believe, based on our review of all available scientific and commercial information, that threats facing polar bear present an emergency posing a significant risk to the well-being of the species. However, if at any time we determine that emergency listing of polar bear is warranted, we will initiate the emergency listing process. Based on our evaluation of the best available scientific and commercial information, however, we find that the polar bear is likely within the foreseeable future (as defined to be 45 years) to become an endangered species throughout all or a significant portion of its range based on threats to the species, including loss of habitat caused by sea ice recession and lack of effective regulatory mechanisms to address the recession of sea ice. Therefore, we propose to list the polar bear as threatened.

On the basis of our careful evaluation of the best available scientific and commercial information regarding the past, present, and future threats to the species as discussed above relative to the listing factors, we have determined that listing is warranted. This determination is supported by the significant current and projected rates of decline in the sea ice habitat essential to polar bear life history requisites and the inadequacy of existing regulatory

mechanisms to address these threats. We have funded this proposed rule to list the polar bear, as it is the highest priority listing action for the Alaska Region. The Alaska Region generally has not faced the relatively heavy Listing Program workload experienced by several other Regions, and consequently was able to use the money allocated to this region for FY2006 to prepare this proposed rule.

Further, the analysis conducted for the polar bear status assessment and proposed rule has been a significant and jointly-coordinated effort of fiscal, intellectual, and other resources among the Service and the USGS, NASA, species experts, and experts in other fields such as contaminants. In addition, the scientific data used in this analysis and projections based on these data are subject to constant change. A delay in proceeding would result in significant expenditure of fiscal and other resources to collect additional data and conduct analyses. As such, we have determined that proceeding with the listing of the polar bear at this time is a responsible use of our fiscal and other resources and is justified given the nature of the scientific data involved and the significant declines in polar bear habitat.

**Critical Habitat**

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' is defined in section 3 of the Act as meaning the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

The primary regulatory effect of critical habitat is the section 7(a)(2) of the Act requirement that Federal agencies shall insure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of designated critical habitat.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is determined to be endangered or threatened. Critical habitat may only be designated within the jurisdiction of the United States and may not be designated for jurisdictions outside of the United States. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. Our regulations (50 CFR 424.12(a)(2)) further state that critical habitat is not determinable when one or both of the following situations exist: (1) Information sufficient to perform required analysis of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

Delineation of critical habitat requires identification of the physical and biological habitat features that are essential to the conservation of the species. In general terms, essential habitat features for the polar bear include annual and perennial marine sea ice habitats that serve as a platform for hunting, feeding, traveling, resting, and to a limited extent, for denning, and terrestrial habitats used by polar bears for denning and reproduction for the recruitment of new animals into the population, as well as for seasonal use in traveling or resting. The most important polar bear life functions that occur in these habitats are feeding (adequate nutrition) and reproduction. These habitats may be influenced by several factors and the interaction among these factors, including: (1) Water depth; (2) atmospheric and oceanic currents or events; (3) other climatologic phenomena such as temperature, winds, precipitation and snowfall; (4) proximity to the continental shelf; (5) topographic relief (accumulation of snow for denning); (6) presence of undisturbed habitats; and (7) secure resting areas that provide refuge from extreme weather and/or other bears or humans. Unlike some other marine mammal species, polar bears generally do not occur at high-density focal areas such as rookeries and haulout sites. However, certain terrestrial areas have a history of higher use, such as core denning areas, or are experiencing an increasing trend of use for resting, such as coastal areas during the fall open water phase for which polar bear use has been increasing in duration for additional and expanded areas. During the winter period, when energetic demands are the greatest, nearshore lead systems and emphemeral or recurrent polynyas are areas of importance for seals and correspondingly for polar bears that hunt seals for nutrition. During the spring period, nearshore lead systems continue to be important habitat for bears for hunting seals and feeding. Also the shorefast ice zone where ringed seals construct subnivean birth lairs for pupping is an important feeding habitat during this season. In Alaska, while denning habitat is more diffuse than in other areas where core high density denning has been identified, certain areas in northern Alaska such as barrier island, river bank drainages, much of the North Slope coastal plain, including the Arctic NWR, and coastal bluffs that occur at the interface of mainland and marine habitat receive proportionally greater use for denning than other areas in the past. Habitat suitable for the accumulation of snow and use for denning has been delineated on the north slope.

While information regarding important polar bear life functions and habitats associated with these functions has expanded greatly in Alaska during the past 20 years, in general the identification of specific physical and biological features and specific geographic areas for consideration as critical habitat is complicated and the future values of these habitats may change in a rapidly changing environment. The polar sea ice provides an essential conservation function for the key life history functions for hunting, feeding, travel, and nuturing cubs. That essential habitat is projected to be significantly reduced within the next 45 years, and some projections forecast complete absence of sea ice during summer months in shorter time frames. A careful assessment of the designation of critical marine areas will require additional time and evaluation. In addition, near-shore and terrestrial habitats may qualify as critical habitat; however a careful assessment will require additional time and evaluation. Therefore, there is a degree of uncertainty at this time as to which specific areas in Alaska might be essential to the conservation of the species and thus meet a key aspect of the definition of critical habitat. Consequently, the designation of critical habitat for the polar bear is not determinable at this time. In the Public Comments Solicited section of this proposed rule we specifically request information regarding critical habitat. If the listing of the polar bear becomes

final, we will then consider whether to propose the designation of critical habitat.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us under the provisions of section 7(a)(2) of the Act.

Several Federal agencies are expected to have involvement under section 7 of the Act regarding the polar bear. The National Marine Fisheries Service may become involved, such as in instances if joint rule making for the incidental take of marine mammals is undertaken. The Environmental Protection Agency may become involved through its permitting authority for the Clean Water Act. The U.S. Army Corps of Engineers may become involved through its responsibilities and permitting authority under section 404 of the Clean Water Act and through future development of harbor projects. The MMS may become involved through administering their programs directed toward offshore oil and gas development. The Denali Commission may be involved through its potential funding of fuel and power generation projects. The U.S. Coast Guard may become involved through their deployment of icebreakers in the Arctic Ocean.

The listing of the polar bear would subsequently lead to the development of a recovery plan for this species. Such a plan will bring together Federal, State, local agency, and private efforts for the conservation of this species. A recovery plan establishes a framework for interested parties to coordinate activities and to cooperate with each other in conservation efforts. The plan will set recovery priorities, identify responsibilities, and estimate the costs of the tasks necessary to accomplish the priorities. It will also describe site-specific management actions necessary to achieve the conservation of the polar bear. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to the State of Alaska for management actions promoting the conservation of the polar bear.

Section 9 of the Act, except as provided in sections 6(g)(2) and 10 of the Act prohibits take and import into or export out of the United States of listed species. The Act defines take to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct. However, the Act also provides for the authorization of take and exceptions to the take prohibitions. Take of listed species by non-Federal property owners can be permitted through the process set forth in section 10 of the Act. For Federally funded or permitted activities, take of listed species may be allowed through the consultation process of section 7 of the Act. The Service has issued regulations (50 CFR 17.31) that generally afford to species listed as threatened the prohibitions that section 9 of the Act establishes with respect to species listed as endangered. Furthermore, Section 4(d) of the Act provides that a special rule can be tailored to provide for the conservation of a particular threatened species. In that case, the general regulations for some of the section 17.31 prohibitions may not apply to that species. A special rule may be developed that contains specific prohibitions or exemptions, as necessary and appropriate to conserve that species.

The Act provides for an exemption for Alaska Natives in section 10(e) that allows any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska to take a threatened or endangered species if such taking is primarily for subsistence purposes and the taking is not accomplished in a wasteful manner. Further, if it is determined that such taking materially and negatively affects the threatened or endangered species, regulations regarding taking may be prescribed. Non-edible by-products of species taken pursuant to section 10(e) may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing. It is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Further, it is illegal for any person to commit, to solicit another person to commit, or cause to be committed, any of these acts. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

The Act provides for the issuance of permits to carry out otherwise prohibited activities involving threatened or endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in the course of otherwise lawful activities provided that certain criteria are met. For threatened species, permits are also available for zoological exhibitions, educational purposes, or special purposes consistent with the purposes of the Act. Requests for copies of the regulations on listed species and inquiries about prohibitions and permits may be addressed to the Endangered Species Coordinator, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not likely constitute a violation of section 9 of the Act and associated regulations at 50 CFR 17.31. The intent of this policy is to increase public awareness of the effects of the listing on proposed and ongoing activities within a species' range.

For the polar bear we have not yet determined which, if any, provisions under section 9, provided these activities are carried out in accordance with existing regulations and permit requirements, would apply. Some permissible uses or actions have been identified below:

(1) Possession, delivery, or movement, including interstate transport of authentic native articles of handicrafts and clothing made from polar bears that were collected prior to the date of

publication in the **Federal Register** of a final regulation adding the polar bear to the list of threatened species;

(2) Sale, possession, delivery, or movement, including interstate transport of authentic native articles of handicrafts and clothing made from polar bears that were taken and produced in accordance with section 10(e) of the Act;

(3) Any action authorized, funded, or carried out by a Federal agency that may affect the polar bear, when the action is conducted in accordance with an incidental take statement issued by us under section 7 of the Act;

(4) Any action carried out for scientific research or to enhance the propagation or survival of polar bears that is conducted in accordance with the conditions of a 50 CFR 17.32 permit; and

(5) Any incidental take of polar bears resulting from an otherwise lawful activity conducted in accordance with the conditions of an incidental take permit issued under 50 CFR 17.32. Non-Federal applicants may design a habitat conservation plan (HCP) for the species and apply for an incidental take permit. HCPs may be developed for listed species and are designed to minimize and mitigate impacts to the species to the greatest extent practicable.

We believe the following activities could potentially result in a violation of section 9 and associated regulations at 50 CFR 17.31 with regard to polar bears, however, possible violations are not limited to these actions alone:

(1) Unauthorized killing, collecting, handling, or harassing of individual polar bears;

(2) Possessing, selling, transporting, or shipping illegally taken polar bears or their parts;

(3) Unauthorized destruction or alteration of the denning, feeding, resting, or habitats used for travel that actually kills or injures individual polar bears by significantly impairing their essential behavioral patterns, including breeding, feeding or sheltering; and,

(4) Discharge or dumping of toxic chemicals, silt, or other pollutants (i.e., sewage, oil, pesticides, and gasoline) into the marine environment that actually kills or injures individual polar bears by significantly impairing their essential behavioral patterns, including breeding, feeding or sheltering.

We will review other activities not identified above on a case-by-case basis to determine whether they may be likely to result in a violation of 50 CFR 17.31. We do not consider these lists to be exhaustive and provide them as information to the public. You may direct questions regarding whether specific activities may constitute a violation of the Act to the Field Supervisor, U.S. Fish and Wildlife Service, Fairbanks Fish and Wildlife Field Office, 101 12th Avenue, Box 110, Fairbanks, Alaska 99701.

Furthermore, the Act, similar to the MMPA, provides an exception to the prohibitions of take and import for Alaska Natives. These exceptions are based on the social, cultural and economic role marine mammals have played, and continue to play, in the lives of Alaska Natives. However, under both the Act and the MMPA, the Service, if warranted, may prescribe limitations on the taking or import of marine mammals by Alaska Natives. Should this proposed rule become final the Service will take such action, if appropriate, to ensure that any harvest of polar bears by Alaska Natives does not materially and negatively affect the species.

Regarding ongoing importation of polar bear trophies taken from approved populations in Canada into the United States, we anticipate conducting an evaluation of the merits of continuing the presently authorized imports. Under the MMPA Section 102—Prohibitions [Importation of pregnant or nursing animals; depleted species which includes those listed as threatened or endangered under the ESA] it is unlawful to import into the United States any marine mammal if the mammal was taken from a species or population stock that the Secretary has, by regulation published in the **Federal Register**, designated as a depleted species or stock. The exception to the general prohibition is under a permit for scientific research, or under a permit for enhancing the survival or recovery of a species or stock, issued under section 104(c) of the MMPA.

## Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), and based on our implementation of the Office of Management and Budget's Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we will seek the expert opinions of at least five appropriate and independent specialists regarding the science in this proposed rule. The purpose of such review is to ensure that our warranted finding and proposed rule are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed listing. We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

## Clarity of the Rule

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following: (1) Is the discussion in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposal? (2) Does the proposal contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposal (groupings and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? What else could we do to make the proposal easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

## Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The Service believes that the past record of cooperation demonstrated by oil and gas industry in complying with terms of Letters of Authorization through the Incidental Take program, Section 101(a)(5) of the Marine Mammal Protection Act, as well as active participation in monitoring the effects of exploration, production, and development activities on polar bears serves as a sound conservation practice. While the Service believes that the incidental take program will continue to operate effectively to result in a negligible affect to polar bears from industrial activities in the future, continued vigilance and compliance will be necessary for protection of the species. In addition, added protections afforded through Section 7 consultation required under the Act provide additional assurances to the protection of the species. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action

and no Statement of Energy Effects is required.

**National Environmental Policy Act**

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

**Government-to-Government Relationship With Tribes**

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis.

**References Cited**

A complete list of all references cited in this proposal is available upon request. You may request a list of all references cited in this document from the Supervisor, Marine Mammals Management Office (see **ADDRESSES** section).

**Author**

The primary author of this proposed rule is Scott Schliebe, Marine Mammals Management Office (see **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding an entry for ''Bear, polar'' in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| MAMMALS | | | | | | | |
| * | * | * | * | * | * | * | * |
| Bear, polar | *Ursus maritimus* | U.S.A. (AK), Canada, Russia, Denmark (Greenland), Norway. | Entire | T | | NA | NA. |
| * | * | * | * | * | * | * | * |

Dated: December 27, 2006.

**H. Dale Hall,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 06–9962 Filed 1–8–07; 8:45 am]

**BILLING CODE 4310–55–P**

Federal Register

Tuesday,
January 9, 2007

# Part III

# Department of Agriculture

## Animal and Plant Health Inspection Service

## 9 CFR Parts 93, 94, 95, and 96

## Bovine Spongiform Encephalopathy; Minimal-Risk Regions; Importation of Live Bovines and Products Derived From Bovines; Proposed Rule

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Parts 93, 94, 95, and 96**

**[Docket No. APHIS–2006–0041]**

**RIN 0579–AC01**

# Bovine Spongiform Encephalopathy; Minimal-Risk Regions; Importation of Live Bovines and Products Derived From Bovines

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations regarding the importation of animals and animal products to establish conditions for the importation of the following commodities from regions that present a minimal risk of introducing bovine spongiform encephalopathy (BSE) into the United States: Live bovines for any use born on or after a date determined by APHIS to be the date of effective enforcement of a ruminant-to-ruminant feed ban in the region of export; blood and blood products derived from bovines; and casings and part of the small intestine derived from bovines. We are proposing these amendments after conducting a risk assessment and comprehensive evaluation of the issues that concluded that such bovines and bovine products can be safely imported under the conditions described in this proposed rule.

**DATES:** We will consider all comments that we receive on or before March 12, 2007.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0041 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS 2006–0041, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS 2006–0041.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

**FOR FURTHER INFORMATION CONTACT:** For information regarding ruminant products, contact Dr. Karen James-Preston, Director, Technical Trade Services, Animal Products, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

For information concerning live ruminants, contact Dr. Lee Ann Thomas, Director, Technical Trade Services, Animals, Organisms and Vectors, and Select Agents, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

For other information concerning this proposed rule, contact Dr. Lisa Ferguson, Senior Staff Veterinarian, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–6954.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA or Department) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases. The regulations in 9 CFR parts 93, 94, 95, and 96 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE), a chronic degenerative disease affecting the central nervous system of cattle.

With some exceptions, APHIS' regulations prohibit or restrict the importation of live ruminants and certain ruminant products and byproducts from the following three categories of regions with regard to BSE: (1) Those regions in which BSE is known to exist (listed in § 94.18(a)(1) of the regulations); (2) those regions that present an undue risk of introducing BSE into the United States because their import requirements are less restrictive than those that would be acceptable for import into the United States and/or because the regions have inadequate surveillance (listed in § 94.18(a)(2) of the regulations); and (3) those regions that present a minimal risk of introducing BSE into the United States via live ruminants and ruminant products and byproducts (listed in § 94.18(a)(3) of the regulations).

*Chronology of APHIS Federal Register Publications Regarding BSE Minimal-Risk Regions*

We added the § 94.18(a)(3) category (BSE minimal-risk regions) to the regulations in a final rule published in the **Federal Register** on January 4, 2005 (70 FR 459–553, Docket No. 03–080–3). In the final rule, we specified which commodities may be imported from BSE minimal-risk regions and under what conditions, and recognized Canada as a BSE minimal-risk region. (At this time, Canada is the only recognized BSE minimal-risk region.)

The January 2005 final rule was based on a proposed rule we published in the **Federal Register** on November 4, 2003 (68 FR 62386–62405, Docket No. 03–080–1). On December 25, 2003, less than 2 weeks before the close of the comment period for our proposed rule, a case of BSE in a dairy cow of Canadian origin in Washington State was verified by an international reference laboratory.

In response to comments from the public requesting an extension of the comment period and in order to give the public an additional opportunity to comment on the proposed rule in light of this development, on March 8, 2004, we published a notice in the **Federal Register** (69 FR 10633–10636, Docket No. 03–080–2) reopening and extending the comment period.

On January 5, 2005, along with the final rule, we published in the **Federal Register** a notice (70 FR 554, Docket No. 03–080–4) announcing the availability of, and requesting comments on, a final environmental assessment (EA) regarding the potential impact on the quality of the human environment due to the importation of ruminants and ruminant products and byproducts from Canada under the conditions specified in the final rule. On January 21, 2005, we published in the **Federal Register** a

notice (70 FR 3183–3184, Docket No. 03–080–5) announcing the availability of a corrected version of the EA for public review and comment. On April 8, 2005, we published in the **Federal Register** a finding (70 FR 18252–18262, Docket No. 03–080–7) that the provisions of the final rule would not have a significant impact on the quality of the human environment.

On March 11, 2005, we published a document in the **Federal Register** that gave notice that the Secretary of Agriculture was delaying until further notice the implementation of certain provisions of the final rule with regard to certain commodities (70 FR 12112–12113, Docket No. 03–080–6).

On November 28, 2005, we published in the **Federal Register** an interim rule (70 FR 71213–71218, Docket No. 03–080–8) that amended certain provisions established by the January 2005 final rule. The interim rule broadened the list of who is authorized to break seals on conveyances and allows transloading under supervision of products transiting the United States.

On March 14, 2006, we published in the **Federal Register** a technical amendment (71 FR 12994–12998, Docket No. 03–080–9) that clarified our intent with regard to certain provisions in the January 2005 final rule and corrected several inconsistencies within the rule.

On August 9, 2006, we published in the **Federal Register** a proposed rule (71 FR 45439–45444, Docket No. APHIS–2006–0026) that proposed to amend the provisions established by the January 2005 final rule by removing several restrictions regarding the identification of animals and the processing of ruminant materials from BSE minimal-risk regions, and by relieving BSE-based restrictions on hide-derived gelatin from BSE minimal-risk regions. We solicited comments concerning our proposal for 60 days ending October 10, 2006. On November 9, 2006, we published a notice in the **Federal Register** (71 FR 65758–65759, Docket No. APHIS–2006–0026) reopening and extended the comment period until November 24, 2006. We received a total of 10 comments by that date. We are considering the issues raised by the commenters and will address them in a separate rulemaking document.

*Scope of the January 2005 Final Rule*

The regulations established by the January 2005 final rule and subsequent amendments allow the importation from BSE minimal-risk regions of live bovines that are under 30 months of age when imported and when slaughtered and that have been subject to a ruminant feed ban equivalent to that in place in the United States. The risk analysis we conducted for that rule found that, because of the nature, incubation period, and progression of BSE infectivity, young cattle exposed to low levels of BSE will accumulate very little BSE infectivity within the first few years of life, and that cattle under 30 months of age from a BSE minimal-risk region are highly unlikely to have accumulated significant amounts of BSE infectivity even if infected. We concluded, therefore, that the risk to U.S. livestock presented by the importation of such bovines was low.

We did not attempt, for that rulemaking, to assess the BSE risk associated with the importation of live bovines 30 months of age or older from a BSE minimal-risk region. Our March 8, 2004, notice that reopened and extended the comment period on the November 2003 proposed rule stated that APHIS was evaluating the appropriate approach with regard to the importation of live animals 30 months of age or older from BSE minimal-risk regions, and would address that issue in a supplemental rulemaking proposal in the **Federal Register**. The provisions in this proposed rule regarding live bovines are the result of that evaluation.

The regulations established by the January 2005 final rule also allow the importation of the following commodities derived from bovines of any age: (1) Meat, meat food products, and meat byproducts; (2) whole or half carcasses; (3) offal; (4) tallow composed of less than 0.15 percent insoluble impurities that are not otherwise eligible for importation under § 95.4(a)(1)(i) of the regulations; and (5) gelatin derived from bones of bovines that is not otherwise eligible for importation under § 94.18(c) of the regulations.

The January 2005 final rule and subsequent amendments did not change the regulations concerning the importation of blood and blood products from regions listed in § 94.18(a); the requirements for the importation of blood and blood products from BSE minimal-risk regions remain the same as the requirements for importation of blood and blood products from other regions listed in § 94.18(a)—only serum and serum albumin are eligible for importation. The January 2005 final rule also did not change the regulations concerning the importation of bovine casings (defined as intestines, stomachs, esophagi, and urinary bladders) from regions listed in § 94.18(a); the requirements for the importation of bovine casings from BSE minimal-risk regions remain the same as the requirements for importation of bovine casings from other regions listed in § in 94.18(a)—only bovine stomachs are eligible for importation.

The January 2005 final rule and subsequent amendments allowed trade to resume in many, but not all, of the commodities that had been prohibited importation from Canada following detection of a BSE-infected cow in Canada in May 2003. We have continued to consider the BSE risk associated with older bovines and other bovine products from BSE minimal-risk regions—and Canada in particular—including bovine blood and blood products, bovine small intestine other than the distal ileum, and bovine casings, which are the subject of this proposed rule.

Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture may prohibit the importation of any animal or article if the Secretary determines that the prohibition is necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock. The Secretary has determined that it is not necessary to continue to prohibit the importation from BSE minimal-risk regions (currently only Canada) of live bovines born after the date a feed ban was effectively enforced in the region of export, bovine blood or blood products, bovine small intestine other than the distal ileum, or bovine casings, provided that the conditions described in this proposal are met.[1] This determination is based on a number of factors, which are discussed in this document and, in greater detail, in the risk assessment prepared for this rulemaking. The risk assessment, and the peer review plan and charge for this assessment may be viewed on the Regulations.gov Web site or in our reading room. Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the

[1] The current regulations regarding BSE minimal-risk regions apply to bison as well as cattle. In current §§ 93.400, 94.0, and 95.1 of the regulations, *bovine* is defined as *Bos taurus*, *Bos indicus*, and *Bison bison*. Although the research and other data cited in this proposed rule refer to bovines other than bison (*i.e.*, to ''cattle''), there is no evidence to indicate that the BSE susceptibility of bison differs from that of cattle. We therefore assume that our conclusions based on cattle-specific evidence discussed in this proposed rule are also applicable to bison. Given that no cases of BSE have been detected in bison, this is likely a cautious assumption. The provisions of this proposed rule would apply to bovines as defined in the current regulations, which include bison.

individuals listed under **FOR FURTHER INFORMATION CONTACT**.

## II. BSE and the Government's Role in Protecting Human and Animal Health

### *A. Nature of BSE*

BSE is a progressive and fatal neurological disorder of cattle that results from an unconventional transmissible agent. BSE belongs to the family of diseases known as transmissible spongiform encephalopathies (TSEs). All TSEs affect the central nervous system of infected animals. However, the distribution of infectivity in the body of the animal and mode of transmission differ according to the species and TSE agent. In addition to BSE, TSEs include, among other diseases, scrapie in sheep and goats, chronic wasting disease in deer and elk, and Creutzfeldt-Jakob disease in humans.

The agent that causes BSE has yet to be fully characterized. The theory that is most accepted in the international scientific community is that the agent is an abnormal form of a normal protein known as cellular prion protein. The BSE agent does not evoke a traditional immune response or inflammatory reaction in host animals. BSE is confirmed by post-mortem microscopic examination of an animal's brain tissue or by detection of the abnormal form of the prion protein in an animal's brain tissues. The pathogenic form of the protein is both less soluble and more resistant to degradation than the normal form. The BSE agent is resistant to heat and to normal sterilization processes.

BSE is not a contagious disease, and therefore is not spread through casual contact between animals. (The possibility of maternal transmission (*i.e.*, from a bovine dam directly to her offspring) was suggested by a 1997 study (Ref 1) conducted in the United Kingdom. However, subsequent studies have shown that it is unlikely that maternal transmission of BSE occurs at any epidemiologically significant level, if it occurs at all (Ref 2)). Scientists believe that the primary route of transmission requires that cattle ingest feed that has been contaminated with a sufficient amount of tissue from an infected animal. This route of transmission can be prevented by excluding potentially contaminated materials from ruminant feed.

### *B. U.S. Government's Role in Protecting Human and Animal Health*

Because variant Creutzfeldt-Jakob Disease (vCJD), a chronic and fatal neurodegenerative disease of humans, has been linked via scientific and epidemiological studies to exposure to the BSE agent, most likely through consumption of cattle products contaminated with the BSE agent, APHIS collaborates with other Federal agencies to implement a coordinated U.S. response to BSE.

Protecting human and animal health from the risks of BSE is carried out on the Federal level primarily by APHIS regarding animal health and the Department's Food Safety and Inspection Service (FSIS) regarding the food safety of meat and poultry, in coordination with the following Centers of the Food and Drug Administration (FDA), U.S. Department of Health and Human Services: The Center for Veterinary Medicine regarding animal feed and animal drugs; the Center for Food Safety and Applied Nutrition regarding foods other than meat, poultry, and egg products; the Center for Biologics Evaluation and Research regarding blood and blood products and other products; the Center for Drug Evaluation and Research regarding drugs containing bovine material; and the Center for Devices and Radiological Health regarding devices containing bovine material.

APHIS recognizes that, although Federal agencies may differ somewhat in their specific mandates, it is necessary to conduct a coordinated Federal effort to safeguard human and animal health. We consider it important to base APHIS' regulatory actions on the best scientific evidence. Additionally, as the agencies make BSE-related documents available for public comment, or otherwise solicit public response, the agencies share and discuss information received.

Of recent note is information solicited and received by FSIS between July and October 2006 regarding the 2005 updated Harvard Risk Assessment of BSE associated with public health exposure. FSIS discussed with APHIS and FDA public comments it received in response to a notice of availability (71 FR 39282–39283, Docket No. FSIS–2006–0011, published in the **Federal Register** July 12, 2006) and a public technical meeting regarding the risk assessment and the potential of BSE exposure and animal health. APHIS has taken relevant comments received into consideration with regard to its risk assessment for this proposed rule.

## III. Commodities Covered by This Proposed Rule

This rule would amend the APHIS regulations as they apply to the importation of the following commodities from BSE minimal-risk regions:

- Live bovines;
- Blood and blood products derived from bovines;
- Small intestine, other than the distal ileum, derived from bovines; and
- Casings derived from bovines.

This part of the Supplementary Information section of this proposed rule discusses the risks associated with each commodity, mitigations that address the risk, and how we propose to amend the regulations to allow the importation of these commodities.

### *A. Live Bovines*

#### BSE Transmission

As noted above under ''Nature of BSE,'' oral ingestion of feed contaminated with the BSE agent is the only documented route of field transmission of BSE (Ref 2 and 3). Several steps must take place for BSE to be transmitted to cattle in the United States from a bovine imported live from another country. A BSE-infected bovine must be imported into the United States; the infected bovine must die or be slaughtered; tissues from that animal that contain the infectious agent must be sent to a rendering facility; the infectivity present in these tissues must survive inactivation in the rendering process; the resulting meat-and-bone meal containing the abnormal prion protein must be incorporated into feed; and this feed must be fed to cattle at a level adequate to infect the cattle. (The amount of infectious material required in feed for cattle to become infected is dependent on the age of the cattle; younger cattle are more susceptible to BSE and require less BSE-contaminated feed to become infected (Ref 4).)

#### Proposed Regulatory Change; OIE Guideline

The first step that must occur for BSE to be transmitted to cattle in the United States from a BSE-infected bovine imported live into this country from a BSE minimal-risk region is that such a bovine must enter the United States. Under our current regulations, the risk of such a bovine entering the United States is already very low because of the APHIS regulatory standards for importation from BSE minimal-risk regions.

In this document, we are proposing to allow the importation of live bovines from BSE minimal-risk regions if the animals were born on or after a date determined by APHIS to be the date on and after which a ruminant-to-ruminant feed ban in the region of export has been effectively enforced. Experience around the world in countries with BSE has demonstrated that feed bans are

effective control measures, and that the incidence of BSE worldwide continues to decline because of these measures (Ref 5 and 6).

Because of the demonstrated efficacy of an effectively enforced feed ban in reducing the possibility of exposure of cattle to the BSE agent, the World Organization for Animal Health (OIE) provides guidelines for trade in live cattle from regions that have reported BSE if such regions have an effective feed ban in place, provided the cattle were born after the date when the feed ban was effectively enforced (OIE *Terrestrial Animal Health Code*, Chapter 2.3.13). The condition in this proposed rule for the importation of live bovines from BSE minimal-risk regions is consistent with the OIE guideline.

Importance of a Feed Ban in Reducing the Likelihood of BSE Transmission

By eliminating transmission, an effective feed ban reduces the possibility of the existence of infected animals in a given cattle population, which in turn reduces even further the chances of healthy animals being exposed to the BSE agent via subsequent recycling of infectivity.

Experience in the United Kingdom demonstrates that implementation of a ruminant-to-ruminant feed ban causes BSE prevalence to decrease. Animal feed restrictions were implemented in the United Kingdom in 1988, when the use of ruminant meat-and-bone meal (MBM) in ruminant animal feed was banned. In September 1990, the use of specified bovine offals was banned for use in any animal feed. This ban prohibited the use in any animal feed of bovine tissues with the highest potential concentration of infectivity. In 1994, the use of mammalian protein—not just ruminant protein—was banned from ruminant feed. In 1996, feeding of any farmed livestock, including fish and horses, with mammalian MBM was completely banned. As a result of reducing the recycling of infectivity, the annual incidence of BSE fell by 99.4 percent, from 36,680 in 1992 to 203 in 2005 (Ref 7).

Although the data presented in the following figure and table represent the specific situation in Great Britain during the years identified in the graph, there is every reason to expect downward pressure on the prevalence of BSE in any country that implements a feed ban.

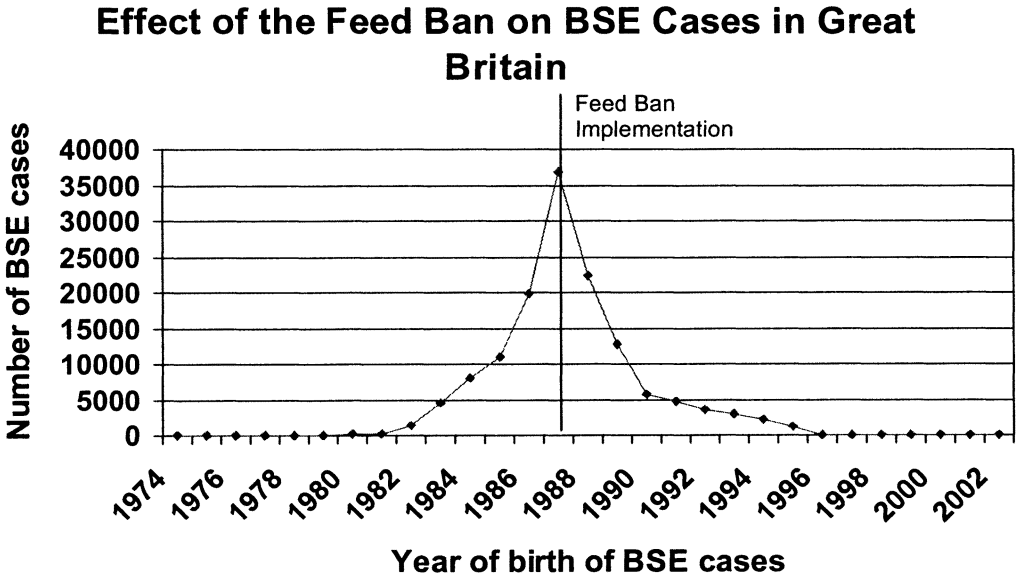


Figure 1. Confirmed cases in cattle in Great Britain born after feed ban implementation. Note: The first feed ban was implemented in the summer of 1988 (before fall calving) (Ref 8).

The raw data that provided the basis for Figure 1 are reproduced in Table 1:

TABLE 1.—CONFIRMED CASES IN GREAT BRITAIN BY YEAR OF BIRTH, WHERE KNOWN

| Year | Cases |
|---|---|
| 1974 | 1 |
| 1975 | 0 |
| 1976 | 2 |
| 1977 | 10 |
| 1978 | 6 |
| 1979 | 41 |
| 1980 | 102 |
| 1981 | 262 |
| 1982 | 1,394 |

TABLE 1.—CONFIRMED CASES IN GREAT BRITAIN BY YEAR OF BIRTH, WHERE KNOWN—Continued

| Year | Cases |
|---|---|
| 1983 | 4,463 |
| 1984 | 8,069 |
| 1985 | 11,071 |
| 1986 | 19,752 |
| 1987 | 36,935 |
| 1988 | 22,266 |
| 1989 | 12,748 |
| 1990 | 5,748 |
| 1991 | 4,779 |
| 1992 | 3,531 |
| 1993 | 2,997 |
| 1994 | 2,182 |
| 1995 | 1,100 |
| 1996 | 67 |
| 1997 | 45 |
| 1998 | 37 |
| 1999 | 24 |
| 2000 | 6 |

TABLE 1.—CONFIRMED CASES IN GREAT BRITAIN BY YEAR OF BIRTH, WHERE KNOWN—Continued

| Year | Cases |
|---|---|
| 2001 | 5 |
| 2002 | 1 |
| Unknown birth year | 43,342 |
| Total | 180,986 |

(Ref 8)

Determining a Date of Effective Enforcement of a Feed Ban

Under the current regulations, one of the conditions that must be met for a region to be recognized by APHIS as a BSE minimal-risk region is that the region must have in place a ruminant-to-ruminant feed ban that is effectively enforced. APHIS bases its determination

of whether a region has in place an effectively enforced ruminant-to-ruminant feed ban on an evaluation of the laws and regulations in place in the region, the adequacy of the infrastructure to implement the regulations, and the evidence of effective implementation and monitoring (*i.e.*, compliance inspections, training and records).

We are proposing in this rule to require that bovines from a BSE minimal-risk region intended for importation into the United States have been born on or after the date determined by APHIS to be the date of effective enforcement of a ruminant-to-ruminant feed ban in the region of export. In determining the date of effective enforcement of a feed ban, we believe it is first necessary to consider the amount of time, if any, between the regulatory establishment of the feed ban in the region of export and the practical implementation of the ban. The period of practical implementation can be determined by evaluating implementation guidance and policies, such as allowing grace periods for certain aspects of the industry. In addition, the time necessary for initial education of industry and training of inspectors must be considered.

After the practical implementation period is determined, we believe it is then necessary to consider whether, in the region being evaluated, an additional period of time was needed to allow most feed products to cycle through the system, given the management practices in the country.

Feed Ban in Canada

In conjunction with the rulemaking that resulted in the January 2005 final rule, APHIS conducted a risk analysis in 2003 and 2004 to evaluate the BSE risk from ruminants and ruminant products imported from regions presenting a minimal BSE risk, and to evaluate whether Canada could be classified as a minimal risk region (Ref 9 and 10). As part of the risk analysis, USDA evaluated a series of measures introduced in Canada to prevent the feeding of ruminant proteins to ruminant animals. USDA considered the compliance activities reported by the Canadian Food Inspection Agency (CFIA) as well as epidemiological information in concluding that compliance with the feed ban was good, and that the feed ban was effectively enforced. In response to the detection of two additional BSE cases in Canada, in January 2005, USDA reassessed the oversight of Canada's feed ban. Based on review of inspection records and on-site observations, USDA confirmed that Canada has a robust inspection program, that overall compliance with the feed ban is good, and that the feed ban is reducing the risk of transmission of BSE in the Canadian cattle population (Ref 11). In addition to the USDA audit of the Canadian feed ban, CFIA conducted its own review in 2005, and concluded that the ban is providing an effective mitigation that is contributing to reducing the BSE risk in the country to an extremely low level (Ref 12).

Components of the Canadian Feed Ban

Canada's feed ban came into force on August 4, 1997, when CFIA issued regulations prohibiting the use of mammalian protein in ruminant feeds as follows: ''Any feed that is, or that contains any prohibited material originating from a mammal (with exceptions) shall not be fed to a ruminant'' (Ref 12). The ban provided exceptions for milk, blood, gelatin, and protein derived solely from porcine or equine sources. Canadian feed regulations also prohibit the use of plate waste and poultry litter in ruminant feed.

The feed ban includes requirements for labeling and recordkeeping. Feed manufacturers, renderers, retailers, and livestock producers must document their production procedures and feeding practices to verify their compliance with the feed ban. Feed manufacturers must keep records regarding the composition, identity, and distribution of all feeds for the species named in the regulations. Renderers, feed manufacturers and farmers must take steps to prevent the material prohibited under the feed ban from being incorporated into or contaminating ruminant feed. To prevent the misfeeding of prohibited material to ruminants, users of livestock feed must keep labels or invoices from all purchased feeds containing prohibited material; these records must be kept for 2 years.

Measures Required at Rendering Facilities

The rendering industry is important in reducing the risk of transmitting BSE infectivity, not only because of its role in inactivation of the BSE agent, but also because it serves as a control point for the redirection of ruminant protein away from cattle feeds. Since 1998, all Canadian rendering facilities have been subject to annual inspections and permitting (Ref 11). Three types of permits are issued, allowing companies to produce either non-prohibited material only, prohibited material only, or both non-prohibited and prohibited material (Ref 11). Permitting requires implementation of manufacturing controls (such as Good Manufacturing Practices and a risk-based Hazard Analysis and Critical Control Point (HACCP) plan, recordkeeping (for both production and distribution) and labeling requirements (*i.e.*, ''Do not feed to cattle, sheep, deer or other ruminants'' on labels and invoices for all prohibited material) directed at preventing cross-contamination or misfeeding.

Measures to Prevent Contamination of Feed

As mentioned earlier, renderers, feed manufacturers, and farmers must take steps to prevent material prohibited under the feed ban from being incorporated into or contaminating ruminant feed. Such incorporation or contamination can be prevented by having dedicated processing lines or facilities that use only prohibited or non-prohibited material. If a facility handles both prohibited and non-prohibited material, procedures must be established and maintained to conduct flushing and/or clean-out between batches of product to prevent cross-contamination.

The feed industry in Canada has also taken a number of aggressive steps to comply with measures in the feed ban designed to reduce the risk of contamination of feed for cattle with prohibited material. Recently both the United States and Canada reviewed the changes made to industry procedures and governmental inspectional oversight. (Ref 11 and 12). These reviews demonstrated, for example, that the Canadian rendering industry has moved toward establishment of dedicated facilities or dedicated processing lines within rendering facilities (Ref 11 and 12). Of the 29 rendering facilities in Canada, 6 handle both prohibited and non-prohibited material, compared to 13 that initially handled both types of material. Of the six, four use dedicated processing lines (Ref 12). According to CFIA's reports, the feed manufacturing industry has also moved toward dedicated facilities. According to the most recent review (March 2005), 94 (17%) of the 550 commercial feed mills in Canada handled prohibited material and also manufactured feeds for ruminants, compared to 120 (22%) in 2002–2003 (Ref 12). These actions, in addition to the labeling and recordkeeping requirements for all products containing prohibited material, decrease the likelihood of contamination of ruminant feeds with prohibited material.

Inspections and Compliance

Following establishment of the feed ban in 1997, CFIA broadened its communications with the affected industries and implemented an inspection program. This program was introduced in phases. From 1997–2000, inspection activities focused on integrating the feed ban's requirements into standard industry practices. For example, starting in 1998, rendering facilities were required to pass an annual inspection in order to renew their permits to operate. In 2000 and 2001, CFIA modified its compliance programs by increasing the frequency of inspections of commercial feed mills from once every 3 years to every year and by continuing the annual inspection and permitting of all rendering facilities. Since 2002, CFIA has been conducting annual inspections of all rendering and commercial feed mill facilities and some ruminant feeders and retail feed distributors.

Recent Regulatory Amendments in Canada

In June 2006, CFIA issued amendments to the feed ban regulations in Canada to enhance the feed ban in that country. Those amendments require, among other things, the removal of potentially BSE-infective tissues (specified risk materials, or SRMs) from all animal feeds, pet food, and fertilizer. The amendments will not be effective until July 12, 2007, and, therefore, they are not included in this discussion.

Date of Effective Enforcement of Ruminant-to-Ruminant Feed Ban in Canada

For the purposes of this proposed rule, we have determined a date we consider to be the date of effective enforcement of ruminant-to-ruminant feed ban in Canada, the only country currently recognized by APHIS as a BSE minimal-risk region. Although the regulations establishing the feed ban in Canada came into force upon their publication in August 1997, full implementation and effective enforcement was a gradual process. In determining a date when the feed ban could be considered to be effectively enforced, we carefully considered information drawn from the epidemiological investigations to date and the reports noted above under the heading ''Feed Ban in Canada.''

From the outset, CFIA recognized that a phase-in period would be required before prohibited materials that were already in feed channels would be exhausted and labeling and recordkeeping requirements would be met. CFIA estimated that it would take approximately 30 days for feed mills and retailers to use up and distribute existing supplies of ''old'' product; 60 days to add a caution statement to the necessary documents; and 60 days for farms to use up their stores of ''old'' product (Ref 13). All retailers were given until September 3, 1997, to use or distribute feed already produced. Feed manufacturers received a grace period until October 3, 1997, to comply with labeling requirements. Livestock producers were given a grace period until October 3, 1997, to use the feed manufactured and purchased prior to the feed ban. However, feed tracing associated with one of the Canadian BSE cases suggested that feed produced prior to implementation of the feed ban may have been available at feed stores beyond the grace period. Therefore, a period of 6 months has been estimated for practical implementation of the feed ban, making February 1998 a more reasonable baseline from which to assess effective implementation (Ref 13).

However, based on our evaluation of the situation in Canada, we believe that the feed ban there achieved full efficacy only at some time after the practical implementation period. We believe that additional time was necessary to allow for most old feed to cycle through and out of the system. To evaluate the duration of this time frame in Canada, we considered on-farm feeding practices in that country. Most cattle producers in Canada do not hold extensive long-term inventories of purchased feeds on their farms due to limited storage space and expense. These practices make it unlikely that feeds containing prohibited material were available for more than a few months after practical implementation of the feed ban. The possible exception is mineral mixes produced before the feed ban that may have contained ruminant MBM. Mineral mixes are typically fed daily but in very small quantities (grams rather than pounds per day) (Ref 14 and 15) and may be stored on the farms for longer periods of time. We believe, however, that they are not likely to have been purchased for use for periods longer than a year.

Both beef and dairy cattle production can be considered to have an annual, or 12-month, calving cycle, in that a cow on a beef or dairy farm will generally give birth once a year. Calving occurs among cows year-round on Canada's dairy farms to ensure a constant supply of fluid milk. Most dairy farms in Canada produce their own forage and grains (Ref 16). Forages produced seasonally are stored on the farm to provide the basis for the diet fed to dairy cattle of all ages and production stages. Protein supplements and specialty feeds, such as mixed calf feeds, are typically purchased commercially in quantities to be fed out over a few months, because these supplemental feeds are expensive to purchase, costly to store, and may deteriorate with time. Typically, purchased feeds are available throughout the year with only moderate price variations, so there is little incentive for producers to maintain large on-farm inventories (Ref 17). The Canadian beef production cycle is very seasonal in that cows are bred so that calving occurs at the same time of year, generally in the spring (Ref 16). Producers are not likely to carry extensive feed inventories from season to season (Ref 16 and 18). Therefore, in both Canadian dairy and beef production, a 12-month period would generally be sufficient to allow purchased feed products that may contain MBM to be completely used.

We arrived at our determination that the Canadian feed ban was fully implemented and effectively enforced as of March 1, 1999, by adding this additional 12-month period to the 6-month ''practical implementation period'' following the August 1997 establishment of the feed ban in Canada. We believe that prohibiting the importation of bovines from Canada that were born before March 1, 1999, would provide an appropriate additional mitigation to what is an already extremely low risk of the introduction of BSE from Canada.

Assessment of Risk From Cattle of Canadian Origin

As noted above, Canada is currently the only country recognized by APHIS as a BSE minimal-risk region. In conjunction with this rulemaking, we have conducted an assessment that both quantitatively and qualitatively addresses the potential BSE risk of importing live bovines from Canada.

Arriving at an estimation of risk begins with laying out the risk pathway (a series of occurrences or steps necessary for disease to enter and become established). Next, the likelihood of each of the multiple steps must be estimated. In our risk assessment, although we analyze the likelihood of each individual step in the process occurring, we interpret its significance in the context of the entire process.

BSE Prevalence in Canada

One of the conditions for being recognized by APHIS as a BSE minimal-risk region is that the region have in

place and maintain risk mitigation measures adequate to prevent widespread exposure and/or establishment of the disease. In classifying Canada as a BSE minimal-risk region in our January 2005 final rule, we determined that such mitigation measures are in place and are maintained in Canada. For the risk assessment for this proposed rule, we have made a quantitative estimate of the prevalence of BSE among Canadian cattle, using data available to us through August 15, 2006, and have used this estimate as part of our quantification of the risk of transmission of BSE to U.S. livestock as a result of this rule. Our estimate indicates a very low level of BSE prevalence in Canada.

From the time of detection of the first native case of BSE in Canada in 2003, nine cases of Canadian-born BSE-infected cattle have been identified, as follows:

- In May 2003, BSE was confirmed in a cow in the Province of Alberta. The cow was determined to have been born in March 1997.
- In December 2003, BSE was confirmed in a cow of Canadian origin in Washington State. The cow was determined to have been born in April 1997.
- In January 2005, BSE was confirmed in two cows in the Province of Alberta. One of the cows was determined to have been born in October 1996. The other cow was determined to have been born in March 1998.
- In January 2006, BSE was confirmed in a cow in the Province of Alberta. The cow was determined to have been born in April 2000.
- In April 2006, BSE was confirmed in a cow in the Province of British Columbia. The cow was determined to have been born in April 2000.
- In June 2006, BSE (of a different phenotype than that in the other diagnoses) was confirmed in a cow in the Province of Manitoba. The cow was determined to have been born in approximately 1991.
- In July 2006, BSE was confirmed in a cow in the Province of Alberta. The cow was determined to have been born in April 2002.
- In August 2006, BSE was confirmed in a cow in the Province of Alberta, which, according to preliminary information available to APHIS, was born in 1996.

Of the nine Canadian-born cows diagnosed with BSE, three were born after March 1, 1999, the date we are proposing as the date of effective enforcement of a ruminant-to-ruminant feed ban in Canada. This is not unexpected, nor do we consider such diagnoses in any way to undercut our conclusion that March 1, 1999, can be considered the date of effective enforcement of the feed ban in Canada. Experience worldwide has demonstrated that, even in countries with an effective feed ban in place, BSE has occurred in cattle born after a feed ban was implemented. No regulatory effort can ensure 100 percent compliance. Isolated incidents, such as feed made from non-prohibited material being contaminated with prohibited material during processing, can occur due to human error. However, such isolated incidents are not epidemiologically significant and do not contribute to further spread of BSE, especially when considered in light of the entire risk pathway and its attendant risk mitigations.

Based on our determination that Canada has had in place since March 1, 1999, an effectively enforced feed ban that continues at a robust level, and the demonstrated effectiveness of a feed ban in reducing the likelihood of BSE transmission, our expectation is that the prevalence of BSE in Canada will continue to decline from its present minimal level. As we discuss in our risk assessment for this rulemaking, such a decline would decrease any possibility of BSE being introduced into the United States by Canadian cattle, and therefore decrease the negligible risk of the spread of BSE to U.S. cattle.

However, in our risk assessment, we also evaluated scenarios that are less likely than the one we expect, including no decrease in BSE prevalence in Canada over the next 20 years. Even using this extremely unlikely scenario, which would mean the continued detection of additional BSE—infected Canadian cattle born after March 1, 1999, our conclusion is that the BSE risk to U.S. livestock due to implementation of this proposed rule would be negligible.

We used a mathematical model to approximate the proportion of BSE—infected, but not necessarily clinically diseased, cattle in Canada. Our mathematical model is discussed in detail in the risk assessment we conducted in conjunction with this proposed rule. Using this mathematical model, we estimated that the prevalence of BSE in Canada, based on data available as of August 15, 2006, is 6.8 animals per every 10 million adult cattle. (The current adult cattle population in Canada is approximately 5.9 million animals.) In comparison, the same model was recently used to estimate the prevalence of BSE in the United States. The findings of that analysis supported a conclusion that BSE prevalence in the United States is below 1 case per million adult cattle, with a most likely estimate for the United States of 1 infected animal per 10 million adult cattle (Ref 19).[2]

Our estimate of BSE prevalence in Canada incorporates the United Kingdom data on the effectiveness of a feed ban. However, it should be noted that the actual prevalence of BSE in Canada is most probably lower than our estimate. This is because, where we needed to incorporate simplifying assumptions in our calculations, due to data uncertainty or the constraints of the mathematical model itself, we chose assumptions that, if anything, erred on the side of assuming greater prevalence.

An example of this is the data we used related to the diagnosis of BSE in a cow of Canadian origin in Washington State in December 2003. Although we incorporated that case into the number of Canadian-born cattle that have been diagnosed with BSE—which increased the estimate of overall BSE prevalence in Canada—we did not numerically increase the total Canadian cattle population by including in that country's number of cattle those animals of Canadian origin that had been imported into the United States and that tested negative for BSE. If those animals had been included in the figure used for the total Canadian cattle population, the estimated BSE prevalence would have been reduced. Additionally, we did not include in our calculations cows that were tested in Canada with negative results as part of investigations conducted after the diagnosis of BSE in cows of Canadian origin.

Projected Future Prevalence Rates in Canada

Our qualitative conclusion is that, due to the feed ban in Canada, BSE prevalence rates will progressively decline in that country over the next 20 years. However, because we could not provide an accurate prediction for the rate at which we would expect prevalence to decrease, we did not attempt to numerically represent the actual expected annual release over the 20 years of our analysis. For example, it would be guesswork to attempt to estimate exactly what the prevalence of BSE in Canada will be in the year 2012 and to use that figure in our mathematical model, even though, qualitatively, we consider it very likely that the prevalence will be less than it was in August 2006. Therefore, when creating a scenario for our quantitative

[2] The current adult cattle population in the United States is approximately 42 million animals.

calculations, we assume that the prevalence of BSE in Canada will remain the same for each of the next 20 years as it was in August 2006.

BSE Risk From Live Bovines From Minimal-Risk Regions

BSE prevalence, however, is just one factor that must be considered when determining the risk of BSE transmission. Requiring, as this rule would do, that live bovines imported into the United States from a BSE minimal-risk region be born after the date of effective enforcement of a feed ban, would mitigate the risk of exposure of U.S. livestock to the BSE agent. As discussed above, such a requirement would be consistent with the OIE recommendation to allow trade in live cattle from regions that have reported BSE if such regions have an effective feed ban in place.

Moreover and importantly, however, if an infected bovine from a BSE minimal-risk region were to be imported into the United States, for that bovine to transmit infection to a U.S. cow, each in a series of additional mitigations against such transmission would have to fail or be breached. The effect of such mitigations, discussed in greater detail in our risk assessment, was also discussed in the APHIS risk assessment that was conducted for our January 2005 final rule establishing the category of BSE minimal-risk regions (Ref 9). In the risk assessment for this rulemaking, we assess with regard to imports of live bovines from Canada (currently the only region recognized by APHIS as a BSE minimal-risk region), using updated data and assumptions, the likelihood of that series of mitigations failing if this proposed rule were implemented.

The mitigations that would have to be breached include:

- Slaughter controls and dead animal disposal;
- Rendering inactivation;
- Feed manufacturing and use controls;
- Biologic limitations to susceptibility.

As discussed in our risk assessments, these mitigations work in a series and are multiplicative in their risk-reduction effects; *i.e.*, however small the chances that BSE infected material would make it past the first mitigation, the likelihood of the material eventually infecting a U.S. animal would shrink to a significantly smaller level with each subsequent mitigation. The risk assessment for this proposed rule simulated the impact of these mitigations on the likelihood of exposure, establishment, and spread of BSE infectivity in the United States if this proposed rule were to be implemented, and quantified those impacts where possible.

Both qualitative and quantitative methods were used in the exposure assessment to evaluate the likelihood of exposing susceptible animals, given the release of infectivity via imported bovines. The most likely scenario of the release assessment included the assumption that the prevalence of BSE in the standing adult cattle population in Canada will continuously decrease. As explained earlier, this expected decrease could not be incorporated into the quantitative methods and, therefore, the possible exposures were assessed qualitatively. This qualitative exposure assessment of the most likely scenario of the release assessment—decreasing Canadian prevalence—indicates that the likelihood of BSE exposure and establishment in the U.S. cattle population as a consequence of infectivity in the United States introduced via imports from Canada is negligible.

Even though we concluded that it is most likely that Canadian prevalence will decrease, we also considered the less likely scenarios and quantitatively analyzed the impact of an assumed constant prevalence in Canada to simulate potential BSE exposure in U.S. cattle. The quantitative model used in the exposure assessment and its results include the much less likely scenario that Canadian BSE prevalence remains constant through 2026. Because we believe this situation is much less likely to occur, we have concluded that prevalence and release and, therefore, the number of infected animals occurring in the United States would be lower than the values derived from the quantitative exposure model.

Using a base-case assumption that the August 2006 BSE prevalence rate in Canada remains the same over the next 20 years, our quantitative model predicts the importation of a total of approximately 19 infected bovines over that period under the provisions of this proposed rule. (As discussed above, however, as a result of implementation of an effective feed ban, we expect the already low prevalence in Canada to decline over time.) The model further predicts that, if 19 infected bovines were imported over a 20-year period, approximately 2 U.S. animals would consequently be infected during that period due to such importations. (For purposes of comparison, the standing U.S. cattle population in 2006 is approximately 97 million animals, which would be multiplied over a 20-year period.)

Of the total number of infected animals predicted over the next 20 years (*i.e.*, the total of infected imported animals and infected U.S. cattle), only a small fraction (numerically, fewer than 1 (0.67)) would live long enough to develop clinical signs and be likely to contain significant levels of infectivity, due to the lengthy incubation period for BSE and the fact that most U.S. cattle are slaughtered before reaching the age when infectivity is manifested in clinical signs. Even assuming the unlikely event of no decline in the Canadian BSE prevalence rate over the next 20 years, the predicted results from our risk assessment indicate that, given the nature of BSE and the mitigations in place that prevent its transmission in the United States, it is highly unlikely that BSE would become established in the United States due to implementation of this proposed rule. And, as noted, we believe the quantitative component of our risk assessment overestimates the likely number of infected animals that would be present in the United States over the next 20 years as a result of importing cattle from Canada under the provisions of this proposed rule.

Sensitivity Analysis to Account for Uncertain Parameters

In reaching the conclusions discussed above, we used what we consider base-case conditions. In order to account for uncertainty, however, and to allow for possible divergence from those expected base case conditions, we have also done ''sensitivity analyses.'' Sensitivity analysis evaluates the degree to which changes in the data used in a model affect the model's results. Even assuming a combination of pessimistic values (*i.e.*, those generating greater risk than base-case conditions) for every model parameter used, we concluded that factors mitigating BSE risk in the United States (*e.g.*, at slaughter, during rendering, regarding feed manufacturing and use, and biological factors (the effect of an animal's age on its BSE susceptibility)) would prevent BSE amplification in the United States, and that any imported infectivity would disappear from the U.S. cattle population. A detailed discussion of the sensitivity analyses is contained in our risk assessment.

Proposed Regulatory Changes Regarding Live Bovines

Based on the information available to us, we believe that allowing the importation from a BSE minimal-risk region of live bovines born on or after the date of effective enforcement of a ruminant-to-ruminant feed ban in the region of export would continue to

protect against the introduction and spread of BSE in the United States, while removing unnecessary restrictions on the importation of such animals, and are proposing to amend § 93.436(a) of the regulations to allow such importations. The regulations would specify March 1, 1999, as the date of the effective enforcement a ruminant-to-ruminant feed ban in Canada, currently the only country recognized by APHIS as a BSE minimal-risk region.

We would remove the requirement in § 93.436(a)(1) of the current regulations that live bovines imported from BSE minimal-risk regions be less than 30 months of age when imported into the United States and when slaughtered. We would additionally remove the requirement in § 93.436(a)(1) and (b)(1) that such bovines not be pregnant when imported into the United States and the provisions in § 93.436 that limit importation to those bovines imported either for immediate slaughter or for movement to a feedlot and then to slaughter.

Identification and Movement of Live Bovines From BSE Minimal-Risk Regions

Section 93.436 also includes movement restrictions to help ensure that all bovines imported from BSE minimal-risk regions are slaughtered in the United States before they are 30 months of age. If we remove the requirement that the bovines be less than 30 months of age when slaughtered, certain of the movement restrictions in § 93.436 would no longer be necessary. We are proposing to remove those restrictions that would be unnecessary, as discussed below.

Permanent Identification of Bovines Moving to Other Than Immediate Slaughter

Current § 93.436(b)(3) requires that bovines imported from a BSE minimal-risk region for other than immediate slaughter (*i.e.*, for movement to a feedlot in the United States and then to slaughter) be permanently and humanely identified before arrival at the port of entry with a distinct and legible mark identifying the exporting country. The permanent identification required by the current regulations can be either a freeze brand, a hot iron brand, or some other method of identification applied to each animal's right hip. In this proposal, we retain the requirement that bovines imported from a BSE minimal-risk region for other than immediate slaughter be permanently marked to identify the exporting country. In the event a bovine from a BSE minimal-risk region were to be diagnosed in the United States with BSE, such marking would expedite initial identification of the animal's country of export. Traceback to the animal's premises of origin would then be facilitated by the animal's unique individual identification, which is currently required under § 93.436(b)(4) and which would continue to be required under the provisions of this proposed rule. However, we are proposing to specify an alternative to the requirement that the animal be marked on the right hip by freeze brand, hot iron, or some other method. (The current regulations allow in a general way for alternative means of identification with the Administrator's approval, but don't include any specifications for such alternative means of identification.)

We are proposing to specify in § 93.436(b)(2) that, in addition to the options for permanent identification already included there, the permanent identification of bovines imported from BSE minimal-risk regions can be in the form of a tattoo on the inside of one ear of each animal that identifies the exporting country. Bovines imported from Canada that are identified by tattoo would have to be identified with the letters ''CAN''.

We proposed in our November 2003 proposed rule to limit the country-of-export permanent identification to a tattoo. However, comments from the public on that proposed rule expressed concern that tattoos might become illegible over time, could not be effectively monitored without restraining the animal, might become obscured by dirt and hair, and are not readily visible—particularly on animals with dark-skinned ears. In our January 2005 final rule, we agreed that tattoos might not provide readily visible identification of the country of origin of bovines, and set forth instead the requirement described above.

We continue to believe that tattoos might not be the most readily visible means of identification of live animals in groups of animals. However, as noted above, the purpose of requiring permanent identification of the animal's country of export in this proposed rule is to expedite initial identification of an animal's country of export in the event the animal is diagnosed with BSE. Such a diagnosis cannot be confirmed on a live animal. Once the animal has been euthanized or has otherwise died, an ear tattoo would be an effective means of identification.

Sealing of Means of Conveyance and Movement as a Group; Bovines Imported for Movement to a Feedlot

We are proposing to remove the requirement in § 93.436(b)(6) that live bovines imported from a BSE minimal-risk region for feeding and then slaughter be imported in a means of conveyance sealed in the region of origin with seals of the national government of the region origin, and be moved directly from the port of entry as a group to a feedlot identified on the APHIS movement documentation currently required for such animals. Under this proposed rule, the importation of bovines from a BSE minimal-risk region would not be dependent on whether the animals are less than 30 months of age when imported and when slaughtered, but, rather, would be governed by whether the animals were born on or after the date of effective enforcement of a ruminant-to-ruminant feed ban in the exporting region. Once imported, the bovines would be handled in the same way as U.S. bovines. Therefore, we do not believe it would be necessary to retain the provisions in the regulations that were designed to help ensure that bovines from a BSE minimal-risk region are moved directly to a feedlot and are handled as an easily identifiable group.

Sealing of Means of Conveyance and Movement as a Group; Bovines Imported for Immediate Slaughter

We are also proposing to remove the requirement in § 93.436(a)(6) that the bovines imported from BSE minimal-risk regions for immediate slaughter be slaughtered as a group. However, we would continue to require that bovines from Canada imported for immediate slaughter be moved directly as a group from the port of entry in a sealed means of conveyance. We would require that the means of conveyance be sealed at the port of entry with seals of the U.S. Government, rather than requiring the sealing to occur in the region of export with seals of the national government of the region of export, as required in the current regulations. We explain our rationale for these proposed provisions in the following paragraphs.

With regard to BSE, the purpose of requiring in the current regulations that bovines from BSE minimal-risk regions that are imported for immediate slaughter be moved to the slaughtering establishment in a sealed means of conveyance is to guard against diversion of any of the animals between the port of entry and the slaughtering establishment, in order to ensure that the animals are slaughtered as a group

before 30 months of age. Because this proposed rule would not require that the animals be slaughtered before 30 months of age, there would be no BSE-related reason to require sealing of the means of conveyance.

However, we believe it is necessary to continue to require sealing of means of conveyance transporting bovines from Canada to immediate slaughter as a mitigative measure against diseases other than BSE. Cattle imported from Canada for immediate slaughter are not subject to tuberculosis and brucellosis testing requirements that would otherwise be applied to animals imported into the United States. Therefore, we would continue to require that such cattle be moved directly to slaughter in a sealed means of conveyance. (APHIS had been requiring such sealing at the port of entry even before our November 2003 proposal regarding BSE. However, the requirement for sealing was being done as APHIS policy, and was not specified in the regulations.)

Where Sealing Must Take Place

We are proposing to remove the requirement that the sealing of the means of conveyance be done in the region of export. That requirement was included in the January 2005 final rule in response to comments from members of the public who expressed concern that requiring sealing at the port of entry could be harmful to the welfare and quality of the animals, due to delays at the port of entry. Under the provisions of this proposed rule, however, we do not expect undue delays of shipments at the port of entry. When a means of conveyance carrying bovines for immediate slaughter arrives at the U.S. port of entry, APHIS inspectors would confirm that the animals are as described on the certificate that must accompany the animals being imported, but generally would not require that the animals be offloaded from the means of conveyance. Therefore, requiring that the sealing of the means of conveyance take place at the port of entry would not cause measurable delay of the shipment. Further, sealing at the port of entry rather than in the region of export will reduce the time the animals will need to be contained in a sealed means of conveyance and reduce the likelihood that a seal will need to be broken between the time it is applied and the arrival of the animals at a slaughtering establishment.

APHIS Form VS 17–130

Currently, § 93.436(b)(8) requires that bovines imported from BSE minimal-risk regions for movement to feeding and then slaughter be accompanied from the port of entry to the feedlot by APHIS Form VS 17–130 or other movement documentation deemed acceptable by the Administrator, which must identify the physical location of the feedlot, the individual responsible for the movement of the animals, and the individual identification of the animal. Because, under this proposed rule, bovines imported from a BSE minimal-risk region that are not moved for immediate slaughter would not be limited to moving to a feedlot and then slaughter, it would no longer be necessary to require that the bovines be accompanied by a VS Form 17–130 that identifies the feedlot of destination. The other necessary information on the VS Form 17–130–*e.g.*, the individual responsible for the movement of the animals and the individual identification of the animal-is already required on the health certificate that must accompany the animals under § 93.405. Therefore, we are proposing to remove the requirement that live bovines imported from BSE minimal-risk regions for other than immediate slaughter be accompanied by VS Form 17–130.

Transport From Feedlots to Slaughter

We are proposing to remove the requirement in § 93.436(b)(9) that the bovines imported from BSE minimal-risk regions for other than immediate slaughter remain at a feedlot until transported from the feedlot to a recognized slaughtering establishment for slaughter, and we are proposing to remove the requirement in § 93.436(b)(10) that the bovines be moved directly from the feedlot to a recognized slaughtering establishment in conveyances sealed at the feedlot with seals of the U.S. Government. We are also proposing to remove the requirement in § 93.436(b)(11) that the bovines be accompanied from the feedlot to a recognized slaughtering establishment by APHIS Form VS 1–27 or other movement documentation deemed acceptable by the Administrator, identifying the physical location of the recognized slaughtering establishment, the individual responsible for the movement of the animals, and the individual identification of the animal. This requirement would not be necessary because, under this proposed rule, cattle imported for other than immediate slaughter would not be limited to those less than 30 months of age that are moved directly to a feedlot and then to slaughter.

Immediate Slaughter

Section 93.420 contains provisions regarding the importation of ruminants from Canada for immediate slaughter, and applies to all ruminants from Canada imported for immediate slaughter, including sheep, goats, bovines, and other types of ruminants. However, as applied to sheep, goats, and bovines, many of the requirements in § 93.420 are duplicative of provisions set forth in § 93.419 for sheep and goats and in § 93.436 for bovines. Because the majority of provisions in the current regulations regarding the importation of bovines and sheep and goats from Canada for immediate slaughter are contained in § 93.436 and § 93.419, respectively, we are proposing to rewrite § 93.420 so that it applies only to ruminants imported from Canada for immediate slaughter other than bovines, sheep, and goats. Any provisions of current § 93.420 that are still applicable to bovines, sheep, and goats under this proposed rule and that do not already appear in § 93.436 or § 93.419 would be moved to those sections. 9 CFR 93.405.

In accordance with § 93.405 of the regulations, bovines, sheep, and goats imported from BSE minimal-risk regions must be accompanied by a health certificate. Among the information that must be recorded on the health certificate is the specific physical location of the feedlot or recognized slaughtering establishment where the ruminants are to be moved after importation. Because, under this proposed rule, bovines imported from BSE minimal-risk regions would not be limited to moving to a feedlot or slaughtering establishment, we are proposing to change that provision in § 93.405(a)(4) to refer to ''destination,'' rather than to ''feedlot or recognized slaughtering establishment.''

*B. Bovine Blood and Blood Products*

Blood and blood products can be divided into two main groups:

1. In addition to whole blood, those products derived from blood that are composed of cells, such as red cell concentrate and platelets; and

2. Plasma (that portion of blood that is cell-free) and products derived from plasma, such as serum (plasma with fibrinogen and clotting factors removed), clotting factors, immunoglobins and albumin (Ref 20).

Fetal bovine serum (FBS) is the most commonly imported blood-derived commodity. FBS is serum derived from blood of bovine fetuses. As serum, it is the cell-free portion of blood with fibrinogen and clotting factors removed. It is used in tissue culture media,

including those used to produce pharmaceuticals and biological products, such as vaccines, and cannot be derived synthetically.

BSE Risk Associated With Bovine Blood and Blood Products From BSE Minimal-Risk Regions

Our January 2005 final rule did not include provisions for the importation of bovine blood and blood products from BSE minimal-risk regions. We considered it advisable at the time to continue to prohibit the importation of blood and blood products from such regions (with the exception of those commodities that were already allowed to be imported for restricted use from BSE-affected regions under § 95.4(b) and (d)).

In consultation with FDA, we have continued to assess the risk of BSE from blood and blood products from BSE minimal-risk regions. Based on the conclusions of our assessment, we are proposing to amend the regulations in § 95.4 to allow the importation of blood and blood products from such regions under specified conditions, which we discuss below.

Consistent with the approach of the risk assessment conducted for this proposed rule with regard to live animals and bovine small intestine, the risk estimation for blood and blood products relies on a comprehensive understanding of the multiple steps in the risk pathway. Thus, to understand the likelihood of BSE spreading and becoming established in the United States as a result of importing blood and blood products from a BSE minimal-risk region (currently only Canada), we examine the entire risk pathway. We evaluate the evidence from research to date—including research that has not detected infectivity in bovine blood and research in other species where infectivity has been detected—in the context of this larger risk pathway. Analysis of this risk pathway, discussed below, is the basis for our proposal to allow, under specified conditions, the importation of blood and blood products derived from bovines from BSE minimal-risk regions.

One of the conditions for being recognized by APHIS as a BSE minimal-risk region is that the region have in place and enforce risk mitigation measures adequate to prevent widespread exposure and/or establishment of the disease, so that, even if one of the very few infected bovines in a BSE minimal-risk region were a source of imported blood or blood products, additional factors would act to further diminish the likelihood of the BSE agent's entering the United States in bovine blood or blood products.

Perhaps the most important factor is that, in research using infected bovines, infectivity has not been detected in cattle blood or any tested derivatives (Ref 21). This finding is applicable to clotted blood and fetal calf blood, and to products derived from whole blood, such as serum or buffy coat (the white cell fraction of centrifuged whole blood). As noted below, research in other species with BSE or other TSE agents has demonstrated infectivity in blood, and we use these studies to further inform our risk assessment. In addition, because blood components—such as FBS and bovine serum albumin (BSA)—are used in the manufacture of vaccines, it is worthwhile to address injection vs. oral consumption as a route of exposure.

Injection presents a different risk pathway than does oral consumption of BSE-contaminated bovine materials. The route of exposure can affect the risk of disease transmission. The relative efficiencies of different transmission routes of BSE have been reported to be, in decreasing order, intracerebral (injecting directly into the brain), intravenous (injecting directly into a vein), intraperitoneal (injected directly into the abdominal cavity), subcutaneous/intramuscular (injecting below the skin and/or into a muscle), and oral. It is estimated that the subcutaneous/intramuscular route of transmission requires 10 times the dose of a TSE agent to cause infection as does the intracerebral route and that oral/intragastric transmission requires 10 times the dose needed for subcutaneous/intramuscular transmission. In other words, injection of a BSE agent into an animal is a more efficient way of transmitting the disease agent to that animal than getting it into the animal through its food.

The difficulty in examining the possibility of BSE transmission through injection is that BSE infectivity has not been detected in unprocessed bovine blood. We generally avoid extrapolating from studies of TSEs other than BSE in species other than bovines; however, in order to consider the only available evidence, we elected to use such studies as potential indicators of the behavior of BSE in cattle blood if, contrary to current evidence, it were to be present at previously undetectable levels. These studies are discussed in detail in our risk assessment.

It is important to restate that no studies have demonstrated BSE infectivity in bovine blood and that we considered studies that involved TSEs other than BSE and species other than bovines. If, contrary to current research, BSE infectivity were to be distributed in bovine blood, research indicates that the BSE infectivity would likely be highest in the cellular components of the blood. These cellular fractions of the whole blood, both red and white cells, are excluded from the blood when harvesting FBS and BSA for use in the preparation of vaccines and drugs.

Another component of the pathway of interest consists of the ways in which bovine blood that is collected might in some way become contaminated with SRMs at the time of collection, particularly in a slaughter environment. To guard against such possible contamination, it would be necessary to collect the blood in a closed system (a system in which the blood is conveyed directly from the animal in a closed conduit to a closed receptacle) or in an otherwise hygienic manner. Additionally, to prevent blood collected from a fetal calf from becoming contaminated with SRMs, the uterus from a slaughtered dam should be removed intact and taken to a separate area away from the slaughtering area of the facility. Further, pithing or use of air injection stunning devices at slaughter could cause macro-emboli from higher risk tissues from the animal's central nervous system to be introduced into the animal's circulatory system. Prohibiting the use of these processes is necessary to prevent contamination of the blood.

Proposed Regulatory Changes Regarding Blood and Blood Products

Currently, the regulations in § 95.4 specify that only the following blood products for the following uses are eligible for importation from any region listed in § 94.18(a) (including (a)(1) through (a)(3)), based on the fact that the manner in which they are used makes it highly unlikely they will come in contact with ruminants in the United States:

- Under § 95.4(b), serum derived from ruminants that have been in any region listed in § 94.18(a) may be imported into the United States for scientific, educational, or research purposes if the APHIS Administrator determines that the importation can be made under conditions that will prevent the introduction of BSE into United States. Such serum is allowed importation into the United States only if it is accompanied by an import permit issued by APHIS in accordance with 9 CFR 104.4 (a U.S. Veterinary Biological Product Permit), and must be moved and handled as specified on the permit.
- Under § 95.4(d), serum albumin (a blood plasma protein) derived from

ruminants that have been in any region listed in § 94.18(a) may be imported into the United States for use as an ingredient in cosmetics (provided FDA import requirements are also met), if the person importing the article obtains a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors, which states the intended use of the article and the name and address of the consignee in the United States.

All other serum and serum albumin from regions listed in § 94.18(a) is prohibited importation into the United States.

The regulations in § 95.4 regarding BSE do not specifically reference blood and blood products other than those described above—either to prohibit or to allow their importation—largely because commercial interest in importing blood products from regions listed in § 94.18(a) has focused on serum and serum albumin. By policy, however, APHIS has prohibited the importation of any blood and blood products from § 94.18(a) regions, other than those described above.

Based on our evaluation of the BSE risk associated with bovine blood and blood products from BSE minimal-risk regions, we believe that bovine blood and blood products may be imported from BSE minimal-risk regions if properly protected against contamination. We are, therefore, proposing the following changes to the regulations at § 95.4(e).

In general, blood collected from bovines can be obtained in one of three ways: It can be collected from an animal that has been slaughtered, it can be collected from a live donor animal (similar to human blood collection), and it can be collected from the fetal calf of a bovine dam that has been slaughtered.

For all of the above three manners of collection, we would require that the blood be collected in a closed system or in an otherwise hygienic manner that prevents contamination of the blood with SRMs. This requirement is necessary to ensure that the blood is not contaminated after collection.

Prohibited Methods of Stunning

When a bovine is slaughtered as part of the process of blood collection, we would require in § 95.4(e)(1)(ii) and (e)(2)(ii) that the slaughtered animal was not subjected to a stunning process with a device injecting compressed air or gas into the cranial cavity, or subjected to a pithing process. Either of those processes create the possibility that macro-emboli from higher risk tissues from the animal's central nervous system might be introduced into the animal's circulatory system.

Fetal Calves

For blood collected from a fetal calf, we would require in § 95.4(e)(2)(iii) that the uterus be removed from the slaughtered dam's abdominal cavity intact and taken to a separate area sufficiently removed from the slaughtering area of the facility to ensure that the fetal blood is not contaminated with SRMs when collected.

Animal Health Requirements

Also, although it is extremely unlikely that any given bovine in a BSE minimal-risk region would be infected with BSE, because of the often undifferentiated clinical signs of BSE (*i.e.*, clinical signs that could be attributed to either BSE or some other disease(s)), we consider it prudent to disqualify from importation into the United States blood and blood products drawn from live bovines showing signs of any type of disease. Therefore, we would require in § 95.4(e)(1)(ii) and (e)(2)(ii) that bovines slaughtered as part of the process of collection (*e.g.*, when blood is collected directly from the slaughtered animal or from the fetal calf of a slaughtered dam) have passed ante-mortem inspection to ensure that the animals are clinically normal and have no obvious signs of disease. If the blood is collected from a live bovine donor, the donor animal must be free of clinical signs of disease.

We are proposing to add language to § 95.4 to prohibit the importation of the blood and blood products and derivatives of blood and blood products, except as specifically provided in § 95.4. This would codify current policy.

Required Certification

We would require in § 95.4 that the shipment of blood or blood products to the United States be accompanied by an original certificate signed by a full-time salaried veterinary officer of the national government of the region of origin, or issued by a veterinarian designated by or accredited by the national government of the region of origin, attesting that the veterinarian issuing the certificate was authorized to do so. The certificate must state that the applicable requirements of § 95.4 have been met.

*C. Small Intestine of Bovines*

The requirement established in the January 2005 final rule for removal of the entire small intestine of bovines from BSE minimal-risk regions was consistent with the FSIS regulations at that time, which govern the slaughter of animals in the United States for meat and meat products for human consumption. The FSIS regulations also apply to slaughtering establishments in other countries that wish to export meat to the United States. FSIS regulations (9 CFR 327.2) provide that a country can be considered eligible to export meat and meat products to the United States only if it maintains a meat inspection program equivalent to that of the United States. A country must demonstrate ''equivalence'' by implementing measures that provide the same level of protection against food hazards as is achieved domestically. FSIS conducts audits of eligible foreign countries' meat inspection systems at least annually. At the time of our January 2005 final rule, FSIS required that the entire small intestine be removed and be disposed of as inedible, in order to ensure removal of the entire distal ileum.

Research Regarding BSE and the Gastrointestinal System of Cattle

As discussed in our risk assessment for this proposed rule, in studies regarding the pathogenesis of BSE in the gastrointestinal system of cattle experimentally and naturally exposed to the BSE agent, no BSE infectivity was detected at any time in the esophagus, reticulum, rumen, abomasum, proximal small intestine, proximal colon, distal colon, and rectum (Ref 21). The studies demonstrated that, if infectivity in intestinal tissues of bovines (other than distal ileum) exists, it is below the level of detection by mouse bioassay (*i.e.*, the insertion of tissue with infectivity from a bovine into a mouse). Based on these studies, we have concluded that intestine other than the distal ileum is highly unlikely to contain epidemiologically significant levels of infectivity, if any infectivity is present at all.

These studies have been compelling to the international scientific community, and the OIE has based international trade guidelines on the likelihood that the distal ileum, but not the remainder of the bovine intestine, is a potential source of BSE infectivity. The distal ileum is the only portion of the bovine intestine for which OIE recommends any trade restrictions because of BSE.

FSIS and FDA Regulations Regarding the Small Intestine

On September 7, 2005, FSIS published in the **Federal Register** an interim final rule that allowed for use as human food, under certain conditions, beef small intestine, excluding the distal ileum, derived from cattle slaughtered in official U.S. establishments or in

certified foreign establishments in countries listed by FSIS in 9 CFR 327.2(b) as eligible to export meat products to the United States (Ref 22). FSIS also provided that it will permit casings derived from beef small intestine, excluding the distal ileum, to be used as containers of meat food products only if the casings are derived from cattle that have been inspected and passed in an official U.S. establishment or a certified foreign establishment.

Also on September 7, 2005, FDA published an interim final rule (Ref 23) and request for comments in which it provided that small intestine is not considered a prohibited cattle material if the distal ileum is removed by a qualifying procedure. FSIS imposed a similar requirement in its interim rule.

The small intestine of cattle attaches at its most proximal end (closest to the mouth) to the most distal (closest to the anus) chamber of the ruminant stomach. The most proximal segment of small intestine is the duodenum. Distal to the duodenum is the very long jejunum. The duodenum and jejunum are used for natural beef casings. Distal to the jejunum is the ileum, which is estimated to be 2- to 3-feet long (Ref 24). The distal-most portion of the ileum, or ''distal ileum,'' is estimated to be 12- to 18-inches long. It attaches at the most proximal portion of the large intestine, the cecum, at what is termed the ''ileocecal junction'' or ''ileocecal orifice.'' Just distal to the ileocecal junction is the cecocolic junction.

FSIS and FDA have determined that the distal ileum can be effectively removed from the rest of the small intestine (Ref 22 and 23). They have also determined that the remaining small intestine can be used as human food if the distal ileum is removed (Ref 22 and 23). To ensure complete removal of the distal ileum, both FSIS and FDA require the removal of at least 80 inches of the uncoiled and trimmed small intestine as measured from the cecocolic junction, unless the processing establishment has demonstrated that an alternative method is effective in ensuring complete removal of the distal ileum. Based on bovine anatomy as described above, we concur that removal of at least 80 inches of the uncoiled and trimmed small intestine as measured from the cecocolic junction will remove the distal ileum.

Proposed Regulatory Changes Regarding Bovine Small Intestine

In our January 2005 final rule, we provided in § 94.19 that one of the conditions for the importation of meat, meat byproducts, and meat food products derived from bovines from BSE minimal-risk regions is that the commodity have been derived from bovines from which the SRMs were removed at slaughter. This same condition is set forth in § 95.4(g) with regard to offal derived from bovines from BSE minimal-risk regions.

The regulations at § 94.19 also require, in addition to the removal of SRMs, the removal of the entire small intestine, even though only part of the small intestine (the distal ileum) has been determined to be an SRM.

Because it is possible to effectively separate and remove the distal ileum from the remainder of a bovine's small intestine, we are proposing to remove the requirements in § 94.19(a)(2), (b)(2), and (f) that bovine meat, meat byproducts, meat food products, and whole or half carcasses intended for importation from BSE minimal-risk regions be derived from animals from which the entire small intestine was removed at slaughter. We would require instead only that SRMs have been removed. (Under FSIS regulations, in effect, the distal ileum SRM includes 80 inches of the uncoiled and trimmed small intestine as measured from the cecocolic junction, unless the processing establishment has demonstrated that an alternative method is effective in ensuring complete removal of the distal ileum.) Similarly, we are proposing to remove the importation condition in § 95.4(g)(1)(i) (which we are proposing in this document to redesignate as § 95.4(h)(1)(i)) that offal derived from bovines from BSE minimal-risk regions be derived from animals from which the small intestine was removed, and would provide instead that the offal must have been derived from bovines from which SRMs were removed.

*D. Bovine Casings*

Currently, § 96.2(b) prohibits the importation of casings, except stomachs, from bovines and other ruminants that originated in or were processed in any region listed in § 94.18(a), which includes BSE minimal-risk regions. In § 96.1, *animal casings* are defined as intestines, stomachs, esophagi, and urinary bladders from cattle, sheep, swine, or goats that are used to encase processed meats in foods such as sausage.

As explained above, only the distal ileum of the small intestine of bovines presents a BSE risk, and FSIS and FDA have established procedures for effective removal of the distal ileum from the remainder of the small intestine. There is no scientific evidence of BSE infectivity in ruminant esophagi or urinary bladders.

Proposed Regulatory Changes Regarding Bovine Casings

Therefore, we are proposing to amend § 96.2 of the regulations to allow the importation of casings derived from bovines from BSE minimal-risk regions if the casings are derived from that part of the small intestine that is eligible for use as human food in accordance with the requirements established by FSIS at 9 CFR 310.22 and FDA at 21 CFR 189.5 and 21 CFR 700.27. We are also proposing to allow the importation from BSE minimal-risk regions of casings derived from bovine esophagi and urinary bladders.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be economically significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Under the Animal Health Protection Act of 2002 (7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture is authorized to promulgate regulations if he or she determines that the regulations are necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock.

This proposed rule would amend the regulations by establishing conditions for the importation of the following commodities from regions that present a minimal risk of introducing BSE into the United States: Live bovines for any use born on or after a date determined by APHIS to be the date of effective enforcement of a ruminant-to-ruminant feed ban in the region of export (for live bovines from Canada, that date is March 1, 1999); blood and blood products derived from bovines; and casings and part of the small intestine derived from bovines.

In accordance with Executive Order 12866 and the Regulatory Flexibility Act, we assessed the potential economic costs and benefits of this rule and potential effects on small entities. Below is a summary of our economic analysis. The full economic analysis may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

We do not have enough data for a comprehensive analysis of the potential

economic effects of this proposed rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis for this proposed rule. We are inviting comments about this proposed rule as it relates to small entities. In particular, we are interested in determining the number and type of small entities that would incur benefits or costs from the implementation of this proposed rule and the economic effect of those benefits or costs.

*The Proposed Rule and This Analysis*

The purpose of this proposed rule is to remove certain restrictions on the importation of certain bovine commodities from BSE minimal-risk regions. APHIS has determined that the restrictions are unwarranted to prevent the introduction and dissemination of BSE into the United States from such regions.

The risk assessment for this proposed rule analyzes the likelihood that importing those commodities from Canada would introduce and disseminate BSE into the U.S. cattle population. The likelihood of release (introduction of the disease agent), the likelihood of exposure for susceptible animals given release, and the magnitude of consequences given release and exposure are evaluated either quantitatively or qualitatively. The risk estimation that combines these components concludes that the BSE risk posed by the proposed rule would be negligible.

This preliminary regulatory impact analysis addresses expected economic effects of allowing resumption of imports from Canada of the commodities listed above. Expected benefits and costs are examined in accordance with Executive Order 12866. Expected economic impacts for small entities are also considered, as required by the Regulatory Flexibility Act. Effects for Canadian and other foreign entities are not addressed in this analysis. However, the Agency expects reestablished access to U.S. markets to benefit Canadian producers and suppliers of commodities included in the proposed rule and, for at least one commodity, cull cattle/processing beef, to result in partial displacement of processing beef imports from other sources.

*Analytical Approach*

We expect the proposed rule to have effects for several different categories of commodities, and benefits to exceed costs overall. Using projected baseline data for the United States and projected imports from Canada with and without the rule, we compute impacts for four commodity categories: Cull cattle/processing beef would be the commodity primarily affected, due to the resumption of cull cattle imports from Canada; and feeder cattle, fed cattle, and fed beef would be affected secondarily, as Canada's slaughter mix adjusts to reestablished exports of culled cows, bulls, and stags to the United States.

The demand for cull cattle is derived from the demand for processing beef, and only a small portion of the U.S. supply of processing beef would come from imported Canadian cull cattle. Therefore, cull cattle and processing beef are combined into a single commodity category. Processing beef refers to lean, boneless beef that is mixed with trimmings from grain-fed cattle to produce ground beef, thereby complementing the domestic production of fed beef. Demand for processing beef is high, as reflected in robust ground beef sales. Despite higher domestic cull cattle slaughter in past months in response to drought conditions, U.S. production of processing beef is currently trending low because the industry is in the early stages of the expansion phase of the cattle cycle.

Historically, Canada has been a major trading partner of the United States in livestock and meat. In 2002, prior to the discovery of BSE in Canada, the United States imported 1.7 million live bovines from Canada, valued at more than $1.1 billion and accounting for more than 67 percent of U.S. total bovine imports. That same year, the United States imported from Canada 382,110 MT of bovine meat, also valued at $1.1 billion, which comprised about 44 percent of bovine meat imports from all sources. U.S.-Canadian cattle and beef trade changed dramatically following Canada's May 2003 BSE discovery. Canada's cattle population increased rapidly following the loss of export markets for its cattle and beef. Its excess cow population and the strong U.S. demand for cull cattle/processing beef underlie imports of Canadian cull cattle expected to occur with this rule.

We evaluate welfare impacts of the proposed rule for cull cattle/processing beef, feeder cattle, fed cattle, and fed beef using a net trade, non-spatial partial equilibrium model.[3] Present and annualized values of welfare gains and losses for the 5-year period, 2007–2011, are computed using 3 percent and 7 percent discount rates. The present and annualized values are expressed in 2006 and 2001 dollars.

For five other commodity categories—breeding cattle, vealers and slaughter calves, bison, bovine casings and small intestine products, and bovine blood and blood products—we do not quantitatively model expected effects of the proposed rule. For the first three of these categories, changes in import quantities projected under the proposed rule are very small, suggesting that impacts for U.S. entities would not be significant. For bovine casings, small intestine products, and blood and blood products, insufficient information about the commodities and quantities that would be imported and levels of U.S. production and consumption prevents us from modeling expected effects of the rule.

*Price and Quantity Impacts for the Modeled Commodities*

The proposed rule is expected to result in the resumption of cull cattle imports from Canada. In addition, declines in imports of feeder cattle, fed cattle, and fed beef are expected to occur as a result of the resumption of cull cattle imports affecting the slaughter mix in Canada. The baseline, along with the projected changes, are presented in Table VIII, below. Relative prices highlight the different situations for the Canadian and U.S. cull cattle markets. For example, in September, 2006, the price of slaughter cows in Canada was only 70 percent of the comparable U.S. price.

*Cull cattle/processing beef.* With the rule, imports of cull cattle from Canada would result in price declines for processing beef. Over the period of analysis, the annual decrease in the price of processing beef, all things equal, is expected to average about 4.3 percent, ranging from declines of $5 per cwt (hundredweight, 100 pounds) in 2007, to $3 per cwt in 2009. In response to this price effect, wholesale demand for processing beef would increase by an average of about 114 million pounds per year over the period of analysis, and domestic supply would decrease by an annual average of about 131 million pounds.

*Feeder cattle, fed cattle, and fed beef.* Imports of feeder cattle, fed cattle, and fed beef are projected to decrease because of the rule. Of these commodities affected secondarily, the

[3] A complete description of the model is provided in: Forsythe, K.W. ''An Economic Model for Routine Analysis of the Welfare Effects of Regulatory Changes.'' V3.00. U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Centers for Epidemiology and Animal Health, April 20, 2005 (draft). It can be found at *http://www.aphis.usda.gov/peer_review/content/printable_version/bas_model_econOnly_apr20.pdf.*

largest impacts would be for feeder cattle. We estimate that the price of feeder cattle would increase in 2007 by about 0.3 percent, from $733 to about $735 per head in 2006 dollars. Over the 5-year period of analysis, the annual increase in feeder cattle prices attributable to the proposed rule, all things equal, is expected to average about 0.6 percent, ranging from about $2.20 per head in 2007, to about $4.60 per head in 2010. In response to these price increases, there would be an average annual decrease in the demand for feeder cattle of about 152,000 head over the period of analysis, and an average annual increase in domestic supply of about 66,000 head.

For fed cattle, our analysis indicates that the price would increase by less than 0.1 percent in 2007. Over the 5-year period, the annual increase in fed cattle prices attributable to the proposed rule, all things equal, is expected to average less than 0.2 percent, ranging in 2006 dollars from 35 cents per head in 2007, to about $1.90 per head in 2009. We estimate that these small changes in price would cause the demand for fed cattle to decrease by an average of about 33,000 head per year and the domestic supply of fed cattle to increase by an average of 26,000 head per year.

Impacts of the proposed rule for fed beef are expected to be very small, with the price increasing in 2007 by less than 0.3 percent, or about 36 cents per cwt carcass weight equivalent from a base price of $142. Over the 5-year period of analysis, the increase in fed beef prices, all things equal, is expected to average less than 0.1 percent, with no effect projected for the last 3 years.

Clearly, the largest price effects would result from the resumption of cull cattle imports from Canada, an expected outcome matched by estimated welfare impacts.

**Welfare Effects for the Modeled Commodities**

In this analysis, consumption and production have commodity-specific definitions that differ from their commonly understood meanings. These definitions are central to interpreting the changes in welfare, and are shown in Table I. They imply that the proposed rule may have mixed effects for at least some entities in the affected industries.

TABLE I.—DEFINITIONS OF CONSUMERS AND PRODUCERS FOR THE MODELED COMMODITY CATEGORIES

| Commodity category | Consumers | Producers |
|---|---|---|
| Feeder cattle | Buyers of cattle for feedlot feeding in the United States. | Sellers of U.S.-raised cattle for feedlot feeding in the United States. |
| Fed cattle | Buyers of fed cattle for slaughter in the United States. | Sellers of U.S.-sourced fed cattle for slaughter in the United States. |
| Cull cattle/processing beef | U.S. buyers of processing beef at the wholesale level. | Sellers of U.S.-produced processing beef at the wholesale level. |
| Fed beef | U.S. buyers of fed beef at the wholesale level | Sellers of U.S.-produced fed beef at the wholesale level. |

*Cull cattle/processing beef.* Projected cull cattle imports from Canada are converted to their processing beef equivalent using projected carcass weights for cows, bulls, and stags, as shown in the note to Table II. Consumers (buyers of processing beef at the wholesale level) can be expected to benefit from welfare gains and producers (sellers of processing beef at the wholesale level) can be expected to bear welfare losses due to the cull cattle imports. The present value of the welfare changes in 2006 dollars when using a 3 percent discount rate would be $1.24 billion in consumer gains, $657 million in producer losses, for a net benefit of about $587 million. Annualized values over the 5 years, in 2006 dollars when using a 3 percent discount rate, would be consumer gains of $271 million, producer losses of $143 million, and net benefits of $128 million.

TABLE II.—CULL CATTLE/PROCESSING BEEF: PRESENT AND ANNUALIZED VALUES OF WELFARE CHANGES WITH THE PROPOSED RULE, 2007–2011

| | Discount rate (percent) | Changes in welfare | | |
|---|---|---|---|---|
| | | Consumer | Producer | Net |
| | | (Thousand dollars) | | |
| Present value: | | | | |
| 2006 Dollars | 3 | 1,243,147 | −656,540 | 586,607 |
| | 7 | 1,120,778 | −590,070 | 530,708 |
| 2001 Dollars | 3 | 1,080,856 | −570,814 | 510,043 |
| | 7 | 974,488 | −513,038 | 461,450 |
| Annualized value: | | | | |
| 2006 Dollars | 3 | 271,447 | −143,358 | 128,089 |
| | 7 | 273,347 | −143,912 | 129,435 |
| 2001 Dollars | 3 | 236,010 | −124,640 | 111,370 |
| | 7 | 237,669 | −125,125 | 112,544 |

**Note:** Consumers are U.S. buyers of processing beef at the wholesale level; producers are sellers of U.S.-produced processing beef at the wholesale level. Cull cattle imports from Canada in thousand head are converted to processing beef in million pounds carcass weight equivalent by multiplying by the following carcass weights (pounds) for cows and bulls/stags, respectively: 2007, 576 and 888; 2008, 579 and 893; 2009, 583 and 899; 2010, 586 and 904; and 2011, 590 and 909 (Source: Expert opinion, USDA Economic Research Service, Market and Trade Economics Division, Animal Products, Grains, and Oil Seeds Branch).

Welfare changes for the cull cattle/processing beef category dominate the modeled effects. The relatively large impacts are not unexpected, given that this is the one modeled commodity category for which imports from Canada would be newly reestablished. The numbers of cull cattle that would be imported with the rule, projected to average 545,000 cows and 66,000 bulls and stags per year, 2007–2011, are much larger than the projected average annual declines in feeder cattle (218,000 head) and fed cattle (59,000 head).

*Feeder cattle, fed cattle, and fed beef.* Fewer feeder cattle and fed cattle and less fed beef are projected to be imported from Canada with the rule than would enter without the rule, and the model indicates for these commodities gains in producer welfare (higher prices and less competition from Canadian suppliers) and losses in consumer welfare (higher prices and fewer feeder, fed cattle, and less fed beef available for purchase). Of these three commodities, the largest impact would be for feeder cattle, with estimated producer welfare gains of $494 million and consumer welfare losses of $518 million, for a net loss of $24 million (2006 dollars, discounted at 3 percent).

*Combined welfare effects.* Effects of the proposed rule for cull cattle/processing beef, feeder cattle, fed cattle, and fed beef are summed in Table III.

TABLE III.—PRESENT AND ANNUALIZED VALUES OF COMBINED WELFARE CHANGES FOR THE MODELED COMMODITIES WITH THE PROPOSED RULE, 2007–2011

| | Discount rate (percent) | Changes in welfare [1] | | |
|---|---|---|---|---|
| | | Consumer | Producer | Net |
| | | (Thousand dollars) | | |
| Present value: | | | | |
| 2006 Dollars | 3 | 444,740 | 111,662 | 556,401 |
| | 7 | 407,740 | 96,136 | 503,876 |
| 2001 Dollars | 3 | 386,246 | 97,526 | 483,775 |
| | 7 | 302,447 | 133,266 | 435,714 |
| Annualized value: | | | | |
| 2006 Dollars | 3 | 97,110 | 24,384 | 121,494 |
| | 7 | 99,452 | 23,457 | 122,908 |
| 2001 Dollars | 3 | 84,339 | 21,296 | 105,634 |
| | 7 | 86,339 | 20,514 | 106,851 |

[1] Combined welfare changes for cull cattle/processing beef, feeder cattle, fed cattle, and fed beef.

The analysis tells us that the present value of the combined welfare changes in 2006 dollars when using a 3 percent discount rate, for example, would be $445 million in consumer gains, $112 million in producer gains, for a total welfare benefit of $556 million. Annualized values over the 5 years, in 2006 dollars when using a 3 percent discount rate, would be consumer gains of $97 million and producer gains of $24 million, yielding benefits of over $121 million.

Our analysis shows producer welfare changes to be negative in 2007 and positive in each of the following 4 years, 2008–2011. In 2007, producer welfare losses for the cull cattle/processing beef category would be larger than the combined producer welfare gains for the other three commodities. For the years 2008–2011, the opposite would occur. This is largely due to the fact that, given Canada's excess cull cattle supply, the largest annual number of cull cattle would be imported in 2007, with imports diminishing thereafter. Table III shows positive changes in producer welfare because the discounted producer welfare gains in 2008–2011 would exceed producer welfare losses in 2007.

By far, the largest effects of the proposed rule would be due to resumption of Canadian cull cattle imports. As shown in Table IV, the present value of consumer welfare gains for the cull cattle/processing beef category outweighs the combined consumer welfare losses for the other three categories ($1.24 billion in consumer benefits, compared to $798 million in combined consumer losses, in 2006 dollars and discounted at 3 percent). Producer welfare losses attributable to resumption of cull cattle/processing beef imports are smaller in magnitude than the combined producer welfare gains for the other three categories ($657 million in producer losses, compared to over $768 million in combined producer gains).

We invite public comment on these estimates of welfare changes. In particular, we welcome informed opinion regarding the price elasticities we use in the analysis for cull cattle/processing beef (price elasticity of supply, 0.84; price elasticity of demand, −0.40) that result in the welfare gains for buyers of processing beef being so much larger than the welfare losses for sellers of processing beef.

TABLE IV.—PRESENT VALUES OF SEPARATE AND COMBINED WELFARE CHANGES WITH THE PROPOSED RULE FOR CULL CATTLE/PROCESSING BEEF, FEEDER CATTLE, FED CATTLE, AND FED BEEF, IN 2006 DOLLARS AND DISCOUNTED AT 3 PERCENT, 2007–2011

| | Cull cattle/processing beef | Feeder cattle | Fed cattle | Fed beef | Combined |
|---|---|---|---|---|---|
| | (Thousand dollars) | | | | |
| Change in consumer welfare | 1,243,147 | 518,352 | 176,136 | −103,919 | 444,740 |
| Change in producer welfare | −656,540 | 494,483 | 171,791 | 101,928 | 111,662 |
| Net change | 586,607 | −23,870 | 4,345 | −1,991 | 556,401 |

Displacement of Processing Beef Imports From Other Countries

The net impact of cull cattle imports from Canada would depend upon the extent to which they would displace (substitute for) processing beef imports from other countries. About 35 percent of cull cattle imports from Canada over the period of analysis are projected to displace processing imports from other countries and the remainder are projected to contribute to an increase in the U.S. supply of processing beef (respectively, 5-year averages of 132 million pounds and 245 million pounds, carcass weight equivalent).[4] We consider here the effects of extreme displacement possibilities, that is, if either none or all of the Canadian cull cattle imports were to displace processing beef imports from other countries.

Projected imports of cull cattle from Canada are shown in Table V, together with changes in the U.S. supply of processing beef under the three displacement scenarios: None of the Canadian imports displacing imports from other countries; projected displacement; or all of the Canadian imports displacing imports from other countries. In the third scenario, we assume that the cull cattle imports from Canada would have no impact on the U.S. supply of processing beef.

Table VI compares the present and annualized values of welfare changes and average annual price changes for the cull cattle/processing beef category under the three displacement scenarios, in 2006 dollars. Discounting at 3 percent, the present value of net welfare benefits for the cull cattle/processing beef category would be about $927 million when no displacement is assumed to occur, compared to net benefits of about $587 million when projected levels of displacement occur, and zero benefits or costs when we assume all imported Canadian processing beef would displace imports from other countries. Annualized net values for the three scenarios, discounted at 3 percent, range from $203 million, to $128 million, to no impact. Over the 5-year period, annual declines in prices would average about $6 per cwt if no displacement were to occur, and about $4 per cwt with projected levels of displacement. There would be no price effect if all processing beef imports from Canada were to displace imports from other countries.

TABLE V.—PROJECTED IMPORTS OF CULL CATTLE FROM CANADA WITH THE PROPOSED RULE AND CHANGES IN THE U.S. SUPPLY OF PROCESSING BEEF IF (I) NONE OF THE CULL CATTLE IMPORTED FROM CANADA DISPLACE PROCESSING BEEF IMPORTED FROM OTHER COUNTRIES, (II) PROJECTED DISPLACEMENT OCCURS, OR (III) ALL OF THE CULL CATTLE IMPORTED FROM CANADA DISPLACE PROCESSING BEEF IMPORTS FROM OTHER COUNTRIES, 2007–2011, IN MILLION POUNDS CARCASS WEIGHT EQUIVALENT

| | 2007 | 2008 | 2009 | 2010 | 2011 |
|---|---|---|---|---|---|
| Projected cull cattle imports from Canada | 458 | 403 | 333 | 343 | 346 |
| Projected processing beef imports from Canada | 0 | 0 | 0 | 0 | 0 |
| Projected displacement of processing beef imports from other countries by processing beef imports from Canada | 170 | 149 | 128 | 106 | 106 |
| Change in U.S. supply if none of the processing beef imports from Canada displace imports from other countries | 458 | 403 | 333 | 343 | 346 |
| Change in U.S. supply of processing beef if projected displacement occurs | 288 | 254 | 205 | 237 | 240 |
| Change in U.S. supply if all the processing beef imports from Canada displace imports from other countries | 0 | 0 | 0 | 0 | 0 |

**Note:** Cull cattle (slaughter cows, bulls, and stags) are converted from thousand head to million pounds carcass weight equivalent by multiplying by the following carcass weights (pounds) for cows and bulls/stags, respectively: 2007, 576 and 888; 2008, 579 and 893; 2009, 583 and 899; 2010, 586 and 904; and 2011, 590 and 909 (Source: Expert opinion, USDA Economic Research Service, Market and Trade Economics Division, Animal Products, Grains, and Oil Seeds Branch).

TABLE VI.—PRESENT AND ANNUALIZED VALUES OF WELFARE CHANGES AND AVERAGE ANNUAL PRICE CHANGES FOR CULL CATTLE/PROCESSING BEEF IF (I) NONE OF THE CULL CATTLE IMPORTED FROM CANADA DISPLACES PROCESSING BEEF IMPORTED FROM OTHER COUNTRIES, (II) PROJECTED DISPLACEMENT OCCURS, OR (III) ALL OF THE CULL CATTLE IMPORTED FROM CANADA DISPLACE PROCESSING BEEF IMPORTS FROM OTHER COUNTRIES, IN 2006 DOLLARS, 2007–2011

| Discount rate (percent) | Amount of imports from Canada assumed to displace imports from other countries [1] | Changes in welfare | | |
|---|---|---|---|---|
| | | Consumer | Producer | Net |
| | | (Thousand dollars) | | |
| Present value: | | | | |
| 3 | None | 1,928,548 | −1,001,140 | 927,408 |
| 3 | Projected | 1,243,147 | −656,540 | 586,607 |
| 3 | All | 0 | 0 | 0 |
| 7 | None | 1,742,482 | −901,619 | 840,864 |
| 7 | Projected | 1,120,778 | −590,070 | 530,708 |
| 7 | All | 0 | 0 | 0 |
| Annualized value: | | | | |
| 3 | None | 421,107 | −218,603 | 202.504 |
| 3 | Projected | 271,447 | −143,358 | 128,089 |

[4] These projections are based on the expert opinion of staff of the USDA Economic Research Service, Market and Trade Economics Division, Animal Products, Grains, and Oil Seeds Branch.

TABLE VI.—PRESENT AND ANNUALIZED VALUES OF WELFARE CHANGES AND AVERAGE ANNUAL PRICE CHANGES FOR CULL CATTLE/PROCESSING BEEF IF (I) NONE OF THE CULL CATTLE IMPORTED FROM CANADA DISPLACES PROCESSING BEEF IMPORTED FROM OTHER COUNTRIES, (II) PROJECTED DISPLACEMENT OCCURS, OR (III) ALL OF THE CULL CATTLE IMPORTED FROM CANADA DISPLACE PROCESSING BEEF IMPORTS FROM OTHER COUNTRIES, IN 2006 DOLLARS, 2007–2011—Continued

| Discount rate (percent) | Amount of imports from Canada assumed to displace imports from other countries [1] | Changes in welfare | | |
|---|---|---|---|---|
| | | Consumer | Producer | Net |
| 3 | All | 0 | 0 | 0 |
| 7 | None | 424,975 | −219,896 | 205,079 |
| 7 | Projected | 273,347 | −143,912 | 129,435 |
| 7 | All | 0 | 0 | 0 |
| Average annual price change and percentage price change: | | (Dollars per cwt) | (Percentage) | |
| | None | −6.00 | −6.57 | |
| | Projected | −4.00 | −4.26 | |
| | All | −0 | 0 | |

**Note:** Prices are in carcass weight equivalent.

[1] Projected displacement quantities for the 5 years, 2007–2011, in million pounds carcass weight equivalent, are 170, 149, 128, 106, and 106. Displaced quantities for the 5 years, if all cull cattle imported from Canada were to displace processing beef imports from other countries, would be 458, 403, 333, 343, and 346 (Source: Expert opinion, USDA Economic Research Service, Market and Trade Economics Division, Animal Products, Grains, and Oil Seeds Branch).

It is evident that the extent of import displacement would influence impacts of the proposed rule for the cull cattle/processing beef category. Table VII shows the significance of the displacement assumption for the combined welfare effects. The larger the quantity of processing beef imports from other countries that would be displaced, the smaller the net benefits. The difference between consumer gains and producer losses would exceed $897 million (discounted at 3 percent) if no displacement of processing beef imports from other countries were to occur. The present value of net benefits would be about $556 million with projected displacement, and there would be a net welfare loss of $30 million if all of the imported Canadian cull cattle were to displace imports from other countries. In the third scenario, the modeled effects of the rule would be due to changes in the supply of Canadian feeder cattle, fed cattle, and fed beef as a result of the cull cattle imports affecting the slaughter mix in Canada. In this case, consumer welfare losses for these commodities would exceed producer welfare gains, resulting in a net decline in welfare.

TABLE VII.—PRESENT AND ANNUALIZED VALUES OF COMBINED WELFARE CHANGES FOR THE MODELED COMMODITIES IF (I) NONE OF THE PROCESSING BEEF IMPORTS FROM CANADA DISPLACE IMPORTS FROM OTHER COUNTRIES, (II) PROJECTED DISPLACEMENT OCCURS, OR (III) ALL OF THE PROCESSING BEEF IMPORTS FROM CANADA DISPLACE IMPORTS FROM OTHER COUNTRIES, IN 2006 DOLLARS, 2007–2011

| Discount rate (percent) | Amount of imports from Canada assumed to displace discount imports from other countries | Changes in welfare | | |
|---|---|---|---|---|
| | | Consumer | Producer | Net |
| | | (Thousand dollars) | | |
| Present value: | | | | |
| 3 | None | 1,130,141 | −232.938 | 897,202 |
| 3 | Projected | 444,740 | 111,662 | 556,401 |
| 3 | All | −798,407 | 768,202 | −30,206 |
| 7 | None | 1,029,444 | −215,413 | 814,032 |
| 7 | Projected | 407,740 | 96,136 | 503,876 |
| 7 | All | −713,038 | 686,206 | −26,832 |
| Annualized value: | | | | |
| 3 | None | 246,770 | −50,861 | 195,909 |
| 3 | Projected | 97,110 | −24,384 | 121,494 |
| 3 | All | −174,337 | 167,742 | −6,595 |
| 7 | None | 251,080 | −52,527 | 198,552 |
| 7 | Projected | 99,452 | 23,457 | 122,908 |
| 7 | All | −173,895 | 167,369 | −6,527 |

*Multi-sector impacts.* For a broader examination of impacts, we map interactions among the grain, animal, and animal products industries using a second model.[5] This model takes into account substitution among livestock products in response to relative price changes. It incorporates foreign trade and yields expected price and revenue effects, but does not allow for computation of welfare changes.

Our results show for the combined livestock, feed, and grain sectors, an estimated decline in gross revenues with the proposed rule of less than one percent in 2007. For the beef and cattle sectors, the gross revenue declines are also less than one percent. The analysis indicates declines of less than one percent, as well, in cattle and beef prices in 2007.

As expected, these simulated impacts are small because they describe effects for aggregated commodity groupings (all cattle production and all beef production are grouped within single categories) and because of the linkages specified between the livestock production and processing sectors that allow for greater flexibility in adjusting to supply shocks. The larger effects reported above for cull cattle/processing beef are subsumed within a combined beef sector in this multi-sector model. These results support our expectation that broader impacts of the proposed rule would be limited.

*Effects for Commodities Not Modeled*

Commodity categories not modeled that would be affected by the proposed rule are breeding cattle, vealers and slaughter calves, bison, bovine casings and small intestine products, and bovine blood and blood products.

*Breeding cattle.* We do not expect the resumption of dairy and beef breeding cattle imports from Canada to significantly affect the U.S. market for these animals. The number that would be imported under the proposed rule is small in comparison to projected cattle imports from Canada overall (4 percent) and even smaller in comparison to the number of replacement breeding heifers supplied on average by U.S. producers (0.5 percent). Breeding cattle imported from Canada would augment the U.S. breeding herd very slightly. Demand for these animals, like the demand for breeding cattle generally, would derive from management decisions based on herd composition and expected future net returns, with price variations influencing secondarily the quantity of breeding cattle purchased.

*Vealers and slaughter calves.* The proposed rule is expected to have a small effect on the number of vealers and slaughter calves imported from Canada. A decline in imports is projected in each year of the period of analysis, compared to quantities that would be imported without the rule, as Canadian slaughter patterns adjust to reestablished export opportunities for cull cattle. Over the 5-year period, an average of 11,800 fewer vealers and slaughter calves are projected to be imported annually with the proposed rule than would be imported without the rule.

For the 10-year period, 1994–2003, slaughter of vealers and calves in the United States averaged 1.3 million head per year. We expect annual U.S. vealer and calf slaughter during the period of analysis to be similar to this earlier average. On this basis, the average annual decrease in vealer and slaughter calf imports from Canada under the proposed rule would be equal to less than 1 percent of U.S. vealer and calf slaughter. Any effect on vealer and slaughter calf prices because of the smaller number expected to be imported under the proposed rule would not be significant.

*Bison.* Like the cattle industry, the commercial bison industry is comprised primarily of cow-calf operations that sell weaned calves to other operations for finishing and processing. Projected bison imports from Canada total 4,000 head in 2007, 3,150 head in 2008, and 2,500 head each year thereafter. Each year, 250 head of breeding bison are projected to be imported. The remainder would be mainly bison for immediate slaughter (2,500 head in 2007, 2,400 head in 2008, and 2,000 head in each of the following years), with a lesser number of feeders (1,250 head in 2007, 500 head in 2008, and 250 head in each year thereafter).

The 2,500 bison projected to be imported for immediate slaughter in 2007 would represent about 7 percent of the U.S. slaughter total in 2005. We assume that most if not all of these slaughter bison (as well as the 1,250 head projected to be imported in 2007 for feeding) would be slaughtered at less than 30 months of age, that is, they would be of the same age as Canadian bison that are currently allowed to be imported. Thus, the only change in bison imports in 2007, as well as in subsequent years, under the proposed rule would be imports of 250 head of breeding bison.

Yearly imports from Canada of 250 head of breeding bison would augment the U.S. bison breeding herd only slightly. They would annually represent only about two-tenths of one percent of the U.S. bison breeding herd, assuming the composition of the national bison herd is similar to that of the national cattle herd, with breeding stock (cows, replacement heifers, and bulls) constituting about 56 percent of the animals.

As the market for bison meat becomes better established, the demand for breeding stock will continue to strengthen. The projected imports of breeding bison under the proposed rule would help meet this growing demand. However, they would constitute a very small addition to the U.S. breeding herd. Any effects on bison prices and the welfare of U.S. bison producers are expected to be insignificant.

*Bovine casings and small intestine products.* The proposed rule may affect the supply of bovine casings and small intestine products in the United States in three ways: By allowing importation of bovine casings from Canada; by allowing importation of Canadian bovine small intestines, minus the distal ileum, that are used to make certain casings and variety meats; and by reducing restrictions on live bovine imports from Canada and thereby changing the U.S. supply of bovine products in general, including intestines and other material used to produce casings and variety meats.

We calculate that with the rule the annual supply of bovine casings and variety meats produced from small intestines would increase on average over the period of analysis by about 1.6 percent. The largest increase would occur in 2007, with production of 2.5 million pounds of additional small intestine for use as casings and variety meats. These supply projections presume a ready market for these products.

The proposed rule would allow importation from Canada of bovine small intestine minus the distal ileum that could then be processed into casings and variety meats in the United States. APHIS does not have information on the volume of bovine small intestine that may be imported from Canada because of the proposed rule. We welcome information that would enable us to evaluate effects on the U.S. supply of bovine small intestine of allowing their importation from Canada.

[5] Three examples of studies based on this type of model are: Paarlberg, P.L. ''Agricultural Export Subsidies and Intermediate Goods Trade,'' *American Journal of Agricultural Economics.* 77, 1 (1995): 119–128. Paarlberg, P.L., J.G. Lee, and A.H. Seitzinger. ''Potential Revenue Impact of an Outbreak of Foot-and-Mouth Disease in the United States,'' *Journal of the American Veterinary Medical Association. 220,* 7 (April 1, 2002): 988–992. Sanyal, K.K. and R.W. Jones. ''The Theory of Trade in Middle Products,'' *American Economic Review. 72* (1982): 16–31.

Current regulations prohibit the importation of bovine and other ruminant casings from BSE minimal-risk regions. The proposed rule would remove this prohibition, and therefore allow resumption of bovine casings imports from Canada. The Agency does not have information on levels of production or consumption of bovine casings in the United States, and trade data do not distinguish between bovine and ovine casings; import and export quantities and prices for bovine casings alone are unavailable from the U.S. Department of Commerce. We welcome information that the public may provide that would enable us to better understand the U.S. bovine casings industry and levels of historic trade in bovine casings between the United States, Canada, and the world.

*Bovine blood and blood products.* The proposed rule would allow resumption of imports of bovine blood and blood products from BSE minimal-risk regions, that is, of Canadian origin. The primary commodities affected would be products used in the manufacture of vaccines and drugs, of which fetal bovine serum (FBS) is the most important. It is the most widely used serum in the culturing of cells, tissues and organs.

Since the detection of BSE in Canada in 2003, imports of FBS from Canada have been restricted to either research samples of Canadian-origin FBS (limited to 1 liter per shipment), or FBS that is derived from animals that originate in the United States, Australia, Mexico, or Central America and is processed at a designated Canadian facility under USDA permit.

The proposed rule may affect the supply of FBS in the United States in two ways: By allowing Canadian-origin FBS imports for commercial purposes, and by reducing restrictions on bovine imports from Canada and thereby changing the U.S. supply of pregnant cows presented for slaughter. We approximate that the proposed rule would allow for the importation of up to 24,000 liters of FBS derived from Canadian cows. Had this amount been imported in 2005, it would have represented about 13 percent of U.S. imports of FBS from all sources. In addition, the increase in pregnant cow slaughter projected with the proposed rule may provide an additional 23,000 to 32,000 liters. Other than for these upper-bound approximations, we are unable to project the extent to which the U.S. supply of FBS may be affected by the proposed rule. The additional supplies would benefit U.S. establishments that use FBS in their manufacturing processes.

*Alternative to the Proposed Rule*

An alternative to the proposed rule considered by APHIS would be to allow resumption of live bovine imports from BSE minimal-risk regions without restriction by date of birth. In other words, Canadian bovines could be imported for any destination or purpose without regard to their age.

*Cattle imports from Canada.* In Table VIII, projected imports under the alternative are compared to projected imports if no regulatory action were taken (baseline import quantities) and to projected imports under the proposed rule. The alternative would allow entry of bovines born before the date specified in the proposed rule as when a ruminant-to-ruminant feed ban in Canada was effectively enforced: March 1, 1999. For convenience, we refer to these animals as older cull cattle.

Under the proposed rule, cattle that are 8 years or older prior to March 1, 2007 would be prohibited. Each year thereafter, the prohibited older cull cattle would comprise a smaller age group: 9 years or older prior to March 1, 2008, 10 years or older prior to March 1, 2009, and so on. Within a few years, the proposed rule's requirement that bovines be born on or after March 1, 1999, would not limit bovine imports from Canada; bovine imports allowed under the proposed rule and the alternative would be the same.

TABLE VIII.—PROJECTED IMPORTS OF CANADIAN FEEDER CATTLE, FED CATTLE, CULL CATTLE/PROCESSING BEEF, AND FED BEEF: BASELINE, PROPOSED RULE, AND ALTERNATIVE OF NO RESTRICTION BY DATE OF BIRTH ON LIVE BOVINE IMPORTS, 2007–2011

| | 2007 | 2008 | 2009 | 2010 | 2011 |
|---|---|---|---|---|---|
| Feeder cattle from Canada | | | | | |
| (Thousand head) | | | | | |
| Baseline | 302 | 371 | 425 | 440 | 441 |
| Proposed Rule | 189 | 175 | 167 | 178 | 179 |
| Alternative | 189 | 175 | 167 | 178 | 179 |
| Fed cattle from Canada | | | | | |
| (Thousand head) | | | | | |
| Baseline | 742 | 731 | 729 | 755 | 756 |
| Proposed Rule | 728 | 673 | 644 | 685 | 688 |
| Alternative | 728 | 673 | 644 | 685 | 688 |
| Cull cattle from Canada, net of imports assumed to displace processing beef imports from other countries | | | | | |
| (Million pounds carcass weight equivalent) | | | | | |
| Baseline | 0 | 0 | 0 | 0 | 0 |
| Proposed Rule | 288 | 254 | 205 | 237 | 240 |
| Alternative | 360 | 318 | 205 | 237 | 240 |
| Fed beef from Canada | | | | | |
| (Million pounds carcass weight equivalent) | | | | | |
| Baseline | 446 | 425 | 420 | 419 | 419 |
| Proposed Rule | 371 | 390 | 420 | 419 | 419 |

TABLE VIII.—PROJECTED IMPORTS OF CANADIAN FEEDER CATTLE, FED CATTLE, CULL CATTLE/PROCESSING BEEF, AND FED BEEF: BASELINE, PROPOSED RULE, AND ALTERNATIVE OF NO RESTRICTION BY DATE OF BIRTH ON LIVE BOVINE IMPORTS, 2007–2011—Continued

| | 2007 | 2008 | 2009 | 2010 | 2011 |
|---|---|---|---|---|---|
| Alternative | 371 | 390 | 420 | 419 | 419 |

Source: Expert opinion, USDA Economic Research Service, Market and Trade Economics Division, Animal Products, Grains, and Oil Seeds Branch.

**Note:** For the cull cattle/processing beef category, cull cattle imports are converted from thousand head to million pounds carcass weight equivalent for 2007–2011 by multiplying by the following carcass weights (pounds) for cows and bulls/stags, respectively: 2007, 576 and 888; 2008, 579 and 893; 2009, 583 and 899; 2010, 586 and 904; and 2011, 590 and 909.

Projected imports of Canadian feeder cattle, fed cattle, and fed beef are the same under the proposed rule and under the alternative. In both cases, feeder and fed cattle imports would be fewer than would enter without the rule, and fed beef imports would be less in the first 2 years of the period of analysis. The only difference between imports under the proposed rule and under the alternative is with respect to cull cattle imports projected for 2007 and 2008. Under the alternative, imports of cull cattle are projected in these 2 years to be one-fourth greater, net of displaced processing beef imports, than they would be under the proposed rule. The older cull cattle that would be imported under the alternative would total 168,000 cows and 20,000 bulls and stags in 2007, and 147,000 cows and 18,000 bulls and stags in 2008. These older cull cattle would yield 72 million pounds and 64 million pounds of processing beef, carcass weight equivalent, for the 2 years.

Table IX shows the present and annualized values of welfare changes under the alternative for the cull cattle/processing beef category. The present value of the welfare changes (2006 dollars, 3 percent discount rate) would be $1.4 billion in consumer gains, $731 million in producer losses, for a net benefit of about $667 million. Annualized values over the 5 years would be consumer gains of $305 million, producer losses of $160 million, and net benefits of $146 million.

TABLE IX.—ALTERNATIVE OF NO RESTRICTION BY DATE OF BIRTH ON LIVE BOVINE IMPORTS: PRESENT AND ANNUALIZED VALUES OF WELFARE CHANGES FOR CULL CATTLE/PROCESSING BEEF, 2007–2011

| | Discount rate (percent) | Changes in welfare | | |
|---|---|---|---|---|
| | | Consumer | Producer | Net |
| | | (Thousand dollars) | | |
| Present Value: | | | | |
| 2006 Dollars | 3 | 1,397,680 | −730,800 | 666,880 |
| | 7 | 1,267,061 | −660,333 | 606,728 |
| 2001 Dollars | 3 | 1,215,348 | −635,446 | 579,902 |
| | 7 | 1,101,796 | −574,189 | 527,606 |
| Annualized Value: | | | | |
| 2006 Dollars | 3 | 305,190 | −159,573 | 145,617 |
| | 7 | 309,025 | −161,049 | 147,976 |
| 2001 Dollars | 3 | 265,377 | −138,752 | 126,624 |
| | 7 | 268,718 | −140,039 | 128,678 |

**Note:** Consumers are U.S. buyers of processing beef at the wholesale level; producers are sellers of U.S.-produced processing beef at the wholesale level. Cull cattle imports from Canada in thousand head are converted to processing beef in million pounds carcass weight equivalent by multiplying by the following carcass weights (pounds) for cows and bulls/stags, respectively: 2007, 576 and 888; 2008, 579 and 893; 2009, 583 and 899; 2010, 586 and 904; and 2011, 590 and 909.

To exemplify the differences in welfare effects between the alternative and the proposed rule for the cull cattle/processing beef category, we compare in Table X their present and annualized values in 2006 dollars when discounted at 3 percent. Compared to effects under the proposed rule, consumer welfare gains under the alternative would be 12.4 percent larger, producer welfare losses would be 11.3 percent larger, and net benefits would be 13.7 percent larger. The annual decrease in processing beef prices under the alternative over the 5-year period, all things equal, is computed to average $4.80 per cwt, compared to an average annual decrease of $4.00 under the proposed rule.

TABLE X.—PRESENT AND ANNUALIZED VALUES OF WELFARE CHANGES FOR CULL CATTLE/PROCESSING BEEF, WITH THE ALTERNATIVE AND WITH THE PROPOSED RULE, 3 PERCENT DISCOUNT RATE, 2006 DOLLARS, 2007–2011

| | Changes in welfare | | |
|---|---|---|---|
| | Consumer | Producer | Net |
| | (Thousand dollars) | | |
| Present Value: | | | |
| Alternative | 1,397,680 | −730,800 | 666,880 |
| Proposed Rule | 1,243,147 | −656,540 | 586,607 |
| Difference | 154,533 | −74,260 | 80,273 |
| Annualized Value: | | | |
| Alternative | 305,190 | −159,573 | 145,617 |
| Proposed Rule | 271,447 | −143,358 | 128,089 |
| Difference | 33,743 | −16,215 | 17,528 |
| Difference as a percentage of welfare changes with the proposed rule | 12.4% | 11.3% | 13.7% |

When we compare present and annualized values of combined welfare changes under the alternative and under the proposed rule, we find that the net welfare benefits would be 15 to 16 percent larger under the alternative than would be realized under the proposed rule. For example, the annualized net benefit (2006 dollars, 3 percent rate of discount) would be $140 million under the alternative, compared to $121 million under the proposed rule. Impacts under the alternative and under the proposed rule would also differ for some of the commodities not modeled. For example, we would expect the supply of bovine casings to be larger with the alternative, due to larger projected slaughter numbers.

*BSE risk.* As described in the risk assessment for this proposed rule, transmission of BSE requires that bovines ingest feed that contains the infectious agent. Feed contamination results from the incorporation of ingredients that contain certain ruminant protein derived from infected animals. Standard rendering processes do not completely inactivate the BSE agent. Therefore, rendered protein such as meat-and-bone meal derived from infected animals may remain contaminated. Prohibitions on the use of ruminant protein in ruminant feed are imposed by FDA to mitigate the risk of BSE transmission.

The OIE establishes standards for the international trade in animals and animal products. It recommends that cattle be imported from a region that has reported an indigenous case of BSE only if the cattle selected for export were born after the date from which a ban on the feeding of ruminants with meat-and-bone meal and greaves (the residue left after animal fat or tallow has been rendered) derived from ruminants had been effectively enforced.

On August 4, 1997, Canada issued regulations prohibiting the use of mammalian protein in ruminant feeds. Implementation of the feed ban was a gradual process, with producers, feed mills, retailers, and feed manufacturers given grace periods before they were required to be in full compliance with the regulations. It is estimated that this implementation period may have lasted several months, making February 1998 a more realistic date on which the ban can be considered to have been practically implemented.

The likelihood that Canadian cattle born after February 1998 would be exposed to the BSE agent continues to decrease over time. APHIS considers that a period of 1 year following the practical implementation of the feed ban allows sufficient time for the measures taken by Canada to have their desired effect. Therefore, APHIS concludes that cattle born on or after March 1, 1999, are unlikely to have been exposed to the BSE agent via feed and can be imported into the United States for any purpose with a low risk that they will be infected with the BSE agent.

We do not have a quantitative estimate of the additional risk posed by importation of Canadian cattle born before March 1, 1999. The importance of a feed ban as a risk mitigation measure is demonstrated in science and experience, and is incorporated into the OIE feed ban recommendation. We conclude that there may be some degree of increased risk of BSE introduction under the alternative, compared to the minimal risk posed by the proposed rule, because of the greater likelihood of the older cull cattle having been exposed to infectivity. While our analysis indicates larger net welfare benefits may be realized under the alternative of no restriction by date of birth on live bovine imports, the proposed rule is preferable because it would pose a lower risk of BSE introduction into the United States and would be consistent with demonstrated science, experience, and OIE guidance.

*Expected Impacts Assuming Resumption of Processing Beef Imports From Canada*

Current regulations require that imported Canadian cattle be slaughtered at less than 30 months of age and that imported Canadian beef come from cattle slaughtered at less than 30 months of age. Our analysis assumes no imports of processing beef from Canada. As a second scenario, we consider effects if imports of Canadian beef from cattle slaughtered at 30 months or older were to resume at the same time that the proposed rule is finalized.

Importation of ruminant products and byproducts was included in the BSE minimal-risk regions final rule, and this proposed rule would not change regulations regarding the importation of beef from Canada. However, in March 2005, APHIS gave notice in the **Federal Register** that the applicability of certain provisions of the rule pertaining to bovine meat, meat byproducts, whole and half carcasses, and certain other bovine products was being delayed until further notice. This partial delay of applicability of the BSE minimal-risk regions rule prohibits the importation of such products if derived from bovines 30 months of age or older at slaughter.

As discussed, the United States is a large importer of processing beef, with Australia, New Zealand, and Uruguay currently our primary suppliers. Over the period of analysis, total processing beef imports are projected to provide about 45 percent of U.S. consumption of processing beef (decreasing from 49 percent in 2007 to 42 percent in 2011). We assume annual imports of Canadian processing beef, 2007–2011, would average 240 million pounds carcass weight equivalent, of which about two-thirds would displace processing beef imports from other countries and about

one-third would represent a net increase in U.S. supply. It is further assumed under this scenario that the Canadian cull cattle imported would not displace processing beef imports from other countries.[6] The net addition of processing beef from Canada would be equivalent to 2.8 percent of projected baseline imports (without the rule) over the period of analysis, or 1.3 percent of U.S. supply. When the processing beef produced from projected cull cattle imports from Canada is included, the increase in the U.S. supply of processing beef under this scenario would be equivalent to 4.3 percent of projected imports without the proposed rule.

Projected imports of cull cattle and processing beef from Canada under this scenario are compared in Table XI to projected imports of cull cattle alone used to evaluate the proposed rule. Results of the analysis show the price of processing beef decreasing in 2007 by 6.3 percent under this scenario, from $99 to about $93 per cwt carcass weight equivalent in 2006 dollars. Over the period of analysis, the annual decrease in processing beef prices because of the proposed rule, all things equal, is expected to average about 5 percent, ranging from about $6.20 per cwt in 2007 to about $3.80 per cwt in 2009.

TABLE XI.—SCENARIO COMPARISON OF QUANTITIES OF (1) CULL CATTLE ALONE AND (II) CULL CATTLE AND PROCESSING BEEF PROJECTED TO BE IMPORTED FROM CANADA, NET OF DISPLACED PROCESSING BEEF IMPORTS FROM OTHER COUNTRIES, 2007–2011, IN MILLION POUNDS OF PROCESSING BEEF, CARCASS WEIGHT EQUIVALENT

| Year | Cull cattle only | Cull cattle and processing beef |
|---|---|---|
| 2007 | 288 | 339 |
| 2008 | 254 | 299 |
| 2009 | 205 | 242 |
| 2010 | 237 | 279 |
| 2011 | 240 | 282 |

Source: Expert opinion, USDA Economic Research Service, Market and Trade Economics Division, Animal Products, Grains, and Oil Seeds Branch.

**Notes:** Cull cattle are converted to processing beef by multiplying by the following carcass weights (pounds) for cows and bulls/stags, respectively: 2007, 576 and 888; 2008, 579 and 893; 2009, 583 and 899; 2010, 586 and 904; and 2011, 590 and 909. All of the quantities that follow are expressed in million pounds of processing beef, carcass weight equivalent. For the cull cattle imports only scenario, the quantities are based on projected imports of slaughter cows, bulls, and stags, and are equivalent to: 2007, 458; 2008, 403; 2009, 333; 2010, 343; and 2011, 346. These quantities are reduced by the following projected displaced processing beef imports from other countries: 2007, 170; 2008, 149; 2009, 128; 2010, 106; and 2011, 106. For the scenario that assumes importation from Canada of both cull cattle and processing beef, quantities of cull cattle imported are: 2007, 214; 2008, 199; 2009, 192; 2010, 204; and 2011, 207. Projected processing beef imports are: 2007, 325; 2008, 275; 2009, 200; 2010, 200; and 2011, 200. Combined cull cattle and processing beef imports are 2007, 539; 2008, 474; 2009, 392; 2010, 404; and 2011, 407. These quantities are reduced by the following projected displaced processing beef imports from other countries: 2007, 200; 2008, 175; 2009, 150; 2010, 125; and 2011, 125.

As shown in Table XII, the present value of the welfare changes in 2006 dollars when using a 3 percent discount rate would be $1.47 billion in consumer gains, $770 million in producer losses, for a net benefit of about $695 million. Annualized values over the 5 years, in 2006 dollars when using a 3 percent discount rate, would be consumer gains of $320 million, producer losses of $168 million, and net benefits of $152 million.

TABLE XII.—CULL CATTLE/PROCESSING BEEF: PRESENT AND ANNUALIZED VALUES OF WELFARE CHANGES ASSUMING CULL CATTLE IMPORTS AND PROCESSING BEEF IMPORTS FROM CANADA WOULD RESUME AT THE SAME TIME, 2007–2011

| | Discount rate (percent) | Changes in welfare | | |
|---|---|---|---|---|
| | | Consumer | Producer | Net |
| | | (Thousand dollars) | | |
| Present Value: | | | | |
| 2006 Dollars | 3 | 1,465,829 | −770,389 | 695,440 |
| | 7 | 1,321,580 | −692,393 | 629,187 |
| 2001 Dollars | 3 | 1,274,467 | −669,797 | 604,670 |
| | 7 | 1,149,081 | −602,002 | 547,078 |
| Annualized Value: | | | | |
| 2006 Dollars | 3 | 320,071 | −168,218 | 151,853 |
| | 7 | 322,321 | −168,868 | 153,453 |
| 2001 Dollars | 3 | 278,286 | −146,253 | 132,033 |
| | 7 | 280,250 | −146,823 | 133,427 |

Compared to impacts for the cull cattle/processing beef category when only cull cattle would enter, this scenario would result in consumer welfare gains larger by 17.9 percent, producer welfare losses larger by 17.3 percent, and net benefits larger by 18.6 percent.

[6] The import quantities and extent of displacement are projections made by staff of the USDA Economic Research Service (ERS), Market and Trade Economics Division, Animal Products, Grains, and Oil Seeds Branch, based on their expert opinion and reference to the ''USDA Agricultural Baseline Projections to 2015,'' United States Department of Agriculture, Interagency Agricultural Projections Committee, Baseline Report OCE–2006–1, February 2006.

Combined effects under this scenario for cull cattle/processing beef, feeder cattle, fed cattle, and fed beef are shown in Table XIII.

TABLE XIII.—PRESENT AND ANNUALIZED VALUES OF COMBINED WELFARE CHANGES FOR THE MODELED COMMODITIES, ASSUMING CULL CATTLE IMPORTS AND PROCESSING BEEF IMPORTS FROM CANADA WOULD RESUME AT THE SAME TIME, 2007–2011

| | Discount rate (percent) | Changes in welfare | | |
|---|---|---|---|---|
| | | Consumer | Producer | Net |
| | | (Thousand dollars) | | |
| Present Value: | | | | |
| 2006 Dollars | 3 | 669,191 | 2,387 | 671,578 |
| | 7 | 610,108 | −2,145 | 607,963 |
| 2001 Dollars | 3 | 581,395 | 2,519 | 583,917 |
| | 7 | 529,956 | −1,342 | 528,614 |
| Annualized Value: | | | | |
| 2006 Dollars | 3 | 146,122 | 523 | 146,643 |
| | 7 | 148,808 | −513 | 148,294 |
| 2001 Dollars | 3 | 126,951 | 551 | 127,501 |
| | 7 | 129,252 | −327 | 128,923 |

Removal of the delay of applicability, thereby allowing importation of Canadian beef from cattle slaughtered at 30 months or older, is a decision that will be taken at the discretion of the Secretary of the U.S. Department of Agriculture.

*Expected Impacts for Small Entities*

We have prepared an initial regulatory flexibility analysis that indicates that industries expected to be affected by the proposed rule are composed largely of small entities. Industries that may be affected, as categorized by the North American Industry Classification System, are Beef Cattle Ranching and Farming (NAICS 112111), Dairy Cattle and Milk Production (NAICS 112120), All Other Animal Production (NAICS 112990), Cattle Feedlots (NAICS 112112), Animal (except Poultry) Slaughtering (NAICS 311611), Meat Processed from Carcasses (NAICS 311612), Meat and Meat Product Merchant Wholesalers (NAICS 424470), Supermarkets and Other Grocery (except Convenience) Stores (NAICS 445110), Meat Markets (NAICS 445210), In-Vitro Diagnostic Substance Manufacturing (NAICS 325413), and Biological Product (except Diagnostic) Manufacturing (NAICS 325414).

Average effects for small entities would be small. As examples, we approximate that gross receipts for small-entity beef and dairy operations would increase, respectively, by $160 (0.6 percent of annual revenue) and $133 (less than 0.1 percent of annual revenue), due to the rule's projected impact on feeder cattle prices. We approximate that small-entity feedlots may incur a revenue loss of about $5,040 (less than 0.3 percent of annual revenue), due to the rule's expected effects on feeder cattle and fed cattle prices. Small-entity meat packing and processing establishments may benefit marginally with the rule, with estimated price increases for fed beef in 2007 and 2008 representing an increase in annual revenue of less than 0.2 percent. Effects of the proposed rule for packers and processors that utilize processing beef would be larger, due to the resumption of cull cattle imports from Canada. Annual prices of processing beef are expected to fall by an average of $4 per cwt over the period of analysis. The price declines would benefit establishments that use processing beef to produce ground beef for the wholesale market. Conversely, establishments that sell processing beef would be negatively affected by the expected price declines.

Currently, bovines imported from Canada are restricted to animals that are slaughtered at less than 30 months of age. Bovines not imported for immediate slaughter must be moved from the port of entry to a feedlot in a sealed means of conveyance and from the feedlot to a recognized slaughtering establishment again in a sealed means of conveyance. The animals may not be moved to more than one feedlot. Under the proposed rule, these movement restrictions would no longer be imposed. Canadian bovines imported other than for immediate slaughter could be moved any number of times to any destinations in unsealed means of conveyance.

Under the proposed rule, feeder bovines imported from BSE minimal-risk regions would not need to be accompanied by APHIS Form VS 17–130, which currently is used to identify the feedlot of destination. (The individual responsible for the movement of an imported animal and the individual identification of the animal would still be required information on the accompanying health certificate.) Also under the proposed rule, bovines of Canadian origin moved from a U.S. feedlot to a slaughtering establishment would not need to be accompanied by APHIS Form VS 1–27.

Removal of these movement and paperwork requirements would benefit buyers and sellers of Canadian-origin bovines. Many of the beneficiaries are likely to be small entities, given their predominance among cattle and dairy operations and feedlot establishments. Affected businesses would be able to take advantage of a broader range of transactional opportunities than under current regulations. For example, the sale of a young steer first for backgrounding, then for confined feeding at one or more facilities, and finally for slaughter may enable the original and subsequent owners of the animal to better maximize returns compared to current marketing possibilities. While we are not able to quantify impacts of removing current movement restrictions on Canadian cattle imports, we expect their removal would benefit the cattle industry across-the-board.

The Agency has found no significant alternatives to the proposed rule that would continue to protect against the introduction and dissemination of BSE into the United States while removing unnecessary prohibitions on the importation of certain commodities from Canada. Without the proposed rule, restrictions on U.S. importation of

certain Canadian bovine commodities that are without scientific merit would continue. With the proposed rule, importation of these Canadian commodities would be allowed to resume under certain conditions and the risk of introduction of BSE into the United States would remain minimal.

*Executive Order 12988*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

*National Environmental Policy Act*

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the importation of bovine and bovine products from Canada under this proposed rule, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule. In addition, copies may be obtained by calling or writing to the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

*Paperwork Reduction Act*

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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## List of Subjects

*9 CFR Part 93*

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

*9 CFR Part 94*

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

*9 CFR Part 95*

Animal feeds, Hay, Imports, Livestock, Reporting and recordkeeping requirements, Straw, Transportation.

*9 CFR Part 96*

Imports, Livestock, Reporting and recordkeeping requirements.

Accordingly, we are proposing to amend 9 CFR parts 93, 94, 95, and 96 as follows:

## PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 would continue to read as follows:

**Authority:** 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

### § 93.405 [Amended]

2. In § 93.405, paragraph (a)(4) would be amended by removing the words ''feedlot or recognized slaughtering establishment'' and adding in their place the words ''destination''.

3. Section 93.419 would be amended as follows:

a. Paragraphs (b) and (c) would be revised to read as set forth below.

b. Paragraph (d) would be redesignated as paragraph (e).

c. A new paragraph (d) would be added to read as set forth below.

d. In newly designated paragraph (e)(2), the reference to ''paragraph (d)(7)'' would be removed and a reference to ''paragraph (e)(7)'' would be added in its place.

### § 93.419 Sheep and goats from Canada.

* * * * *

(b) If the sheep or goats are unaccompanied by the certificate required by paragraph (a) of this section, or if they are found upon inspection at the port of entry to be affected with or exposed to a communicable disease, they shall be refused entry and shall be handled or quarantined, or otherwise disposed of, as the Administrator may direct.

(c) Any sheep or goats imported from Canada must not be pregnant, must be less than 12 months of age when imported into the United States and when slaughtered, must be from a flock or herd subject to a ruminant feed ban equivalent to the requirements established by the U.S. Food and Drug Administration at 21 CFR 589.2000, and must be individually identified by an official Canadian Food Inspection Agency eartag applied before the animal's arrival at the port of entry into the United States, that is determined by the Administrator to meet standards equivalent to those for official eartags in the United States as defined in § 71.1 of this chapter and to be traceable to the premises of origin of the animal. No person may alter, deface, remove, or otherwise tamper with the individual identification while the animal is in the United States or moving into or through the United States, except that the identification may be removed at the time of slaughter. The animals must be accompanied by the certification issued in accordance with § 93.405 that states, in addition to the statements required by § 93.405, that the conditions of this paragraph have been met. Additionally, for sheep and goats imported for immediate slaughter, the certificate must state that the conditions of paragraphs (d)(1) through (d)(3) of this section have been met, and, for sheep and goats imported for other than immediate slaughter, the certificate must state that the conditions of paragraphs (e)(1) and (e)(2) of this section have been met.

(d) *Sheep and goats imported for immediate slaughter.* Sheep and goats imported from Canada for immediate slaughter must be imported only through a port of entry listed in § 93.403(b) or as provided for in § 93.403(f) in a means of conveyance sealed in Canada with seals of the Canadian Government, and must be moved directly as a group from the port of entry to a recognized slaughtering establishment for slaughter as a group. The sheep and goats shall be inspected at the port of entry and otherwise handled in accordance with § 93.408. The seals on the means of conveyance must be broken only at the port of entry by the APHIS port veterinarian or at the recognized slaughtering establishment by an authorized USDA representative. If the seals are broken by the APHIS port veterinarian at the port of entry, the means of conveyance must be resealed with seals of the U.S. Government before being moved to the recognized slaughtering establishment. The shipment must be accompanied from the port of entry to the recognized slaughtering establishment by APHIS Form VS 17–33, which shall include the location of the recognized slaughtering establishment. Additionally, the sheep and goats must meet the following conditions:

(1) The animals have not tested positive for and are not suspect for a transmissible spongiform encephalopathy;

(2) The animals have not resided in a flock or herd that has been diagnosed with BSE; and

(3) The animals' movement is not restricted within Canada as a result of exposure to a transmissible spongiform encephalopathy.

* * * * *

4. Section 93.420 would be revised to read as follows:

### § 93.420 Ruminants from Canada for immediate slaughter other than bovines, sheep, and goats.

The requirements for the importation of sheep and goats from Canada for immediate slaughter are contained in § 93.419. The requirements for the importation of bovines from Canada for immediate slaughter are contained in § 93.436. All other ruminants imported from Canada for immediate slaughter, in addition to meeting all other applicable requirements of this part, must be imported only through a port of entry listed in § 93.403(b) or as provided for in § 93.403(f) to a recognized slaughtering establishment for slaughter, in conveyances that must be sealed with seals of the U.S. Government at the port of entry. The seals may be broken only at a recognized slaughtering establishment in the United States by an authorized USDA representative. The shipment must be accompanied from the port of entry to the recognized slaughtering establishment by APHIS Form VS 17–33, which must include the location of the recognized slaughtering establishment. Such ruminants shall be inspected at the port of entry and otherwise handled in accordance with § 93.408.

(Approved by the Office of Management and Budget under control number 0579–0277)

5. Section 93.436 would be amended as follows:

a. Paragraphs (a) and (b) would be revised to read as set forth below.

b. In paragraph (c), the reference to ''§§ 93.419(c) and 93.420'' would be removed and a reference to ''§§ 93.405 and 93.419'' would be added in its place.

### § 93.436 Ruminants from regions of minimal risk for BSE.

* * * * *

(a) *Bovines for immediate slaughter.* Bovines from a region listed in § 94.18(a)(3) of this subchapter may be

imported for immediate slaughter under the following conditions:

(1) The bovines must have been born on or after a date determined by APHIS to be the date of effective enforcement of a ruminant-to-ruminant feed ban in the region of export. For bovines imported from Canada, that date is March 1, 1999.

(2) Each bovine must be individually identified by an official eartag of the country of origin, applied before the animal's arrival at the port of entry into the United States, that is determined by the Administrator to meet standards equivalent to those for official eartags in this chapter and to be traceable to the premises of origin of the animal. No person may alter, deface, remove, or otherwise tamper with the official identification while the animal is in the United States or moving into or through the United States, except that the identification may be removed at the time of slaughter;

(3) The bovines must be accompanied by a certificate issued in accordance with § 93.405 that states, in addition to the statements required by § 93.405, that the conditions of paragraphs (a)(1) and (a)(2) of this section have been met;

(4) The bovines must be imported only through a port of entry listed in § 93.403(b) or as provided for in § 93.403(f). The bovines shall be inspected at the port of entry and otherwise handled in accordance with § 93.408;

(5) The bovines must be moved directly from the port of entry to a recognized slaughtering establishment. Bovines imported from Canada must be moved to the slaughtering establishment in conveyances that are sealed with seals of the U.S. Government at the port of entry. The seals may be broken only at the recognized slaughtering establishment by an authorized USDA representative; and

(6) The bovines must be accompanied from the port of entry to the recognized slaughtering establishment by APHIS Form VS 17–33.

(b) *Bovines for other than immediate slaughter.* Bovines from a region listed in § 94.18(a)(3) of this subchapter may be imported for other than immediate slaughter under the following conditions:

(1) The bovines must have been born on or after a date determined by APHIS to be the date of effective enforcement of a ruminant-to-ruminant feed ban in the region of export. For bovines imported from Canada, that date is March 1, 1999.

(2) The bovines must be permanently and humanely identified before arrival at the port of entry with a distinct and legible mark identifying the exporting country. Acceptable means of permanent identification include the following:

(i) A mark properly applied with a freeze brand, hot iron, or other method, and easily visible on the live animal and on the carcass before skinning. Such a mark must be not less than 2 inches nor more than 3 inches high, and must be applied to each animal's right hip, high on the tail-head (over the junction of the sacral and first cocygeal vertebrae). Bovines exported from Canada so marked must be marked with ''CAN'';

(ii) A tattoo with letters identifying the exporting country must be applied to the inside of one ear of the animal. For bovines exported from Canada, the tattoo must read ''CAN'';

(iii) Other means of permanent identification upon request if deemed adequate by the Administrator to humanely identify the animal in a distinct and legible way as having been imported from the BSE minimal-risk exporting region.

(3) Each bovine must be individually identified by an official eartag of the country of origin, applied before the animal's arrival at the port of entry into the United States, that is determined by the Administrator to meet standards equivalent to those for official eartags in § 71.1 of this chapter and to be traceable to the premises of origin of the animal. No person may alter, deface, remove, or otherwise tamper with the official identification while the animal is in the United States or moving into or through the United States, except that the identification may be removed at the time of slaughter;

(4) The bovines must be accompanied by a certificate issued in accordance with § 93.405 that states, in addition to the statements required by § 93.405, that the conditions of paragraphs (a)(1) and (a)(2) of this section have been met; and

(5) The bovines must be imported only through a port of entry listed in § 93.403(b) or as provided for in § 93.403(f).

* * * * *

## PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

6. The authority citation for part 94 would continue to read as follows:

**Authority:** 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

### § 94.19 [Amended]

7. In § 94.19, paragraphs (a)(2), (b)(2), and (f) would be amended by removing the words ''and small intestine'' each time they appear.

## PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

8. The authority citation for part 95 would continue to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

9. Section 95.4 would be amended as follows:

a. The heading and the paragraph (a) introductory text would be revised to read as set forth below.

b. Paragraphs (e) through (h) would be redesignated as paragraphs (f) through (i), respectively.

c. Paragraphs (a)(1)(ii) and (a)(1)(iv) would be revised to read as set forth below.

d. In paragraph (b), the words ''paragraphs (d) and (h)'' would be removed and the words ''paragraphs (d), (e), and (i)'' would be added in their place.

e. Paragraph (d) introductory text would be revised to read as set forth below.

f. New paragraph (e) would be added to read as set forth below.

g. In newly designated paragraph (h)(1)(i), the words ''and small intestine'' would be removed.

h. In newly designated paragraph (i) introductory text, the words ''paragraphs (h)(1) through (h)(3)'' would be removed and the words paragraphs ''paragraphs (i)(1) through (i)(3)'' would be added in their place.

### § 95.4 Restrictions on the importation of processed animal protein, offal, tankage, fat, glands, certain tallow other than tallow derivatives, and blood and blood products due to bovine spongiform encephalopathy.

(a) Except as provided in paragraphs (c) through (i) of this section, the importation of the following is prohibited:

(1) * * *

(ii) Glands, unprocessed fat tissue, and blood and blood products derived from ruminants;

* * * * *

(iv) Derivatives of glands and blood and blood products derived from ruminants;

* * * * *

(d) Except as provided in paragraph (e) of this section, the importation of serum albumin, serocolostrum, amniotic liquids or extracts, and placental liquids derived from ruminants that have been in any region listed in § 94.18(a) of this chapter, and collagen and collagen products that meet any of the conditions listed paragraphs (a)(1) through (a)(3) of this section, is prohibited unless the following conditions have been met:

* * * * *

(e) Bovine blood and blood products that are otherwise prohibited importation under paragraph (a)(1) or (d) of this section may be imported into the United States if they meet the following conditions:

(1) For blood collected at slaughter and for products derived from blood collected at slaughter:

(i) The blood was collected in a closed system in which the blood was conveyed directly from the animal in a closed conduit to a closed receptacle, or was collected otherwise in an hygienic manner that prevents contamination of the blood with SRMs.

(ii) The slaughtered animal passed ante-mortem inspection and was not subjected to a pithing process or to a stunning process with a device injecting compressed air or gas into the cranial cavity;

(2) For fetal bovine serum:

(i) The blood from which the fetal bovine serum was derived was collected in a closed system in which the blood was conveyed directly from the animal in a closed conduit to a closed receptacle, or was collected otherwise in an hygienic manner that prevents contamination of the blood with SRMs;

(ii) The dam of the fetal calf passed ante-mortem inspection and was not subjected to a pithing process or to a stunning process with a device injecting compressed air or gas into the cranial cavity;

(iii) The uterus was removed from the dam's abdominal cavity intact and taken to a separate area sufficiently removed from the slaughtering area of the facility to ensure that the fetal blood was not contaminated with SRMs when collected.

(3) For blood collected from live donor bovines and for products derived from blood collected from live donor bovines:

(i) The blood was collected in a closed system in which the blood was conveyed directly from the animal in a closed conduit to a closed receptacle, or was collected otherwise in a hygienic manner that prevents contamination of the blood with SRMs;

(ii) The donor animal was free of clinical signs of disease.

(4) Each shipment to the United States is accompanied by an original certificate signed by a full-time salaried veterinary officer of the national government of the region of origin, or issued by a veterinarian designated by or accredited by the national government of the region of origin, representing that the veterinarian issuing the certificate was authorized to do so. The certificate must state that the requirements of paragraph (e)(1), (e)(2), or (e)(3) of this section, as applicable, have been met.

* * * * *

## PART 96—RESTRICTION OF IMPORTATIONS OF FOREIGN ANIMAL CASINGS OFFERED FOR ENTRY INTO THE UNITED STATES

10. The authority citation for part 96 would continue to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.4.

11. In § 96.1, new definitions of *Food and Drug Administration* and *Food Safety and Inspection Service* would be added, in alphabetical order, to read as follows:

### § 96.1 Definitions.

* * * * *

*Food and Drug Administration.* The Food and Drug Administration of the United States Department of Health and Human Services.

*Food Safety and Inspection Service.* The Food Safety and Inspection Service of the United States Department of Agriculture.

* * * * *

12. In § 96.2, paragraph (b) would be revised to read as follows:

### § 96.2 Prohibition of casings due to African swine fever and bovine spongiform encephalopathy.

* * * * *

(b) *Ruminant casings.* The importation of casings, except stomachs, from ruminants that originated in or were processed in any region listed in § 94.18(a) of this subchapter is prohibited, except as provided in paragraphs (b)(1) and (b)(2) of this section:

(1) Casings that are derived from sheep that were slaughtered in a region listed in § 94.18(a)(3) of this subchapter at less than 12 months of age and that were from a flock subject to a ruminant feed ban equivalent to the requirements established by the U.S. Food and Drug Administration at 21 CFR 589.2000 may be imported.

(2) Casings that are derived from bovines that were slaughtered in a region listed in § 94.18(a)(3) of this subchapter may be imported, provided, if the casings are derived from the small intestine, the casings are derived from that part of the small intestine that is eligible for use as human food in accordance with the requirements established by the Food Safety and Inspection Service at 9 CFR 310.22 and the Food and Drug Administration at 21 CFR 189.5.

(3) Casings imported in accordance with either paragraph (b)(1) or (b)(2) of this section must be accompanied by a certificate that:

(i) States that the casings meet the conditions of this section;

(ii) Is written in English;

(iii) Is signed by an individual eligible to issue the certificate required under § 96.3; and

(iv) Is presented to an authorized inspector at the port of entry.

(Approved by the Office of Management and Budget under control number 0579–0015)

13. In § 96.3, paragraph (d) would be revised to read as follows:

### § 96.3 Certificate for animal casings.

* * * * *

(d) In addition to meeting the requirements of this section, the certificate accompanying sheep casings from a region listed in § 94.18(a)(3) of this subchapter must state that the casings meet the requirements of § 96.2(b)(1) and the certificate accompanying bovine casings from a region listed in § 94.18(a)(3) of this subchapter must state that the casings meet the requirements of § 96.2(b)(2).

* * * * *

Done in Washington, DC, this 3rd day of January 2007.

**Bruce Knight,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 07–17 Filed 1–4–07; 3:00 pm]

BILLING CODE 3410–34–P

Federal Register

Tuesday,
January 9, 2007

# Part IV

# The President

## Memorandum of January 5, 2007—Assignment of Functions Regarding the Citizens Health Care Working Group

Federal Register
Vol. 72, No. 5
Tuesday, January 9, 2007

# Presidential Documents

**Title 3—**

## The President

**Memorandum of January 5, 2007**

## Assignment of Functions Regarding the Citizens Health Care Working Group

**Memorandum for the Secretary of Health and Human Services**

By virtue of authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3 of the United States Code, the functions of the President under section 1014(o)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173) are assigned to the Secretary of Health and Human Services.

You are authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
*Washington, January 5, 2007.*

[FR Doc. 07–67
Filed 1–8–07; 11:11 am]
Billing code 4110–60–M

# Rules and Regulations

Federal Register
Vol. 72, No. 5
Tuesday, January 9, 2007

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

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

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### 7 CFR Part 760

**RIN 0560–AH45**

## 2005 Section 32 Hurricane Disaster Programs; 2006 Livestock Assistance Grant Program

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule sets forth the Farm Service Agency (FSA) regulations for the 2005 Section 32 Hurricane Disaster Programs in response to emergency agricultural situations caused by the 2005 hurricanes Dennis, Katrina, Ophelia, Rita, and Wilma in certain counties in Alabama, Florida, Louisiana, Mississippi, North Carolina, and Texas. The rule establishes four hurricane disaster programs to provide funds to eligible producers who suffered eligible losses, and a grant program that will provide funds to the respective States to enable them to assist aquaculture producers having losses related to the aforementioned hurricanes. This final rule also sets forth provisions related to the 2006 Livestock Assistance Grant Program.

**DATES:** This final rule is effective January 8, 2007.

**FOR FURTHER INFORMATION CONTACT:** Diane Sharp, Director, Production, Emergencies, and Compliance Division; Farm Service Agency; United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517; telephone (202) 720–7641; e-mail *Diane.Sharp@wdc.usda.gov*.

**SUPPLEMENTARY INFORMATION:**

### Discussion of Final Rule

In 2005 hurricanes Dennis, Katrina, Ophelia, Rita, and Wilma, in applicable counties in Alabama, Florida, Louisiana, Mississippi, North Carolina, and Texas, destroyed and damaged trees, killed livestock, and adversely impacted crop production, including aquaculture, thus severely limiting the purchasing power of farmers engaged in the production of agricultural commodities. Section 32 of the Act of August 24, 1935, as amended (Section 32), provides discretionary authority for the Secretary of Agriculture (the Secretary) to use Section 32 funds to reestablish farmers' purchasing power by making payments to them in connection with the normal production of agricultural commodities produced for domestic consumption.

The FSA published an interim final rule on May 10, 2006, with a 30-day comment period which ended on June 9, 2006. The interim final rule provided that the Secretary would use an estimated $250 million in funds available under Section 32 to restore purchasing power to farmers affected by the significant and widespread destruction caused by the named hurricanes, in those counties in the named States that received a Presidential or Secretarial Designation as a primary county. Accordingly, for eligible losses suffered as a result of the aforementioned hurricanes, the Secretary determined that assistance would be provided by establishment of four hurricane disaster programs to provide direct payments to eligible producers who suffered eligible losses; and one grant program that will provide funds to the named States in order to enable these States to assist aquaculture producers. These programs include: (1) Hurricane Indemnity Program (HIP), (2) Feed Indemnity Program (FIP), (3) Livestock Indemnity program (LIP), (4) Tree Indemnity Program (TIP), and (5) Aquaculture Grant Program. These programs operate under regulations codified in 7 CFR part 760.

### Comments and Changes to Final Rule

Seven respondents provided comments to FSA during the 30-day comment period. One comment was received from an individual, four comments were received from associations representing various producer interests, and two comments were received from advocacy organizations. All comments received were in support of the 2005 Section 32 Hurricane Disaster Programs and expressed the need for the programs because of the losses caused by hurricane destruction. Some of the commenters addressed issues about other, already existing regulations and issues which were not part of the interim final rule for which no comments were invited. Therefore, these issues are not addressed. A few editorial changes have been made in the text of the regulation for clarity and to facilitate the application of the regulations. The definition of deer has been removed because it, as provided in the interim rule, did not include all categories of eligible deer.

*'Comment:* Three commenters expressed concern that the disaster programs were not available to producers in DeSoto County, Florida.

*Response:* This rule addressed the hurricane destruction only in those counties in the named States that received a Presidential or Secretarial Designation as a primary county. DeSoto County was not so designated and therefore the disaster programs are not available for losses in that county. No change to the final rule was made as a result of these comments.

*'Comment:* One commenter expressed concern that payments under TIP would be paid only to eligible owners.

*Response:* The text of the background of the interim rule did state that TIP payments would be provided to eligible owners. However, the regulatory text at 760.502 is actually broader in that TIP payments are also made to those who bear financial responsibility and who have incurred costs, which includes lessees. Accordingly, no change to the final rule was made as a result of this comment.

*'Comment:* Two commenters sought clarification of the provisions which describe the exclusion from these disaster programs of individuals or entities whose adjusted gross income (AGI) is in excess of $2.5 million without including the stipulation that individuals or entities are eligible if 75% or more of the $2.5 million is earned from agricultural enterprises.

*Response:* A change to the final rule will be made to clarify the provision that an individual or entity may be considered to meet the AGI requirements if not less than 75% of the individual's or entity's average AGI for the three tax years immediately

preceding the applicable crop year is derived from farming or ranching operations.

*'Comment:* One commenter suggested that the initial breeding and raising of horses should be deemed part of agricultural production, and that horses are an agricultural product regardless of the activity in which the horse may be used. Therefore, the definitions of ''commercial use'' and ''farming operation'' should be modified to indicate a commercial horse breeding operation, by itself, would satisfy the applicable definitions.

*Response:* FSA does not agree that a horse, or any animal, is an agricultural product without regard to the purpose, use, or activity for which it is used. Regardless of whether the animal is a horse, goat, sheep, cattle or other livestock, no animal is automatically considered an agricultural product based solely on the kind of livestock. No change to the final rule was made as a result of this comment.

*'Comment:* One commenter questioned why FIP excludes ''* * * donkeys, mules, or other large solid-hoofed herbivorous mammals'' but LIP includes ''* * * mule or donkey.''

*Response:* Each of these two livestock programs was designed to be consistent with previous livestock programs implemented by FSA. Administering similar programs in a consistent manner reduces the burden placed on producers and ensures that these programs are consistent with similar previous FSA programs. Accordingly, FSA determined to include equine animals (horses, donkeys, and mules) as an eligible category under LIP, and determined to include horses as an eligible category of livestock because of the change in the definition of livestock included in Public Law 109–97. No change to the final rule was made as a result of this comment.

*'Comment:* One commenter suggested that the word ''produced'' be removed from the requirements for eligibility under both FIP and LIP as it pertains to animals because, the commenter claimed, animals such as race horses would thus not be eligible if they were produced for reasons other than commercial use as part of a farming operation.

*Response:* The purpose and use of any animal, including a horse, is critical to determining whether the requirements of Section 32 are met. Any animal, including a horse, which was produced and maintained for reasons other than commercial use as part of a farming operation would not meet the criteria required under the authority provided by Section 32. No change to the final rule was made as a result of this comment.

*'Comment:* One commenter requested clarification as to what FSA deems to be farming or ranching activities for these disaster programs.

*Response:* FSA defers to how the producer classified and reported the income of the farming enterprise to IRS. The producer decision of how to report such income reflects the business practices of that enterprise. FSA determinations about such farming or ranching activities, when necessary, will be determined by documents filed with IRS for the applicable year. No change to the final rule was made as a result of this comment.

*'Comment:* Two commenters expressed concern about HIP providing disaster benefits to eligible producers who receive either a Federal Crop Insurance Program or the Non Insured Crop Disaster Assistance Program (NAP) payment. One commenter asked that FSA let ''small and limited farmers and ranchers participate in this program without regard to having received * * *'' such a payment. Another commenter asked that FSA waive the requirement for those who agree to obtain coverage in the future, stating that the limitations of HIP payments to those who receive either a crop insurance or NAP payment places a disproportionate impact upon limited resource and socially disadvantaged farmers.

*Response:* Of the 5 disaster programs offered under the 2005 Section 32 Hurricane Disaster Programs, only HIP benefits are predicated on participants having received a crop insurance or NAP payment. HIP is a ''top up'' program that will supplement crop insurance or NAP payments because of emergency agricultural situations that crop insurance or NAP payments did not adequately meet. Because HIP is intended to supplement crop insurance or NAP payments, waiving this requirement for those who agree to obtain coverage in the future would delay implementation of the program. Also, both NAP and the catastrophic level of crop insurance are available at no cost to limited resource producers who request that the fees for same be waived. Further, some previous disaster programs have had the stipulation that payments be made based on the proviso that future coverage be obtained and in many instances such future coverage was not obtained. No change to the final rule was made as a result of this comment.

*'Comment:* One commenter stated that under HIP there seemed no need for FSA to determine that a producer who applies for benefits will be eligible to receive a payment if damage occurred due to an eligible hurricane and due to a cause of loss which includes hurricanes.

*Response:* A change to section 760.202(a)(3)(vi) in the final rule will be made to delete ''hurricane.''

• *Comment:* One commenter stated concern that no rationale is offered for excluding FIP assistance for losses of beef cattle, buffalo/beefalo, and dairy cattle weighing less than 500 pounds and that because many producers have realized drastically lower-than-projected income from their 2005 calves, FIP assistance for these producers for all of their livestock losses is critical to restoring their buying power.

*Response:* The purpose of FIP is to provide monetary assistance to eligible livestock owners, or cash lessees, for feed losses or increased feed costs that occurred as a result of an applicable hurricane. The program is not designed or authorized to provide assistance for the loss or reduction of projected income. In general, livestock under a certain weight are normally still nursing and obtaining most of their nutrition from their mother. Therefore, generally, there is no, or minimal, feed loss associated with respect to such animals. No change to the final rule was made as a result of this comment.

• *Comment:* One commenter expressed concern that there would be insufficient funds to cover all losses, thus producing a 'first-come, first-serve' allocation system that would favor the most informed producers without accounting for less informed producers who are at least equally in need of assistance.

*Response:* FSA is confident that sufficient funds are available to cover all eligible losses. These programs are available to all eligible producers on an equal basis. No change to the final rule was made as a result of this comment.

• *Comment:* One commenter urged FSA to provide for producers who suffered eligible losses in multiple counties to apply for disaster benefits in one county office; and absent this provision, to make the date a producer files his first application in any county office the application date for his filings in all other county offices.

*Response:* Based on the fact that severe devastation occurred, very little documentation is available to support reported losses. Therefore FSA determined to require producers to apply in each county where loss occurred in order to enable each FSA county office to validate the loss in that county and to maintain the integrity of the program. As stated previously, FSA

is confident that sufficient funds are available to cover all losses so there is no need for time-stamping when an application is filed. No change to the final rule was made as a result of this comment.

• *Comment:* One commenter asks that payments under these Section 32 programs not be subject to administrative offset.

*Response:* The Debt Collection Improvement Act of 1996 requires that, with only limited exceptions such as loan proceeds from the federal Farm Loan Program, all federal disbursements be subject to administrative offset. No change to the final rule was made as a result of this comment.

• *Comment:* One commenter asked that the dates of the application period be included in the rule.

*Response:* The application period for the disaster programs began on May 17, 2005, prior to the comment period deadline. As yet no end date has been established. To arbitrarily include an end date for the application period in the final rule might limit the time during which applications can be taken, to the detriment of some eligible producers. No change to the final rule was made as a result of this comment. Producers will be notified of the end of the enrollment period through the issuance of press releases and newsletters.

• *Comment:* One commenter stated that the tomato is a fruit grown on a vine and thus meets the definition of vine and should be eligible for benefits under the disaster programs.

*Response:* The tomato plant grows with a weak, woody, inflexible stem and, is traditionally considered to be a vegetable for farm program purposes.

**2006 Section 32 Livestock Assistance Grant Program**

Since the issuance of the interim rule that established the 2005 Section 32 Disaster Programs, USDA has determined that significant losses of forage have occurred in several States as the result of severe droughts. As a result of this determination, and taking into account the limited availability of Section 32 funds, FSA will administer a limited program to provide assistance to livestock producers where forage was adversely affected by drought in counties reaching D3 or D4 Drought on the U.S. Drought Monitor, during March 7 to August 31, 2006, in the States of: Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin and Wyoming. Under the Livestock Assistance Grant Program, FSA will provide grants to the State governments of these States to assist livestock producers who suffered forage losses as part of a farming operation in eligible counties. Among other conditions in the grant, the amount of each grant will be based on the number of adult beef cattle and sheep from each eligible county uniformly prorated to insure that available funding is not exceeded. Accordingly, a new Subpart H is added to 7 CFR Part 760.

**Executive Order 12866**

This rule has been determined to be economically significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget. A Cost-Benefit Analysis was completed and is summarized below. It is also available from the contact person cited above.

**Executive Order 12372**

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

**Executive Order 12612**

This rule does not have Federalism implications that warrant the preparation of a Federalism Assessment. This rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

**Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988. This rule is not retroactive and it does not preempt State law. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

**Unfunded Mandates Reform Act of 1995**

This rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, and tribal government or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995, the Office of Management and Budget (OMB) has approved the information collection required to support this program and assigned it OMB Control number 0560–0257. Copies of the information collection may be obtained from Debbie O'Donoghue, phone: (202)720–6605; e-mail: *Debbie.Odonoghue@wdc.usda.gov.*

**Small Business Regulatory Enforcement Fairness Act of 1996**

The Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104–121) (SBREFA) requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. This rule has not been determined to be major under SBREFA. In addition, section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. Accordingly, FSA finds that it would be contrary to the public interest to delay implementation of this rule because it would significantly delay assistance to the many people affected by the hurricane disasters addressed by this rule. This rule is thus effective immediately.

**Environmental Evaluation**

The environmental impacts of this rule have been considered consistent with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500 1508), and regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. A Programmatic Environmental Assessment (PEA) was completed and it was determined that the Proposed Action does not have the potential to significantly impact the quality of the human environment, and, therefore, FSA has issued a Finding of No Significant Impact (FONSI) with respect to the 2005 Hurricane Assistance programs which include the Hurricane Indemnity Program, Feed Indemnity Program, Livestock Indemnity program, Tree Indemnity Program, Aquaculture Grant Program, and the 2006 Livestock Assistance Grant Program. A copy of the Final PEA and FONSI are on file and available to the public in the Administrative Record at the address specified in the **ADDRESSES** section of this rule.

**Government Paperwork Elimination Act**

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in

particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The regulation is available at *http://www.fsa.usda.gov* under the heading 'Other Partners.' Applications may be submitted at the FSA county offices.

**E-Government Act Compliance**

CCC is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E–GOV compliance related to this rule, please contact the person named above under the information contact section.

**Summary of Economic Impacts**

As a result of 2005 hurricanes, 261 counties in Alabama, Florida, Louisiana, Mississippi, North Carolina, and Texas were designated as Presidential and Secretarial primary disaster counties. A wide variety of crops were damaged because of the diversity of production in the affected areas. Damaged crops include feed grains, soybeans, upland cotton, rice, sugarcane, nursery plants, fruits, vegetables, pecans, pasture, livestock, poultry, and aquaculture. In response to this situation, FSA established four hurricane disaster programs for producers and a grant program for affected States. Their respective impacts are summarized as follows:

1. *HIP.* HIP payments are expected to be about $59 million. This estimate is based on 30 percent of the sum of the total payments reported by the RMA and total payment estimates for the NAP program. According to RMA, crop loss indemnities are estimated at $187 million. Based on the participation rates in the hurricane impacted States, it is estimated that approximately $10 million will be issued under NAP. Thus, HIP payments are estimated to total about $56 million (.30 x $187 million) plus about $3 million (.30 x $10 million). Therefore, crop loss payments are estimated to total about $59 million.

2. *FIP.* The value of expected claims under the 2005 FIP is approximately $5 million. For those producers who have suffered losses due to the 2005 hurricanes, and qualify for payments under the 2005 FIP, their farm income losses will be somewhat offset or reduced by these payments, and they and their local communities will benefit accordingly.

3. *LIP.* The value of expected claims under the 2005 LIP is $25 million based on projections from applications on file as of September 5, 2006. The impacts of the LIP on any sector of the economy, including livestock feed prices, livestock prices, and consumer prices, are not expected to be measurable. However, for those producers who have suffered losses due to the 2005 hurricanes, and qualify for payments under the LIP, their farm income losses will be somewhat offset or reduced by these payments, and they and their local communities will benefit accordingly.

4. *TIP.* FSA estimates the cost of the TIP to be between $31.6 million and $56.6 million with a point estimate of $35.1 million. Over 90 percent of the program funds will go to the Florida citrus industry.

5. *Aquaculture grants* were provided as follows: Alabama, $5,037,500; Florida, $3,662,500; Louisiana, $4,512,500; Mississippi, $10,762,500; North Carolina, $312,500; and Texas, $712,500. Funding of $25 million was expended.

6. *Livestock Grant Program.* To provide assistance to livestock producers whose forage has been adversely impacted by severe drought in 2006, $50 million has been allocated for block grants to States. Based on the counties declared drought disaster areas and NASS statistics on the number of livestock in each applicable county of each State, funds are being distributed as follows:

LIVESTOCK ASSISTANCE GRANT PROGRAM

| State | Grant amount ($) |
|---|---|
| Alabama | 976,011 |
| Arizona | 2,405,043 |
| Arkansas | 2,015,485 |
| Colorado | 1,283,883 |
| Florida | 149,705 |
| Georgia | 11,391 |
| Kansas | 948,511 |
| Louisiana | 958,437 |
| Minnesota | 704,980 |
| Mississippi | 759,916 |
| Missouri | 2,726,909 |
| Montana | 933,443 |
| Nebraska | 3,627,091 |
| New Mexico | 1,512,932 |
| North Dakota | 1,807,850 |
| Oklahoma | 6,594,374 |
| South Dakota | 4,299,137 |
| Texas | 16,101,487 |
| Wisconsin | 575,062 |
| Wyoming | 1,608,352 |
| Grand Total | 50,000,000 |

**List of Subjects for 7 CFR Part 760**

Disaster assistance, Hurricane, Indemnity payments, Livestock.

■ For the reasons set forth above, the interim rule of May 10, 2006, amending 7 CFR part 760 is adopted as final with the following changes:

## PART 760—INDEMNITY PAYMENT PROGRAMS

■ 1. The authority citation for part 760 continues to read as follows:

**Authority:** 7 U.S.C. 612c; Pub. L. 106–387, 114 Stat. 1549; Pub. L. 107–76, 115 Stat. 704.

■ 2. Subparts B through G are revised and subpart H is added to read as follow:

**Subpart B—General Provisions for the 2005 Section 32 Hurricane Disaster Programs**

Sec.
760.101 Eligible counties, hurricanes and disaster periods.
760.102 Applicability.
760.103 Administration of HIP, FIP, LIP, and TIP.
760.104 Definitions.
760.105 Application for payment.
760.106 Limitations on payments and other benefits.
760.107 Appeals.
760.108 Offsets, assignments, and debt settlement.
760.109 Records and inspections thereof.
760.110 Refunds; joint and several liability.
760.111 Paperwork Reduction Act assigned number.

**Subpart C—Hurricane Indemnity Program**

760.201 Applicability.
760.202 Producer eligibility.
760.203 Payment calculation.

**Subpart D—Feed Indemnity Program**

760.301 Applicability.
760.302 Definitions.
760.303 Eligible livestock and producers.
760.304 Application process.
760.305 Payment calculation.

**Subpart E—Livestock Indemnity Program**

760.401 Applicability.
760.402 Definitions.
760.403 Eligible owners, contract growers and livestock.
760.404 Application process.
760.405 Payment calculation.

**Subpart F—Tree Indemnity Program**

760.501 Applicability.
760.502 Eligible producers and stands.
760.503 Application process.
760.504 Payment calculation.

**Subpart G—Aquaculture program**

760.601 Funds availability.

**Subpart H—2006 Livestock Assistance Grant Program**

760.701 Funds availability.

## Subpart B—General Provisions for the 2005 Section 32 Hurricane Disaster Programs

### § 760.101 Eligible counties, hurricanes and disaster periods.

Producers who have suffered certain losses due to 2005 Hurricanes Dennis, Katrina, Ophelia, Rita, and Wilma (2005 hurricanes) in the following counties (eligible counties) are eligible to enroll in the programs made available under subparts B through F of this part. The 'Disaster Period' is the time period in which losses occurred that would be considered eligible for the programs under subparts B through F of this part. Funds for the programs in subparts B through G are made available under Section 32 of the Act of August 24, 1935, as amended (Section 32).

| State | County | Disaster period | | | | |
|---|---|---|---|---|---|---|
| | | DENNIS | KATRINA | OPHELIA | RITA | WILMA |
| Alabama | Autauga | 7/10/05–9/8/05 | | | | |
| Alabama | Baldwin | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Bibb | | 8/29/05–10/28/05 | | | |
| Alabama | Butler | 7/10/05–9/8/05 | | | | |
| Alabama | Chambers | 7/10/05–9/8/05 | | | | |
| Alabama | Choctaw | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Clarke | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Clay | 7/10/05–9/8/05 | | | | |
| Alabama | Cleburne | 7/10/05–9/8/05 | | | | |
| Alabama | Coffee | 7/10/05–9/8/05 | | | | |
| Alabama | Colbert | | 8/29/05–10/28/05 | | | |
| Alabama | Conecuh | 7/10/05–9/8/05 | | | | |
| Alabama | Covington | 7/10/05–9/8/05 | | | | |
| Alabama | Crenshaw | 7/10/05–9/8/05 | | | | |
| Alabama | Cullman | | 8/29/05–10/28/05 | | | |
| Alabama | Dallas | 7/10/05–9/8/05 | | | | |
| Alabama | Escambia | 7/10/05–9/8/05 | | | | |
| Alabama | Geneva | 7/10/05–9/8/05 | | | | |
| Alabama | Greene | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Hale | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Henry | 7/10/05–9/8/05 | | | | |
| Alabama | Houston | 7/10/05–9/8/05 | | | | |
| Alabama | Jefferson | | 8/29/05–10/28/05 | | | |
| Alabama | Lamar | | 8/29/05–10/28/05 | | | |
| Alabama | Lauderdale | | 8/29/05–10/28/05 | | | |
| Alabama | Lowndes | 7/10/05–9/8/05 | | | | |
| Alabama | Macon | 7/10/05–9/8/05 | | | | |
| Alabama | Marengo | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Marion | | 8/29/05–10/28/05 | | | |
| Alabama | Mobile | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Monroe | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Perry | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Pickens | | 8/29/05–10/28/05 | | | |
| Alabama | Pike | 7/10/05–9/8/05 | | | | |
| Alabama | Randolph | 7/10/05–9/8/05 | | | | |
| Alabama | Sumter | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Tuscaloosa | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Washington | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Wilcox | 7/10/05–9/8/05 | 8/29/05–10/28/05 | | | |
| Alabama | Winston | | 8/29/05–10/28/05 | | | |
| Florida | Bay | 7/10/05–9/8/05 | 8/24/05–10/23/05 | | | |
| Florida | Brevard | | | | | 10/23/05–12/22/05 |
| Florida | Broward | | 8/24/05–10/23/05 | | | 10/23/05–12/22/05 |
| Florida | Calhoun | 7/10/05–9/8/05 | | | | |
| Florida | Charlotte | | | | | 10/23/05–12/22/05 |
| Florida | Collier | | 8/24/05–10/23/05 | | | 10/23/05–12/22/05 |
| Florida | Dixie | 7/10/05–9/8/05 | | | | |
| Florida | Escambia | 7/10/05–9/8/05 | 8/24/05–10/23/05 | | | |
| Florida | Franklin | 7/10/05–9/8/05 | 8/24/05–10/23/05 | | | |
| Florida | Gadsden | 7/10/05–9/8/05 | | | | |
| Florida | Glades | | | | | 10/23/05–12/22/05 |
| Florida | Gulf | 7/10/05–9/8/05 | 8/24/05–10/23/05 | | | |
| Florida | Hardee | | | | | 10/23/05–12/22/05 |
| Florida | Hendry | | | | | 10/23/05–12/22/05 |
| Florida | Highlands | | | | | 10/23/05–12/22/05 |
| Florida | Holmes | 7/10/05–9/8/05 | | | | |
| Florida | Indian River | | | | | 10/23/05–12/22/05 |
| Florida | Jackson | 7/10/05–9/8/05 | | | | |
| Florida | Jefferson | 7/10/05–9/8/05 | | | | |
| Florida | Lee | | | | | 10/23/05–12/22/05 |
| Florida | Leon | 7/10/05–9/8/05 | | | | |
| Florida | Levy | 7/10/05–9/8/05 | | | | |
| Florida | Liberty | 7/10/05–9/8/05 | | | | |

| State | County | Disaster period | | | | |
|---|---|---|---|---|---|---|
| | | DENNIS | KATRINA | OPHELIA | RITA | WILMA |
| Florida | Martin | | | | | 10/23/05–12/22/05 |
| Florida | Miami-Dade | | 8/24/05–10/23/05 | | | 10/23/05–12/22/05 |
| Florida | Monroe | 7/10/05–9/8/05 | 8/24/05–10/23/05 | | | 10/23/05–12/22/05 |
| Florida | Okaloosa | 7/10/05–9/8/05 | 8/24/05–10/23/05 | | | |
| Florida | Okeechobee | | | | | 10/23/05–12/22/05 |
| Florida | Palm Beach | | | | | 10/23/05–12/22/05 |
| Florida | St. Lucie | | | | | 10/23/05–12/22/05 |
| Florida | Santa Rosa | 7/10/05–9/8/05 | 8/24/05–10/23/05 | | | |
| Florida | Sarasota | | | | | 10/23/05–12/22/05 |
| Florida | Taylor | 7/10/05–9/8/05 | | | | |
| Florida | Wakulla | 7/10/05–9/8/05 | | | | |
| Florida | Walton | 7/10/05–9/8/05 | 8/24/05–10/23/05 | | | |
| Florida | Washington | 7/10/05–9/8/05 | | | | |
| Louisiana | Acadia | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Allen | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Ascension | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Assumption | | 8/29/05–10/28/05 | | | |
| Louisiana | Avoyelles | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Beauregard | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Bienville | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Bossier | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Caddo | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Calcasieu | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Caldwell | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Cameron | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Catahoula | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Claiborne | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Concordia | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | De Soto | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | East Baton Rouge | | 8/29/05–10/28/05 | | | |
| Louisiana | East Carroll | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | East Feliciana | | 8/29/05–10/28/05 | | | |
| Louisiana | Evangeline | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Franklin | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Grant | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Iberia | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Iberville | | 8/29/05–10/28/05 | | | |
| Louisiana | Jackson | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Jefferson | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Jefferson Davis | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Lafayette | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Lafourche | | 8/29/05–10/28/05 | | | |
| Louisiana | La Salle | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Lincoln | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Livingston | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Madison | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Morehouse | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Natchitoches | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Orleans | | 8/29/05–10/28/05 | | | |
| Louisiana | Ouachita | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Plaquemines | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Pointe Coupee | | 8/29/05–10/28/05 | | | |
| Louisiana | Rapides | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Red River | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Richland | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Sabine | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | St. Bernard | | 8/29/05–10/28/05 | | | |
| Louisiana | St. Charles | | 8/29/05–10/28/05 | | | |
| Louisiana | St. Helena | | 8/29/05–10/28/05 | | | |
| Louisiana | St. James | | 8/29/05–10/28/05 | | | |
| Louisiana | St. John the Baptist | | 8/29/05–10/28/05 | | | |
| Louisiana | St. Landry | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | St. Martin | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | St. Mary | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | St. Tammany | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Tangipahoa | | 8/29/05–10/28/05 | | | |
| Louisiana | Tensas | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Terrebonne | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Union | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Vermilion | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Vernon | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | Washington | | 8/29/05–10/28/05 | | | |

| State | County | Disaster period | | | | |
|---|---|---|---|---|---|---|
| | | DENNIS | KATRINA | OPHELIA | RITA | WILMA |
| Louisiana | Webster | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | West Baton Rouge | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | West Carroll | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Louisiana | West Feliciana | | 8/29/05–10/28/05 | | | |
| Louisiana | Winn | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Adams | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Alcorn | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Amite | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Attala | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Benton | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Bolivar | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Calhoun | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Carroll | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Chickasaw | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Choctaw | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Claiborne | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Clarke | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Clay | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Coahoma | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Copiah | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Covington | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | De Soto | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Forrest | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Franklin | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | George | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Greene | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Grenada | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Hancock | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Harrison | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Hinds | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Holmes | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Humphreys | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Issaquena | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Itawamba | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Jackson | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Jasper | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Jefferson | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Jefferson Davis | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Jones | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Kemper | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Lafayette | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Lamar | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Lauderdale | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Lawrence | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Leake | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Lee | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Leflore | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Lincoln | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Lowndes | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Madison | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Marion | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Marshall | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Monroe | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Montgomery | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Neshoba | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Newton | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Noxubee | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Oktibbeha | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Panola | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Pearl River | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Perry | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Pike | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Pontotoc | | 8/29/05–10/28/05 | | | |
| Mississippi | Prentiss | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Quitman | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Rankin | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Scott | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Sharkey | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Simpson | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Smith | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Stone | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Sunflower | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |

| State | County | Disaster period | | | | |
|---|---|---|---|---|---|---|
| | | DENNIS | KATRINA | OPHELIA | RITA | WILMA |
| Mississippi | Tallahatchie | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Tate | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Tippah | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Tishomingo | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Tunica | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Union | | 8/29/05–10/28/05 | | | |
| Mississippi | Walthall | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Warren | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Washington | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Wayne | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Webster | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Wilkinson | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Winston | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Yalobusha | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| Mississippi | Yazoo | | 8/29/05–10/28/05 | | 9/23/05–11/22/05 | |
| North Carolina | Brunswick | | | 9/11/05–11/10/05 | | |
| North Carolina | Carteret | | | 9/11/05–11/10/05 | | |
| North Carolina | Craven | | | 9/11/05–11/10/05 | | |
| North Carolina | Dare | | | 9/11/05–11/10/05 | | |
| North Carolina | Hyde | | | 9/11/05–11/10/05 | | |
| North Carolina | Jones | | | 9/11/05–11/10/05 | | |
| North Carolina | New Hanover | | | 9/11/05–11/10/05 | | |
| North Carolina | Onslow | | | 9/11/05–11/10/05 | | |
| North Carolina | Pamlico | | | 9/11/05–11/10/05 | | |
| North Carolina | Pender | | | 9/11/05–11/10/05 | | |
| Texas | Angelina | | | | 9/23/05–11/22/05 | |
| Texas | Brazoria | | | | 9/23/05–11/22/05 | |
| Texas | Chambers | | | | 9/23/05–11/22/05 | |
| Texas | Cherokee | | | | 9/23/05–11/22/05 | |
| Texas | Fort Bend | | | | 9/23/05–11/22/05 | |
| Texas | Galveston | | | | 9/23/05–11/22/05 | |
| Texas | Gregg | | | | 9/23/05–11/22/05 | |
| Texas | Hardin | | | | 9/23/05–11/22/05 | |
| Texas | Harris | | | | 9/23/05–11/22/05 | |
| Texas | Harrison | | | | 9/23/05–11/22/05 | |
| Texas | Houston | | | | 9/23/05–11/22/05 | |
| Texas | Jasper | | | | 9/23/05–11/22/05 | |
| Texas | Jefferson | | | | 9/23/05–11/22/05 | |
| Texas | Liberty | | | | 9/23/05–11/22/05 | |
| Texas | Marion | | | | 9/23/05–11/22/05 | |
| Texas | Montgomery | | | | 9/23/05–11/22/05 | |
| Texas | Nacogdoches | | | | 9/23/05–11/22/05 | |
| Texas | Newton | | | | 9/23/05–11/22/05 | |
| Texas | Orange | | | | 9/23/05–11/22/05 | |
| Texas | Panola | | | | 9/23/05–11/22/05 | |
| Texas | Polk | | | | 9/23/05–11/22/05 | |
| Texas | Rusk | | | | 9/23/05–11/22/05 | |
| Texas | Sabine | | | | 9/23/05–11/22/05 | |
| Texas | San Augustine | | | | 9/23/05–11/22/05 | |
| Texas | San Jacinto | | | | 9/23/05–11/22/05 | |
| Texas | Shelby | | | | 9/23/05–11/22/05 | |
| Texas | Trinity | | | | 9/23/05–11/22/05 | |
| Texas | Tyler | | | | 9/23/05–11/22/05 | |
| Texas | Walker | | | | 9/23/05–11/22/05 | |

**§ 760.102 Applicability.**

(a) This part establishes the terms and conditions under which the following programs will be administered with respect to producers affected by 2005 hurricanes in eligible counties:

(1) Hurricane Indemnity Program (HIP);

(2) Feed Indemnity Program (FIP);

(3) Livestock Indemnity Program (LIP);

(4) Tree Indemnity Program (TIP); and

(5) Aquaculture grants to States.

(b) The amount that may be expended for payments under subparts B through G of this part shall not exceed the amount of Section 32 funds made available by the Secretary for the administration of these programs.

(c) To be eligible for payments under these programs, producers must comply with all applicable provisions under subparts B through G of this part and, in the case of State grants, by the State.

**§ 760.103 Administration of HIP, FIP, LIP, and TIP.**

(a) These programs are administered under the general supervision of the Administrator, FSA.

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of subparts B through F of this part.

(c) The State FSA committee shall take any action required by the regulations of subparts B through F of this part that the county FSA committee

has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations of subparts B through F of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with subparts B through F of this part.

(d) No provision or delegation to a State or county FSA committee shall preclude the Administrator, FSA, Deputy Administrator for Farm Programs, FSA or a designee or other such person, from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

**§ 760.104 Definitions.**

The following definitions in this section apply to the programs in subparts B through G of this part. The terms defined in part 718 of this chapter and parts 1400 and 1437 of this title shall also be applicable, except where they conflict with the definitions set forth in this section.

*Application* means the '2005 Hurricane Disaster Programs Application' form issued by FSA.

*Application period* means the date established by the Deputy Administrator for producers to apply for program benefits.

*Bush* means a thick densely branched woody shrub grown for the production of an annual crop for commercial market for human consumption.

*Commercial use* means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible producer.

*Crop insurance* means an insurance policy reinsured by the Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended.

*Farming operation* means a business enterprise engaged in the production of agricultural products.

*Fruit tree* means a woody perennial plant having a single main trunk, commonly exceeding 10 feet in height and usually devoid of branches below, but bearing a head of branches and foliage or crown of leaves at the summit that is grown for the production of an annual crop, including nuts, for commercial market for human consumption.

*Owner* means one who had legal ownership of the trees, bushes, vines, or livestock for which benefits are being requested under subparts B through F, on the day such plant or livestock perished or suffered losses due to an eligible hurricane as set forth § 760.101.

*Stand* means a contiguous acreage of the same crop of trees, bushes, or vines, and excludes container-grown crops.

*Tier* means the geographic bands of damage generally correlating to the severity of damage caused by the maximum sustained winds of the applicable hurricanes.

*Vine* means a plant from which an annual fruit crop is produced for commercial market for human consumption, such as grape, kiwi, or passion fruit, that has a flexible stem supported by climbing, twining, or creeping along a surface.

**§ 760.105 Application for payment.**

(a) A producer who applies for any program under subparts B through F shall file an application and any required supporting documentation in the county FSA office serving the county where the eligible loss occurred; or in the case of FIP, where the eligible livestock were physically located on the applicable date.

(b) The application must be filed during the application period announced by FSA.

(c) Payments may be made for eligible losses suffered by an eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer signs the application for payment. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

(d) Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data program benefits will not be approved or provided.

(e) A minor child shall be eligible to apply for program benefits so long as all eligibility requirements are met and one of the following conditions exist:

(1) The right of majority has been conferred upon the minor by court proceedings or statute;

(2) A guardian has been appointed to manage the minor's property, and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which a surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

**§ 760.106 Limitations on payments and other benefits.**

(a) Separate payment limitations apply to HIP, FIP, LIP, and TIP. No 'person' as determined under part 1400 of this title shall receive more than $80,000 under each of these programs.

(b) An individual or entity whose adjusted gross income is in excess of $2.5 million, as determined under part 1400 of this title, shall not be eligible to receive benefits under this part for HIP, FIP, LIP, and TIP; except that the individual or entity may be considered to meet the adjusted gross income requirement if not less than 75 percent of the individual's or entity's average adjusted gross income for the three tax years immediately preceding the applicable crop year is derived from farming or ranching operations.

(c) As a condition to receive benefits under subparts B through F, a producer must have been in compliance with the provisions of parts 12 and 718 of this title for the 2005 crop year and must not otherwise be barred from receiving benefits under any law.

(d) An individual or entity determined to be a foreign person under part 1400 of this title shall not be eligible to receive benefits under subparts B through F of this part.

**§ 760.107 Appeals.**

The appeal regulations set forth at parts 11 and 780 of this title apply to determinations made pursuant to subparts B through F of this part.

**§ 760.108 Offsets, assignments, and debt settlement.**

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any producer shall be made without regard to questions of title under State law and without regard to any claim or lien against the commodity, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 792 of this chapter apply to payments made under subparts B through F of this part.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing the assignment of payments found at part 1404 of this title.

**§ 760.109 Records and inspection thereof.**

Producers receiving payments under the programs in subparts B through F or any other person who furnishes information for the purposes of enabling such producer to receive a payment under subparts B through F of this part shall maintain any books, records, and

accounts supporting any information so furnished for 3 years following the end of the year during which the application for payment was filed. Producers receiving payments or any other person who furnishes such information to FSA shall permit authorized representatives of USDA and the General Accounting Office during regular business hours to inspect, examine, and to allow such persons to make copies of such books, records, and to enter upon, inspect and verify all applicable livestock and acreage in which the applicant has an interest for the purpose of confirming the accuracy of the information provided by the applicant.

**§ 760.110 Refunds; joint and several liability.**

In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under subparts B through F of this part, and if any refund of a payment to FSA shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to FSA together with interest and late-payment charges as provided for in part 792 of this chapter.

**§ 760.111 Paperwork Reduction Act assigned number.**

The information collection required to support the regulations of subparts B through F of this part has been approved by OMB and assigned OMB control number 0560–0257.

## Subpart C—Hurricane Indemnity Program

**§ 760.201 Applicability.**

This subpart sets forth the terms and conditions applicable to the Hurricane Indemnity Program (HIP). Benefits will be provided under this subpart to producers who have received a crop insurance indemnity from the Risk Management Agency (RMA) based on the associated loss criteria set forth in § 760.202(a)(1) as provided to FSA by RMA; and to producers who have received Noninsured Crop Disaster Assistance Program (NAP) payments under part 1437 of this title based on the provisions of § 760.202(a)(1). HIP benefits will be provided under this subpart to eligible producers who suffered losses due to 2005 hurricanes as set forth in § 760.101.

**§ 760.202 Producer eligibility.**

A producer who applies for benefits under this subpart will be eligible to receive a payment if both of the following apply:

(a) The producer received a crop insurance indemnity from RMA or a NAP payment under part 1437 of this title for crop losses:

(1) In an eligible county;

(2) Recorded by RMA or FSA as being due to a 2005 hurricane and the loss occurred during a disaster period as set forth in § 760.101; and

(3) Were due to any of the following causes of loss:

(i) Excessive moisture, precipitation, and/or rain;

(ii) Flood;

(iii) Excessive wind;

(iv) Cyclone;

(v) Tornado;

(vi) Tropical depression;

(vii) Storm surge; or

(viii) Salinity due to salt water intrusion; and

(b) An application is filed in accordance with § 760.105.

**§ 760.203 Payment calculation.**

The disaster benefits under this subpart will be equal to the smaller of:

(a) 30 percent of the RMA crop insurance indemnity or 30 percent of the NAP payment for eligible crop losses as provided in § 760.202(a)(1), and adding the crop insurance premium for the indemnity as provided in § 760.202(a)(1); or

(b) 95 percent of the expected value of the crop in the absence of a disaster, as determined by RMA for insured crops, using information from the crop policy; and by FSA for NAP crops, using the producer's price and yield, minus the following:

(1) The value of the production as counted by RMA for insured crops to establish the indemnity and by FSA for NAP crops to establish the NAP payment;

(2) The crop's eligible indemnity or NAP payment for eligible crop losses determined in accordance with § 760.202(a)(1); and

(3) Adding the crop insurance premium for the indemnity as provided in § 760.202(a)(1).

## Subpart D—Feed Indemnity Program

**§ 760.301 Applicability.**

This subpart sets forth the terms and conditions applicable to the Feed Indemnity Program (FIP). FIP benefits will be provided under this subpart to eligible owners and cash lessees, but not both, for the same livestock, for feed losses or increased feed costs that occurred in eligible counties during the disaster period as set forth in § 760.101.

**§ 760.302 Definitions.**

The following definitions are applicable for all purposes of administering FIP.

*Adult beef bulls* means male bovine animals that were at least 2 years old and used for breeding purposes on the beginning date of the applicable disaster period as set forth in § 760.101.

*Adult beef cows* means female bovine animals that had delivered one or more offspring before the beginning date of the applicable disaster period as set forth in § 760.101. A first-time bred beef heifer shall also be considered an adult beef cow if it was pregnant on the beginning date of the applicable disaster period as set forth in § 760.101.

*Adult buffalo and beefalo bulls* means male animals of those breeds that were at least 2 years old and used for breeding purposes on the beginning date of the applicable disaster period as set forth in § 760.101.

*Adult buffalo and beefalo cows* means female animals of those breeds that had delivered one or more offspring before the beginning date of the applicable disaster period as set forth in § 760.101. A first-time bred buffalo or beefalo heifer shall also be considered to be an adult buffalo or beefalo cow if it was pregnant on the beginning date of the applicable disaster period as set forth in § 760.101.

*Adult dairy bulls* means male bovine animals of a breed used for producing milk for human consumption that were at least 2 years old and used for breeding dairy cows on the beginning date of the applicable disaster period as set forth in § 760.101.

*Adult dairy cows* means female bovine animals used for the purpose of providing milk for human consumption, that had delivered one or more offspring before the beginning date of the applicable disaster period as set forth in § 760.101. A first-time bred dairy heifer shall also be considered an adult dairy cow if it was pregnant on the beginning date of the applicable disaster period as set forth in § 760.101.

*Goats* means domesticated, ruminant mammals of the genus Capra, including Angora goats.

*Horses* means domesticated horses, and does not include donkeys, mules or other large solid-hoofed herbivorous mammals.

*Non-adult beef cattle* means male, female or neutered male bovine animals that weighed 500 pounds or more on the beginning date of the applicable disaster period as set forth in § 760.101, but do not meet the definition of adult beef cows or bulls.

*Non-adult buffalo/beefalo* means male, female or neutered male animals of those breeds that weighed 500 pounds or more on the beginning date of the applicable disaster period as set forth in § 760.101, but do not meet the

definition of an adult buffalo or beefalo cow or bull.

*Non-adult dairy cattle* means male, female or neutered male bovine livestock, of a breed used for the purpose of providing milk for human consumption, that weighed 500 pounds or more on the beginning date of the applicable disaster period as set forth in § 760.101, but do not meet the definition adult dairy cows or bulls.

*Sheep* means domesticated, ruminant mammals of the genus *Ovis.*

**§ 760.303 Eligible livestock and producers.**

(a) To be considered eligible, livestock must meet all the following conditions:

(1) Be adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, horses, sheep, goats or deer as defined in § 760.302;

(2) Been physically located in an eligible county on the beginning date of the applicable disaster period as set forth in § 760.101;

(3) Been maintained for commercial use as part of a farming operation on the beginning date of the applicable disaster period as set forth in § 760.101;

(4) Not have been produced and maintained for reasons other than commercial use as part of a farming operation. Such excluded uses include, but are not limited to wild free roaming animals or animals used for recreational purposes, such as pleasure, hunting, pets, or for show.

(b) To be considered an eligible livestock producer, a producer must have:

(1) Owned or cash-leased, but not both for the same livestock, eligible livestock on the beginning date of the applicable disaster period as provided in § 760.101; and

(2) Suffered a feed loss or an increased feed cost during the applicable disaster period as set forth in § 760.101 with respect to feed used for the eligible livestock.

**§ 760.304 Application process.**

(a) Applicants must submit to FSA a completed application in accordance with § 760.105, and any other supporting documentation as determined by FSA to be necessary to make a determination of the eligibility of the applicant. Supporting documents include but are not limited to: Purchase records; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency and National Guard records; written contracts; production records; Internal Revenue Service (IRS) records; property tax records; private insurance documents; and other similar documents.

**§ 760.305 Payment calculation.**

(a) FIP payments are calculated by multiplying the national payment rate for each of the following livestock categories by the number of eligible livestock in each category. The payment rate represents the cost of the amount of corn needed to maintain 1 animal unit for a specified period of time.

(b) The eligible livestock categories are:

(1) Adult beef cows or bulls;

(2) Non-adult beef cattle;

(3) Adult buffalo or beefalo cows or bulls;

(4) Non-adult buffalo or beefalo;

(5) Adult dairy cows or bulls;

(6) Non-adult dairy cattle;

(7) Goats;

(8) Sheep;

(9) Horses; and

(10) Deer.

## Subpart E—Livestock Indemnity Program

**§ 760.401 Applicability.**

(a) This subpart sets forth the terms and conditions applicable to the Livestock Indemnity Program (LIP). Benefits will be provided under this subpart to eligible livestock owners and contract growers, but not both for the same livestock loss, for certain livestock deaths that occurred in eligible counties during the disaster period as set forth in § 760.101.

(b) Eligible livestock owners and contract growers will be compensated in accordance with § 760.405 for eligible livestock deaths that occurred in eligible counties during the disaster period as set forth in § 760.101.

**§ 760.402 Definitions.**

The following definitions are applicable for all purposes of administering LIP.

*Adult beef bull* means a male bovine animal that was at least 2 years old and used for breeding purposes before it died.

*Adult beef cow* means a female bovine animal that had delivered one or more offspring before dying. A first-time bred beef heifer shall also be considered an adult beef cow if it was pregnant at the time it died.

*Adult buffalo and beefalo bull* means a male animal of those breeds that was at least 2 years old and used for breeding purposes before it died.

*Adult buffalo and beefalo cow* means a female animal of those breeds that had delivered one or more offspring before dying. A first-time bred buffalo or beefalo heifer shall also be considered an adult buffalo or beefalo cow if it was pregnant at the time it died.

*Adult dairy bull* means a male bovine animal of a breed used for producing milk for human consumption that was at least 2 years old and used for breeding dairy cows before it died.

*Adult dairy cow* means a female bovine animal used for the purpose of providing milk for human consumption that had delivered one or more offspring before dying. A first-time bred dairy heifer shall also be considered an adult dairy cow if it was pregnant at the time it died.

*Buck* means a male goat.

*Contract* means, with respect to contracts for the handling of livestock, a written agreement between a livestock owner and another individual or entity setting the specific terms, conditions and obligations of the parties involved regarding the production of livestock or livestock products.

*Doe* means a female goat.

*Equine animal* means a domesticated horse, mule or donkey.

*Ewe* means a female sheep.

*Goat* means a domesticated, ruminant mammal of the genus *Capra,* including Angora goats. Goats will be further delineated by sex (bucks and does) and age (kids).

*Kid* means a goat less than 1 year old.

*Lamb* means a sheep less than 1 year old.

*Non-adult beef cattle* means male, female or neutered male bovines that do not meet the definition of adult beef cows or bulls. *Non-adult beef cattle* is further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time they died.

*Non-adult buffalo or beefalo* means a male, female or neutered male animal of those breeds that do not meet the definition of adult buffalo/beefalo cow or bull. *Non-adult buffalo or beefalo* is further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time of death.

*Non-adult dairy cattle* means male, female or neutered male bovine livestock, of a breed used for the purpose of providing milk for human consumption, that do not meet the definition of adult dairy cows or bulls. *Non-adult dairy cattle* is further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time they died.

*Poultry* means domesticated chickens, turkeys, ducks and geese. *Poultry* will be further delineated by sex, age and purpose of production, as determined by FSA.

*Ram* means a male sheep.

*Sheep* means domesticated, ruminant mammals of the genus *Ovis. Sheep* will be further delineated by sex (rams and ewes) and age (lambs).

*Swine* means domesticated omnivorous pigs, hogs, and boars. *Swine* will be further delineated by sex and weight as determined by FSA.

**§ 760.403 Eligible owners, contract growers and livestock.**

(a) To be considered eligible, a livestock owner must have had legal ownership of the eligible livestock on the day the livestock died.

(b) To be considered eligible, a contract grower on the day the livestock died must have had:

(1) A written agreement with the owner of eligible livestock setting the specific terms, conditions and obligations of the parties involved regarding the production of livestock; and

(2) Control of the livestock that died.

(c) To be considered eligible, livestock must meet all the following:

(1) Be adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, equine, sheep, goats, swine, poultry or deer.

(2) Died as a direct result of an applicable disaster, in an eligible county and during the applicable disaster period as set forth in § 760.101;

(3) Been maintained for commercial use as part of a farming operation on the day they died; and before dying;

(4) Not have been produced or maintained for reasons other than commercial use as part of a farming operation, including but not limited to wild free roaming animals or animals used for recreational purposes, such as pleasure, hunting, pets, or for show.

**§ 760.404 Application process.**

(a) Applicants must submit to FSA a completed application in accordance with § 760.105 and other supporting documents as determined by FSA to be necessary for making determinations of the eligibility of the applicant. Supporting documents must show: evidence of loss; current physical location of livestock in inventory; and physical location of claimed livestock at the time of death.

(b) Applicants must provide adequate proof that the death of the eligible livestock occurred during the applicable disaster period, and the death was a direct result of the occurrence of a 2005 hurricane as provided in § 760.101. The quantity and kind of livestock that died as a direct result of the applicable disaster may be documented by: Purchase records; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency and National Guard records; written contracts; production records; IRS records; property tax records; private insurance documents; and any other similar documents.

(c) Certifications of livestock deaths by third parties may be accepted only if both the following conditions are met:

(1) The livestock owner or livestock contract grower, as applicable, certifies in writing:

(i) That there is no other documentation of death available;

(ii) The number of livestock, by category as determined by the Deputy Administrator, in inventory at the time the applicable disaster occurred;

(iii) Other details necessary for FSA to determine the certification acceptable; and

(2) The third party has provided to FSA their telephone number and address, and a statement containing:

(i) Specific details about their knowledge of the livestock deaths;

(ii) Their affiliation to the livestock owner or contract grower; and

(iii) The accuracy of the deaths claimed by the livestock owner or contract grower; and

(iv) Other details necessary for FSA to determine the certification acceptable.

**§ 760.405 Payment calculation.**

(a) Under LIP, separate payment rates are established for eligible livestock owners and eligible contract growers in accordance with paragraphs (b) and (c) of this section. LIP payments are calculated by multiplying the national payment rate, as determined in paragraphs (b) and (c) of this section, by the number of eligible livestock in each category, as provided in paragraph (d) of this section. The payment calculated for an eligible contract grower for an eligible livestock category shall be reduced by the amount of any compensation received from the contractor for the loss of income from the dead livestock.

(b) The LIP payment rate for eligible livestock owners is based on 75 percent of the average fair market value of the livestock.

(c) The LIP payment rates for eligible contract growers is based on 75 percent of the average income loss sustained by the contract grower with respect to the dead livestock.

(d) The categories of eligible livestock are as follows:

(1) Adult beef cows;
(2) Adult beef bulls;
(3) Non-adult beef cattle;
(4) Adult buffalo or beefalo cows;
(5) Adult buffalo or beefalo bulls;
(6) Non-adult buffalo/beefalo;
(7) Adult dairy cows;
(8) Adult dairy bulls;
(9) Non-adult dairy cattle;
(10) Swine, sows, boars, barrows, gilts over 150 pounds;
(11) Swine, sows, boars, barrows, gilts 50 to 150 pounds;
(12) Swine, feeder pigs under 50 pounds;
(13) Goats, bucks;
(14) Goats, does;
(15) Goats, kids;
(16) Sheep, rams;
(17) Sheep, ewes;
(18) Sheep, lambs;
(19) Deer;
(20) Chickens, layers, roasters;
(21) Chickens, broilers, pullets;
(22) Chickens, chicks;
(23) Turkeys, toms, fryers, roasters;
(24) Turkeys, poults;
(25) Ducks;
(26) Ducks, ducklings;
(27) Geese, goose;
(28) Geese, gosling; and
(29) Equine.

## Subpart F—Tree Indemnity Program

**§ 760.501 Applicability.**

(a) This subpart sets forth the terms and conditions applicable to the Tree Indemnity Program (TIP). Benefits will be provided under this subpart for eligible fruit trees, bushes, and vines that were lost or damaged during the disaster period as set forth in § 760.101.

(b) Compensation will be based on expenses incurred for replanting, rehabilitation, cleanup, and debris removal.

(c) No benefits shall be provided when the loss:

(1) Occurred in any county other than an eligible county, or

(2) Was not the result of an eligible disaster as set forth in § 760.101.

**§ 760.502 Eligible producers and stands.**

(a) An eligible fruit tree, bush, and/or vine producer is one who bears financial responsibility and who has incurred costs of at least $90 per acre for replanting, rehabilitation, cleanup, or debris removal, excluding crop production.

(b) An eligible stand must:

(1) Be physically located in an eligible county;

(2) Have been impacted during a 2005 hurricane as set forth in § 760.101; and

(3) Be grown for commercial use.

**§ 760.503 Application process.**

(a) Applicants must submit a completed application and report of acreage identifying the geographic location and number of acres in the disaster-affected stand of claimed fruit trees, bushes, and vines in accordance with part 718 of this chapter, and any other supporting documentation for FSA to determine the eligibility of the applicant.

(b) Applicants must certify and provide adequate proof that the expenses incurred to eligible fruit trees, bushes, or vines occurred during the applicable disaster period and that the loss or damage was a direct result of a 2005 hurricane, as set forth in § 760.101.

(c) The quantity and kind of fruit trees, bushes, or vines that died or were damaged as a result of the applicable disaster may be documented by; purchase records; bank or other loan documents; Federal Emergency Management Agency and National Guard records; IRS records; property tax records; private insurance documents; and similar documents.

**§ 760.504 Payment calculation.**

(a) TIP payments shall be calculated by multiplying the following national payment rate for the applicable tier by the number of eligible acres, excluding but not limited to such things as drainage ditches and canals, in a stand of fruit trees, bushes, or vines by the producer's share in such crop:

(1) Tier I—$750;
(2) Tier II—$300;
(3) Tier III—$200; and
(4) Tier IV—$90.

(b) If the actual expenses incurred for damage are greater than the value associated with the tier based on the location of the stand, the applicant may submit documentation to FSA to request the stand be placed in the next lower-numbered tier which represents a greater level of loss and a higher payment rate. Regardless of the expenses incurred the stand can only be placed in the next lower-numbered tier.

## Subpart G—Aquaculture Program

**§ 760.601 Funds availability.**

FSA will provide block grants to the states of Alabama, Florida, Louisiana, Mississippi, North Carolina and Texas where aquaculture was adversely affected by 2005 hurricanes as set forth in § 760.101. Producers in eligible counties in those states who raise aquaculture species in a controlled environment as part of a farming operation and who have not received assistance under other disaster programs for the same aquaculture losses are eligible to receive these funds. Funds provided by a State to a farming operation under such a grant shall not exceed $80,000.

## Subpart H—2006 Livestock Assistance Grant Program

**§ 760.701 Funds availability.**

FSA will administer a limited program to provide assistance to livestock producers where forage was adversely affected by drought in counties reaching D3 or D4 Drought on the U.S. Drought Monitor, during March 7 to August 31, 2006, in the States of: Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin and Wyoming. Under the Livestock Assistance Grant Program, FSA will provide grants to the State governments of these States to assist livestock producers who suffered forage losses as part of a farming operation in eligible counties. The amount of each grant will be based on the number of adult beef cattle and sheep from each eligible county uniformly prorated to insure that available funding is not exceeded. Producers in eligible counties in those States who suffered forage losses as part of a farming operation are eligible for assistance under these grants. Among other conditions of these grants, assistance provided by a State under such a grant to an applicant shall not exceed $10,000, except for general partnerships and joint ventures in which case assistance shall not exceed $10,000 times the number of members that constitute the general partnership or joint venture.

Signed in Washington, DC January 4, 2007.

**Teresa C. Lasseter,**

*Administrator, Farm Service Agency.*

[FR Doc. E7–88 Filed 1–8–07; 8:45 am]

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## FEDERAL ELECTION COMMISSION

## 11 CFR Part 104

**[Notice 2006—23]**

## Statement of Policy: ''Purpose of Disbursement'' Entries for Filings With the Commission

**AGENCY:** Federal Election Commission.

**ACTION:** Statement of Policy.

**SUMMARY:** Political committees and other persons required to file campaign finance reports with the FEC must itemize certain disbursements and, for each itemized disbursement, must provide information including a brief description of the purpose of the disbursement. The ''purpose of disbursement'' entry, when considered along with the identity of the disbursement recipient, must be sufficiently specific to make the purpose of the disbursement clear. The guidance below includes a non-exhaustive list of ''purpose of disbursement'' entries that are generally acceptable, and a non-exhaustive list of terms that are generally not acceptable.

**DATES:** Effective as of January 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Richard T. Ewell, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530, or Debbie Chacona, Branch Chief, Party/Non-Party Branch, Reports Analysis Division, 999 E Street, NW., Washington, DC 20463, (202) 694–1130 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** Political committees and other persons required to file campaign finance reports with the FEC must itemize certain disbursements and, for each itemized disbursement, must provide the full name and address of the recipient, the date the disbursement was made, and a brief statement or description of why the disbursement was made. *See* 2 U.S.C. 434(b); 11 CFR 104.3(b)(3) and (4), 104.10(b)(4), 104.17(b)(3) and 300.36(b)(2)(iii). The ''purpose of disbursement'' entry, when considered along with the identity of the disbursement recipient, must be sufficiently specific to make the purpose of the disbursement clear. 11 CFR 104.3(b)(3)(i)(B) and (4)(i)(A). The Commission's regulation requiring a description of the purpose of each itemized disbursement includes examples of descriptions that are acceptable (*e.g.*, ''dinner expenses,'' ''salary,'' ''travel expenses'') and examples that are unacceptable (*e.g.*, ''advance,'' ''miscellaneous''). Neither list is exhaustive.

The Commission solicited comments on a draft of this policy statement on November 2, 2006. Two comments were received. After reviewing the comments received, the Commission has decided to publish the policy statement with one change. As suggested by a commenter, the Commission has added ''Consulting-Political'' to the examples of generally insufficient descriptions. In light of this change, the Commission has also added examples of descriptions that would be generally sufficient, such as ''Consulting-Media,'' ''Consulting-Fundraising,'' ''Consulting-Polling,'' ''Consulting-Legal'' and ''Consulting-Get-Out-The-Vote.''

The Commission recognizes that the ''purpose of disbursement'' entries, when linked to information provided about the recipient of the payment, may provide sufficient disclosure. For example, a disbursement to an office supply vendor for the stated purpose of ''Supplies'' provides adequate and acceptable disclosure, while a disbursement to a committee staff member for the same purpose of ''Supplies'' would likely trigger a

request for a more complete description of the purpose of the disbursement. In the former case, it is obvious to the reader what type of supplies were purchased, while in the latter case, it is not.

As a rule of thumb, filers should consider the following question: ''Could a person not associated with the committee easily discern why the disbursement was made when reading the name of the recipient and the purpose?'' For example, a person not associated with the committee could not easily discern the purpose of a disbursement made to a vendor for ''Consulting'' (unless the vendor's name makes the purpose clear, *e.g.*, Smith Fundraising Consulting, Inc.). As discussed above, however, if the committee were to provide additional detail with respect to the type of consulting the vendor provided (*e.g.*, ''Fundraising Consulting''), an unassociated person would have no difficultly discerning the purpose of the disbursement.

All information on campaign finance reports submitted to the FEC, including the entries for ''purpose of disbursement,'' are reviewed by analysts in the Reports Analysis Division (RAD). Some campaign finance reports, particularly those filed by presidential campaign committees accepting public funding, are also reviewed by auditors in the Audit Division. In practice, the RAD analysts and the auditors often encounter ''purpose of disbursement'' entries that are not listed in the examples contained in 11 CFR 104.3(b)(3) and (4), and receive questions from filers regarding acceptable descriptions. Therefore, in order to provide further guidance to filers and to encourage consistency between filers, the Commission is publishing lists of additional generally acceptable and generally unacceptable descriptions.

The Commission does not intend to request that a committee provide additional information about a purpose of disbursement entry if the committee uses those descriptions listed below as providing sufficient detail. However, if a committee uses a description that is listed as lacking sufficient detail, a RAD analyst may review the report more closely but the Commission would not automatically take any particular action. In most instances, the Commission will merely contact the reporting committee and the committee may then amend its report. In the rare circumstances in which the Commission deems it necessary to pursue the matter further, the Commission will conduct a separate review of the sufficiency of the description of purpose to determine whether it meets the requirements of 11 CFR 104.3(b).

Any future revisions to these lists will be posted on the Commission's Web site at *http://www.fec.gov/law/policy.shtml*. Committees with questions can contact either their assigned RAD analyst (phone: (800) 424–9530 (press 5)) or the FEC Information Division (phone: (800) 424–9530 (press 6); e-mail: *info@fec.gov*).

*Descriptions of purpose that provide sufficient detail:*

- ''Salary'' for a disbursement to a staff member.
- ''Media'' for a disbursement to a television or radio communication company.
- ''Polling'' for a disbursement to a research/communications company.
- ''Travel,'' ''Travel Expenses,'' or ''Travel Expense Reimbursement'' for a disbursement to a staff member.
- ''Printing'' for a disbursement to a printing company.
- ''Phone Banks'' for a disbursement to a vendor providing phone bank services.
- ''Dinner Expense'' for a disbursement to a restaurant.
- ''Catering Cost'' for a disbursement to a hotel or restaurant where a fundraiser was held.
- ''Party Fees'' or ''Party Annual Dues'' for a disbursement to a National Party Committee for their annual dues.
- ''Exit Polling,'' ''Door-to-Door Get-Out-the-Vote,'' ''Get-Out-the-Vote Phone Calls,'' or ''Driving Voters to the Polls'' to individuals or vendors contracted for get-out-the-vote or voter registration activity.
- ''Supplies'' for a disbursement to an office supply vendor.
- ''Consultant-Media,'' ''Consultant-Fundraising,'' ''Consultant-Get-Out-The-Vote,'' ''Consultant-Legal,'' or ''Consultant-Polling'' for a disbursement to a consultant or consulting company.

Descriptions of purposes that generally lack sufficient detail:

Administrative Expenses
Admin.
Advance
Bonus
Bounty
Campaign Expense
Campaign Material
Charges
Collateral
Collateral Materials
Commission
Compensation (*other than committee staff*)
Consultant
Consultant-Political
Consulting
Consulting Non-FEA
Consulting Service
Contract
Contract Labor
Contractual Services
Convention Expenses
Convention Services
Costs
Delegate
Delegate Expenses
Design
Discount Fees
Election Day Expense
Entertainment
Event
Event Expense
Event Reimbursement
Event Supplies (*if to an individual*)
Expenses
Expense Reimbursement
Fees
Fundraising (*if to an individual*)
Fundraising Event
Fundraising Expense (*if to an individual*)
Fundraising Fees (*if to an individual*)
Fundraising Supplies (*if to an individual*)
General Advice
General Consulting
Generic Campaign Activity
Generic Consulting
Get-Out-The-Vote or GOTV
GOTV Expenses
GOTV Labor
Invoice
Labor
Literature
Meeting (*if to an individual*)
Meeting Expenses (*if to an individual*)
Meeting Supplies (*if to an individual*)
Miscellaneous or Misc.
Miscellaneous Expense
Office Expense (*if to an individual*)
Office Services
Outside Services
Operating Expenses
Other Expenses
Production
Professional Fees
Professional Fees—Consulting
Professional Services
Promotional Material
Publication
Push Card
Reimbursement
Rendered Service
Services
Services Rendered
State Convention
Supplies (*if to an individual*)
Voter Bounty
Voter Contact
Voter Drive
Voter Identification or Voter ID
Voter Registration
Worker

This **Federal Register** notice represents a general statement of policy

announcing the general course of action that the Commission intends to follow. This policy statement does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay in effective date under 5 U.S.C. 553 of the Administrative Procedure Act (''APA''). As such, it does not bind the Commission or any member of the general public. The provisions of the Regulatory Flexibility Act, which apply when notice and comment are required by the APA or another statute, are not applicable.

Dated: December 27, 2006.

**Robert D. Lenhard,**

*Vice Chairman, Federal Election Commission.*

[FR Doc. E7–65 Filed 1–8–07; 8:45 am]

**BILLING CODE 6715–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2005–22696; Directorate Identifier 2005–SW–22–AD; Amendment 39–14877; AD 2007–01–06]**

**RIN 2120–AA64**

## Airworthiness Directives; Bell Helicopter Textron Canada Model 206A, B, L, L–1, L–3, and L–4 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD) for the specified Bell Helicopter Textron Canada (BHTC) model helicopters. The existing AD currently requires certain inspections and checks of the tail rotor blade (blade) for a deformation, a crack, and a bent or deformed tail rotor weight (weight). Also, that AD requires, before further flight, replacing each blade with an airworthy blade if a deformation, a crack, or a bent or deformed weight is found. This action contains the same actions as the existing AD and also adds to the applicability certain serial-numbered blades inadvertently omitted from the current AD. This action also requires replacing each affected blade, which is a terminating action. This amendment is prompted by three reports of skin cracks originating near the blade trailing edge balance weight. The actions specified by this AD are intended to prevent blade failure and subsequent loss of control of the helicopter.

**DATES:** Effective February 13, 2007.

**ADDRESSES:** You may get the service information identified in this AD from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272.

### Examining the Docket

You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://dms.dot.gov,* or at the Docket Management System (DMS), U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, on the plaza level of the Nassif Building, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend 14 CFR part 39 by superseding AD 2004–24–08, Amendment 39–13884 (69 FR 69810, December 1, 2004), for the specified BHTC model helicopters was published in the **Federal Register** on October 17, 2005 (70 FR 60246). This action contains the same actions as the existing AD. Also, when we issued AD 2004–24–08, we intentionally did not include the long-term requirement (no later than April 27, 2007) for removing and sending the affected blades to Rotor Blades, Inc. as specified by the manufacturer. We are including a long-term requirement in this AD that the affected blades be replaced on or before April 27, 2007, as terminating action. Additionally, in AD 2004–24–08, we inadvertently omitted blade serial numbers 10102 through 10114 from the applicability. We are correcting that oversight with this action.

Since issuing AD 2004–24–08, BHTC has issued Alert Service Bulletin 206–04–100 for Bell Model 206A and B helicopters, and 206L–04–127 for Bell Model 206L series helicopters, both Revision C, both dated March 5, 2005 (ASB). These ASBs add two warnings in the compliance section specifying returning the blade for balancing to Rotor Blades, Inc., and introduce new skin damage limits that supersede the previous damage limits. The ASB also gives a new address for Rotor Blades Inc.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on these helicopter models. Transport Canada advises of three reports of skin cracks originating near the blade trailing edge balance weight. Two of the occurrences caused a loss of the weight and a strip of material along the trailing edge leading to an imbalance, which caused the fracture of three of the four tail rotor gearbox attachments. One of these occurrences resulted in the gearbox shifting that caused failure of the drive shaft and resulting loss of yaw control. Transport Canada issued AD No. CF–2004–05R1, dated June 28, 2004, to ensure the continued airworthiness of these helicopters in Canada.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed, except for a change in paragraph (f) of the AD to add additional contact information. This change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that this AD will:

- Affect 2194 helicopters of U.S. registry,
- Take about ¼ work hour for a blade check or inspection, and
- Take 3 work hours to replace a blade at an average labor rate of $65 per work hour.
- Cost about $5848 per helicopter. (In its ASB, the manufacturer states it will give warranty credit based on hour usage on the blade with remaining life hours and other restrictions.)

Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $19,989,973. Costs assume—200 pilot checks, 26 mechanic inspections, and one blade replacement for 90 percent of the fleet with a nonconforming blade.

### 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 an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the economic evaluation.

### 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.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 removing Amendment 39–13884 (69 FR 69810, December 1, 2004) and by adding a new airworthiness directive (AD), Amendment 39–14877, to read as follows:

**2007–01–06 Bell Helicopter Textron Canada:** Amendment 39–14877. Docket No. FAA–2005–22696; Directorate Identifier 2005–SW–22–AD. Supersedes AD 2004–24–08, Amendment 39–13884, Docket No. 2004–SW–12–AD.

### Applicability

Model 206A, B, L, L–1, L–3, and L–4 helicopters, with a tail rotor blade (blade) with the following part number (P/N) and serial number (S/N) installed, certificated in any category.

| Model 206A & B; Blade, P/N 206–016–201–133, S/N with prefix ''CS'' and no ''V'' suffix | Model 206A, B, L, L–1, L–3, & L–4; Blade, P/N 206–016–201–131, S/N with prefix ''CS'' and no ''V'' suffix | |
|---|---|---|
| 1381 through 1442 | 7000 through 7018 | 10174 through 10218 |
| 1492 through 1517 | 7020 through 7043 | 10220 |
| 1520 through 1542 | 7045 through 7050 | 10232 |
| 1550 | 7052 through 7132 | 10235 |
| 1556 | 7134 through 7246 | 10237 through 10241 |
| 1560 | 7248 through 7270 | 10244 |
| 1562 | 7272 through 7277 | 10245 |
| 1564 through 1567 | 7279 through 7339 | 10248 |
| 1569 through 1606 | 7342 through 7368 | 10250 through 10264 |
| 1609 | 7784 | 10266 through 10268 |
| 1611 | 7786 | 10270 through 10274 |
| 1612 | 7788 | 10276 through 10278 |
| 1614 through 1631 | 7790 through 7796 | 10280 through 10282 |
| 1633 through 1675 | 7798 through 7819 | 10284 through 10292 |
| 1677 | 7821 through 7833 | 10296 |
| 1678 | 7835 through 7839 | 10300 through 10330 |
| 1680 through 1682 | 7841 through 8001 | 10332 |
| 1684 through 1787 | 8003 through 8026 | 10333 |
| 1789 through 1803 | 8029 through 8061 | 10335 through 10347 |
| 1810 through 1812 | 8064 through 8117 | 10349 |
| 1814 | 8119 | 10351 through 10359 |
| 1816 | 8121 through 8139 | 10363 through 10365 |
| 1820 | 8142 through 8176 | 10367 |
| 1823 through 1831 | 8178 through 8262 | 10373 |
| 1834 through 1836 | 8264 through 8294 | 10374 |
| 1838 | 8298 through 8368 | 10377 through 10385 |
| 1840 through 1844 | 8370 through 8375 | 10387 through 10408 |
| 1846 | 8378 through 8416 | 10410 |
| 1848 through 1882 | 8419 | 10414 through 10417 |
| 1884 through 1887 | 8421 | 10419 through 10427 |
| 1889 through 1893 | 8425 through 8428 | 10430 |
| 1896 through 1898 | 8430 through 8438 | 10432 |
| 1900 | 8440 | 10437 |
| 1904 | 8441 | 10438 |
| 1909 through 1912 | 8443 | 10442 through 10445 |
| 1915 | 8445 through 8447 | 10458 through 10466 |
| 1916 | 8449 through 8606 | 10469 |
| 1919 through 1921 | 8608 through 8622 | 10470 |

| | | |
|---|---|---|
| 1924 | 8624 through 8626 | 10474 |
| 1928 through 1931 | 8628 through 8632 | 10476 through 10478 |
| 1933 | 8635 through 8653 | 10480 through 10487 |
| 1934 through 1939 | 8655 through 8686 | 10489 through 10491 |
| 1943 | 8690 | 10493 through 10495 |
| 1945 | 8692 through 8700 | 10497 through 10503 |
| 1947 | 8703 through 8715 | 10505 through 10588 |
| 1948 | 8717 through 8722 | 10591 through 10606 |
| 1952 through 1957 | 8724 through 8742 | 10608 through 10610 |
| 1960 | 8745 through 8828 | 10612 through 10620 |
| 1962 through 1965 | 8830 through 8835 | 10623 |
| | 8838 through 8840 | 10624 |
| | 8842 through 8881 | 10631 through 10655 |
| | 8883 through 9032 | 10657 through 10669 |
| | 9034 through 9139 | 10672 |
| | 9141 through 9198 | 10673 |
| | 9200 | 10676 through 10678 |
| | 9202 through 9302 | 10680 through 10683 |
| | 9304 through 9339 | 10685 |
| | 9341 through 9371 | 10687 |
| | 9373 through 9411 | 10689 through 10702 |
| | 9413 | 10707 |
| | 9415 through 9417 | 10712 |
| | 9419 through 9496 | 10715 |
| | 9498 through 9585 | 10730 |
| | 9587 through 9594 | 10732 through 10734 |
| | 9596 through 9618 | 10736 |
| | 9621 through 9629 | 10738 |
| | 9632 through 9642 | 10739 |
| | 9645 through 9651 | 10746 |
| | 9653 through 9673 | 10750 |
| | 9675 through 9707 | 10756 |
| | 9709 through 9724 | 10760 |
| | 9727 through 9731 | 10761 |
| | 9733 through 9735 | 10765 |
| | 9737 through 9739 | 10770 |
| | 9741 through 9748 | 10774 through 10776 |
| | 9751 through 9785 | 10778 |
| | 9787 | 10781 |
| | 9788 | 10783 through 10785 |
| | 9790 through 9792 | 10792 |
| | 9795 through 9847 | 10794 |
| | 9849 through 9928 | 10798 |
| | 9930 through 9937 | 10799 |
| | 9940 through 9942 | 10806 through 10808 |
| | 9944 through 9952 | 10811 |
| | 9955 through 9972 | 10814 through 10822 |
| | 9974 through 9989 | 10824 |
| | 9991 through 9995 | 10825 |
| | 9997 through 10004 | 10829 |
| | 10006 through 10009 | 10831 |
| | 10011 | 10917 |
| | 10013 through 10018 | 10923 |
| | 10021 through 10030 | 10931 |
| | 10034 | 10936 |
| | 10036 through 10057 | 10937 |
| | 10061 through 10082 | 10940 |
| | 10090 through 10092 | 10943 |
| | 10094 through 10100 | 10945 |
| | 10102 through 10114 | 10947 |
| | 10116 | 10948 |
| | 10119 | 10964 |
| | 10121 | 10965 |
| | 10123 through 10134 | 10973 |
| | 10136 through 10140 | 10982 |
| | 10142 through 10144 | 10985 |
| | 10146 through 10172 | 10986 |

**Compliance**

Required as indicated.

To prevent blade failure and subsequent loss of control of the helicopter, do the following:

(a) Before further flight, unless accomplished previously, and before installing any blade with a P/N and S/N listed in the applicability section of this AD, clean the blade. Using a 10X or higher magnifying glass, inspect both sides of each blade for a deformation, a crack, and a bent or deformed weight in the area shown in Figure 1 of this AD.

**Note 1:** Paint irregularities on the blade may indicate a crack.

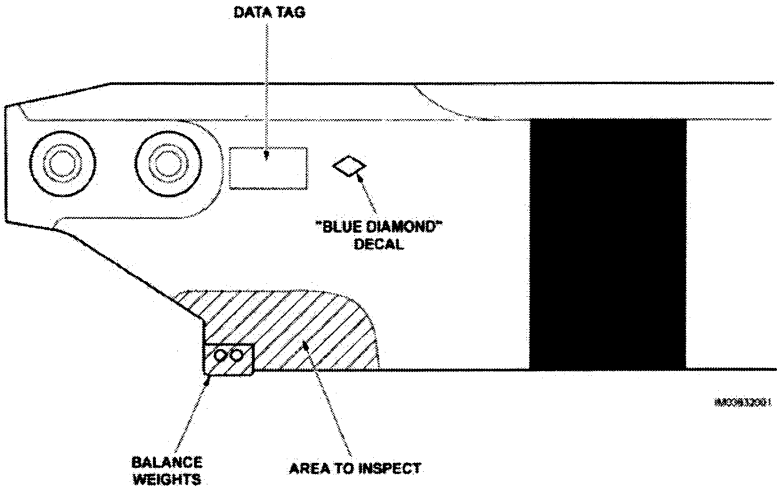


**Figure 1. Tail rotor blade inspection.**

(b) After doing paragraph (a) of this AD, at the following intervals, clean both sides of each blade and do either paragraph (1) or (2) as follows:

(1) At intervals not to exceed 12 hours time-in-service (TIS), using a 10X or higher magnifying glass, inspect both sides of each blade for a deformation, a crack, and a bent or deformed weight in the area shown in Figure 1 of this AD, or

(2) Inspect and check both sides of each blade for a deformation, a crack, and a bent or deformed weight in the area shown in Figure 1 of this AD as follows:

(i) Using a 10X or higher magnifying glass, inspect at intervals not to exceed 24 hours TIS, and

(ii) Check at intervals not to exceed 3 hours TIS between the inspections required by paragraph (b)(2)(i) of this AD. An owner/operator (pilot), holding at least a private pilot certificate, may perform this visual check and must enter compliance with this paragraph into the helicopter maintenance records by following 14 CFR sections 43.11 and 91.417(a)(2)(v).

(c) Before further flight, replace any blade that has a deformation, a crack, or a bent or deformed weight with an airworthy blade.

**Note 2:** Bell Helicopter Textron Alert Service Bulletin No. 206–04–100 for Model 206A and B and No. 206L–04–127 for Model 206L series, both Revision C, both dated March 5, 2005, pertain to the subject of this AD.

(d) On or before April 27, 2007, for any affected part-numbered blade with a S/N listed in the applicability section of this AD:

(1) Replace the blade with a blade that has a S/N other than one listed in the applicability section of this AD, or

(2) Replace the blade with a blade that has a S/N listed in the applicability section of this AD and also has a ''V'' suffix.

(e) Replacing each blade with an airworthy blade as required by paragraph (d) of this AD constitutes terminating action for the requirements of this AD.

(f) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, ATTN: Sharon Miles, Aviation Safety Engineer, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(g) This amendment becomes effective on February 13, 2007.

**Note 3:** The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2004–05R1, dated June 28, 2004.

Issued in Fort Worth, Texas, on December 26, 2006.

**David A. Downey,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. E7–39 Filed 1–8–07; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[FAA–2006–26518; Directorate Identifier 2006–CE–84–AD; Amendment 39–14874; AD 2007–01–03]**

**RIN 2120–AA64**

## Airworthiness Directives; Stemme GmbH & Co. KG Model S10–VT Gliders

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI)

issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> During certification works it was found that the cooling liquid EVANS NPG+ is flammable. The liquid cooling circuit of the Stemme S10–VT is not designed to be filled with a flammable liquid without prior modifications.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** This AD becomes effective January 29, 2007.

The Director of the Federal Register approved the incorporation by reference of Stemme F&D Service Bulletin A31–10–076 Am. Index: 01.a, dated October 9, 2006, listed in this AD as of January 29, 2007.

We must receive comments on this AD by February 8, 2007.

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

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (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: http://www.regulations.gov.* Follow the instructions for submitting comments.

## Examining the AD Docket

You may examine the AD docket 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 AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Greg Davison, Glider Program Manager, 901 Locust, Room 301, Kansas City, Missouri, 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

## Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

## Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2006–0311–E, dated October 11, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states that:

> During certification works it was found that the cooling liquid EVANS NPG+ is flammable. The liquid cooling circuit of the Stemme S10–VT is not designed to be filled with a flammable liquid without prior modifications. For that reason, this Emergency AD requires the replacement of the EVANS NPG+ cooling liquid. In addition, the operation limit of the cylinder head temperature must be temporary changed to 120[deg]C/248[deg]F.

You may obtain further information by examining the MCAI in the AD docket.

## Relevant Service Information

Stemme GmbH & Co. KG has issued Stemme F&D Service Bulletin A31–10–076 Am. Index: 01.a, dated October 9, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

## FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

## Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

## FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the cooling liquid is flammable. The liquid cooling circuit of the Stemme S10–VT is not designed to be filled with a flammable liquid without prior modifications, and this could result in a fire. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

## Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–26518; Directorate Identifier 2006–CE–84–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because 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 about this AD.

### 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 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.

### 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 FAA amends § 39.13 by adding the following new AD:

**2007–01–03 Stemme GMBH & Co. KG:** Amendment 39–14874; Docket No. FAA–2006–26518; Directorate Identifier 2006–CE–84–AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective January 29, 2007.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Model S10–VT gliders, serial numbers 11–001 through 11–104, certificated in any category.

#### Reason

(d) The mandatory continuing airworthiness information (MCAI) states that:

During certification works it was found that the cooling liquid EVANS NPG+ is flammable. The liquid cooling circuit of the Stemme S10–VT is not designed to be filled with a flammable liquid without prior modifications. For that reason, this Emergency AD requires the replacement of the EVANS NPG+ cooling liquid. In addition, the operation limit of the cylinder head temperature must be temporary changed to 120 [deg]C/248 [deg]F.

#### Actions and Compliance

(e) Prior to further flight as of January 29, 2007 (the effective date of this AD), unless already done, do the following actions.

(1) Replace the EVANS NPG+ cooling liquid in accordance with the instructions of Stemme F&D Service Bulletin A31–10–076 Am. Index: 01.a, dated October 9, 2006;

(2) Amend the Limitations and Normal Procedures Sections of the Airplane Flight Manual (AFM) to include the temporary operation limit of the cylinder head temperature to 120 [deg]C/248 [deg]F. This may be accomplished by inserting a copy of this AD into the AFM, affecting pages 2–3, 2–6, and 4–12;

(3) Apply two red lines on the Cylinder Head Temperature Gauge for the L/H and R/H cylinder head temperature at 120 [deg]C/248 [deg]F; and

(4) Replace the radiator cap part number 922075 (0.9 bar/13 psi) (or FAA approved equivalent) with a new radiator cap part number 922070 (1.2 bar/18 psi) (or FAA approved equivalent). Rotax Aircraft Engines Service Instruction SI–25–1997 R8 and Rotax Service Bulletin Sb–914–029 R2 reference this requirement.

#### FAA AD Differences

**Note:** This AD differs from the MCAI and/or service information by adding the action to replace the radiator cap.

#### Other FAA AD Provisions

(f) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Greg Davison, Glider Program Manager, 901 Locust, Room 301, Kansas City, Missouri, 64106; telephone: (816) 329–4130; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

#### Related Information

(g) Refer to European Aviation Safety Agency (EASA) AD No.: 2006–0311–E, dated October 11, 2006, and Stemme F&D Service Bulletin A31–10–076 Am. Index: 01.a, dated October 9, 2006, for related information.

#### Material Incorporated by Reference

(h) You must use Stemme F&D Service Bulletin A31–10–076 Am. Index: 01.a, dated October 9, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact STEMME GmbH & Co. KG, Flugplatzstra[beta]e F2, Nr. 7, D–15344 Strausberg, Germany; telephone: + 49.33 41/36 12–0; fax: +49.33 41/36 12–30; e-mail: *P.Ellwanger@stemme.de.*

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; 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 Kansas City, Missouri on December 27, 2006.

**John R. Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E6–22620 Filed 1–8–07; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2006–25851; Directorate Identifier 2006–NM–133–AD; Amendment 39–14872; AD 2007–01–01]**

**RIN 2120–AA64**

## Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes. This AD requires determining the part number of the lift spoiler actuators/jacks (referred to after this as ''lift spoiler jacks''). For affected lift spoiler jacks, this AD requires determining the date of manufacture of the lift spoiler jacks, repetitively inspecting the eye-end assembly of the lift spoiler jacks to detect discrepancies of the assembly or associated parts, and performing corrective actions if necessary. This AD results from a report that a lift spoiler deployed in flight due to corrosion at the thread where the eye-end assembly was screwed into the piston of the lift spoiler jack. We are issuing this AD to prevent detachment of the eye-end assembly of a lift spoiler jack, which could result in uncommanded deployment of a lift spoiler in flight, and consequent reduced controllability of the airplane.

**DATES:** This AD becomes effective February 13, 2007.

The Director of the **Federal Register** approved the incorporation by reference of a certain publication listed in the AD as of February 13, 2007.

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

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

**FOR FURTHER INFORMATION CONTACT:** Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; 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 BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes. That NPRM was published in the **Federal Register** on September 20, 2006 (71 FR 54939). That NPRM proposed to require determining the part number of the lift spoiler actuators/jacks (referred to after this as ''lift spoiler jacks''). For affected lift spoiler jacks, that NPRM proposed to require determining the date of manufacture of the lift spoiler jacks, repetitively inspecting the eye-end assembly of the lift spoiler jacks to detect discrepancies of the assembly or associated parts, and performing corrective actions if necessary.

### Comments

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

### Request To Publish Service Information

The Modification and Replacement Parts Association (MARPA) states that, typically, ADs are based on service information originating with the type certificate holder or its suppliers. MARPA adds that manufacturer service documents are privately authored instruments generally having copyright protection against duplication and distribution. MARPA notes that when a service document is incorporated by reference into a public document, such as an AD, it loses its private, protected status and becomes a public document. MARPA adds that if a service document is used as a mandatory element of compliance, it should not simply be referenced, but should be incorporated into the regulatory document; by definition, public laws must be public, which means they cannot rely upon private writings. MARPA adds that incorporated by reference service documents should be made available to the public by publication in the Docket Management System (DMS), keyed to the action that incorporates them. MARPA notes that the stated purpose of the incorporation by reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals; traditionally, ''affected individuals'' means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA adds that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing and repair shops, parts purveyors and distributors, and organizations manufacturing or servicing alternatively certified parts under section 21.303 (''Replacement and modification parts'') of the Federal Aviation Regulations (14 CFR 21.303). Therefore, MARPA asks that the service documents deemed essential to the accomplishment of the NPRM be incorporated by reference into the regulatory instrument and published in the DMS.

We understand MARPA's comment concerning incorporation by reference. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the document necessary for the accomplishment of the requirements mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

In regard to the commenter's request to post service bulletins on the Department of Transportation's DMS, we are currently in the process of reviewing issues surrounding the posting of service bulletins on the DMS as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. No change to the final rule is necessary in response to this comment.

## 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.

## Costs of Compliance

This AD affects about 53 airplanes of U.S. registry. The required inspections take about 4 work hours per airplane, per inspection cycle, 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 $16,960, or $320 per airplane, per inspection cycle.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2007–01–01 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft):** Amendment 39–14872. Docket No. FAA–2006–25851; Directorate Identifier 2006–NM–133–AD.

**Effective Date**

(a) This AD becomes effective February 13, 2007.

**Affected ADs**

(b) None.

**Applicability**

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

**Unsafe Condition**

(d) This AD results from a report that a lift spoiler deployed in flight due to corrosion at the thread where the eye-end assembly was screwed into the piston of the lift spoiler actuator/jack (referred to after this as the ''lift spoiler jack''). We are issuing this AD to prevent detachment of the eye-end assembly of a lift spoiler jack, which could result in uncommanded deployment of a lift spoiler in flight, and consequent reduced controllability of the airplane.

**Compliance**

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

**Service Bulletin Reference**

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin SB27–176, Revision 2, dated October 5, 2004. Although the service bulletin specifies to submit information to the manufacturer, this AD does not include that requirement. Inspections and corrective actions accomplished before the effective date of this AD in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin SB27–176, dated October 1, 2003; or Revision 1, dated January 13, 2004; are acceptable for compliance with the corresponding actions required by this AD.

**Determination of Part Number (P/N)**

(g) Within 30 days after the effective date of this AD: Determine the P/N of all six lift spoiler jacks. A review of airplane maintenance records is an acceptable method of determining the P/N if the P/N can be conclusively determined from that review.

(1) If no lift spoiler jack having P/N P308–45–0002 or P308–45–0102 is installed: No further action is required by this paragraph.

(2) For any lift spoiler jack having P/N P308–45–0002 or P308–45–0102: Before further flight, inspect the lift spoiler jack to determine its serial number (S/N) and date of manufacture. A review of airplane maintenance records is acceptable in lieu of this inspection if the S/N and date of manufacture can be conclusively determined from that review.

**Inspection of Lift Spoiler Jack**

(h) For any lift spoiler jack having P/N P308–45–0002 or P308–45–0102: At the applicable compliance time specified in paragraph (h)(1) or (h)(2) of this AD, perform a detailed inspection for discrepancies of the eye-end assembly of the lift spoiler jack, associated hardware, and the thread of the piston where the eye-end assembly attaches, in accordance with the service bulletin. Discrepancies include but are not limited to evidence of corrosion or damaged or fretted threads.

(1) For lift spoiler jacks identified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD: Within 30 days after the effective date of this AD.

(i) Any lift spoiler jack having a S/N prefixed with ''DAWX'' or ''CSW'' (regardless of the date of manufacture).

(ii) Any lift spoiler jack having P/N P308–45–0002 or P308–45–0102, with a date of manufacture on or before December 31, 1999.

(2) For lift spoiler jacks with a date of manufacture on or after January 1, 2000, except those with S/Ns prefixed with ''DAWX'' or ''CSW'': Within 5 months after the effective date of this AD.

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

cleaning and elaborate procedures may be required.''

**Repetitive Inspections/Corrective Action**

(i) Repeat the inspection required by paragraph (h) of this AD and do corrective actions based on the inspection findings, in accordance with paragraph (i)(1), (i)(2), or (i)(3) of this AD, as applicable.

(1) If no discrepancy of the eye-end assembly of the lift spoiler jack is found: Repeat the inspection required by paragraph (h) of this AD within 48 months, and, based on the findings during that repeat inspection, repeat the inspection and do corrective actions, as applicable, in accordance with paragraph (i) of this AD.

(2) If light corrosion, as defined in the service bulletin, but no other discrepancy, is found: Repeat the inspection required by paragraph (h) of this AD within 24 months, and, based on the findings during that repeat inspection, repeat the inspection and do corrective actions, as applicable, in accordance with paragraph (i) of this AD.

(3) If severe corrosion, as defined in the service bulletin, or any damaged or fretted thread, is found: Before further flight, replace the eye-end assembly of the lift spoiler jack, associated hardware, and piston, as applicable, with new or serviceable parts, as applicable, in accordance with the service bulletin. Then, repeat the inspection required by paragraph (h) of this AD within 48 months, and, based on the findings during that repeat inspection, repeat the inspection and do corrective actions, as applicable, in accordance with paragraph (i) of this AD. Where the service bulletin specifies to return certain damaged parts to the parts manufacturer, this AD does not require that action.

**Parts Installation**

(j) As of the effective date of this AD, no person may install a lift spoiler jack having P/N P308–45–0002 or P308–45–0102 unless it has been inspected as required by this AD and found to be free of severe corrosion or other discrepancy.

**Alternative Methods of Compliance (AMOCs)**

(k)(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**

(l) European Aviation Safety Agency airworthiness directive 2006–0139, dated May 23, 2006, also addresses the subject of this AD.

**Material Incorporated by Reference**

(m) You must use BAE Systems (Operations) Limited Inspection Service Bulletin SB27–176, Revision 2, dated October 5, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/[fxsp0]federal—register/code—of—federal—regulations/[fxsp0]ibr—locations.html.*

Issued in Renton, Washington, on December 21, 2006.

**Ali Bahrami,**

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

[FR Doc. E6–22537 Filed 1–8–07; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2006–25822; Airspace Docket No. 06–AWP–16]**

**RIN 2120–AA66**

## Revision of Class D Airspace; Mesa, AZ

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

**ACTION:** Final rule.

**SUMMARY:** This action revises Class D airspace at Mesa, AZ, Falcon Field Airport. The airspace is modified to accommodate general aviation pilots transitioning the Phoenix area as described in the forthcoming proposed Phoenix Class B airspace redesign. Revising the Mesa Falcon Field airspace provides a wider corridor for general aviation pilots to transition north and south beneath the proposed Phoenix Class B airspace and remain west of the Mesa Falcon Field Airport Class D airspace.

**DATES:** *Effective Date:* 0901 UTC, March 15, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Francie Hope, System Support Specialist, Western Service Area, AWP–520.3, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6502.

**SUPPLEMENTARY INFORMATION:**

### History

On October 25, 2006, the FAA published in the **Federal Register** (71 FR 62397) a notice of proposed rulemaking to revise the Class D airspace at Mesa, AZ. Interested parties were invited to participate in this ruelmaking effort by submitting written comments on this proposal to the FAA. No comments were received. This revision is the same as that proposed in the notice. Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9P dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising the Class D airspace area for Mesa, AZ, Falcon Field Airport. The airspace is modified to accommodate general aviation pilots transitioning the Phoenix area as described in the forthcoming proposed Phoenix Class B airspace redesign. Revising the Mesa Falcon Field airspace provides a wider corridor for general aviation pilots to transition north and south beneath the proposed Phoenix Class B airspace and remain west of the Mesa Falcon Field Airport Class D airspace. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 95765, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

*Paragraph 5000 Class D Airspace.*

* * * * *

**AWP AZ D Mesa, AZ [Revised]**

Mesa, Falcon Field, AZ
(Lat. 33[deg]27'39'' N., long. 111[deg]43'42'' W.)

That airspace extending upward from the surface to but not including 3,400 feet MSL beginning at lat. 33[deg]24'38'' N., long. 111[deg]47'23'' W.; then north to lat. 33[deg]30'40'' N., long. 111[deg]47'23'' W.; then northeast, southeast, and southwest along a 4.3-mile radius of Falcon Field Airport, to lat. 33[deg]24'38'' N., long. 111[deg]47'23'' W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on December 20, 2006.

**Leonard A. Mobley,**

*Acting Director, Western Terminal Operations.*

[FR Doc. 07–8 Filed 1–8–07; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2006–25922; Airspace Docket No. 06–AWP–17]**

**RIN 2120–AA66**

## Establishment of Class E Airspace; Santa Cruz, CA

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes a Class E airspace area at Santa Cruz, CA. The establishment of a Special COPTER Area Navigation (RNAV) Global Positioning System (GPS) 040 Point In Space Standard Instrument Approach Procedure (SIAP) and a Special COPTER RNAV (GPS) 227 Departure Procedure serving Dominican Hospital Heliport has made this action necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain helicopters executing the Special COPTER RNAV (GPS) 040 Point In Space SIAP and Special COPTER RNAV (GPS) 227 Departure Procedure to Dominican Hospital Heliport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Dominican Hospital Heliport, Santa Cruz, CA.

**DATES:** *Effective Date:* 0901 UTC March 15, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Francie Hope, System Support Specialist, Western Service Area, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 725–6502.

**SUPPLEMENTARY INFORMATION:**

### History

On October 27, 2006, the FAA proposed to amend 14 CFR part 71 by establishing a Class E airspace area at Santa Cruz, CA. (71 FR 62954). Additional controlled airspace extending upward from 700 feet above the surface is needed to contain helicopters executing Special COPTER Area Navigation (RNAV) Global Positioning System (GPS) 040 Point In Space Standard Instrument Approach Procedure (SIAP) and a Special COPTER RNAV (GPS) 227 Departure Procedure serving Dominican Hospital Heliport. The intended effect of this proposal is to provide adequate controlled airspace for helicopters executing Special COPTER Area Navigation (RNAV) Global Positioning System (GPS) 040 Point In Space Standard Instrument Approach Procedure (SIAP) and a Special COPTER RNAV (GPS) 040 Point In Space Standard Instrument Approach Procedure (SIAP) and a Special COPTER RNAV (GPS) 227 Departure Procedure serving Dominican Hospital Heliport, Santa Cruz, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

### The Rule

This amendment to 14 CFR part 71 establishes a Class E airspace area at Santa Cruz, CA. The establishment of a Special COPTER Area Navigation (RNAV) Global Positioning System (GPS) 040 Point In Space Standard Instrument Approach Procedure (SIAP) and a Special COPTER RNAV (GPS) 227 Departure Procedure serving Dominican Hospital Heliport has made this action necessary. The effect of this action will provide adequate controlled airspace for helicopters executing the Special COPTER Area Navigation (RNAV) Global Positioning System (GPS) 040 Point In Space Standard Instrument Approach Procedure (SIAP) and Special COPTER RNAV (GPS) 227 Departure Procedure to Dominican Hospital Heliport, Santa Cruz, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS, ROUTES; AND REPORTING POINTS.

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AWP CA E5 Santa Cruz, CA [New]**

Dominican Hospital Heliport Point in Space Coordinates
(Lat. 36[deg]58'26'' N., long. 121[deg]59'38'' W.)

That airspace extending upward from 700 feet above the surface and within a 6.5-mile radius of the Point in Space serving the Dominican Hospital Heliport.

* * * * *

Issued in Los Angeles, California on December 20, 2006.

**Leonard A. Mobley,**

*Acting Area Director, Western Terminal Operations.*

[FR Doc. 07–7 Filed 1–8–07; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30531; Amdt. No. 3201]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

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

**DATES:** This rule is effective January 9, 2007. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 9, 2007.

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

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Ave., SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169, or
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal—register/code—of—federal—regulations/ibr—locations.html.*

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

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

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

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

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

### The Rule

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

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

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

## Conclusion

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

## List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on December 29, 2006.

**James J. Ballough,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

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

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, LDA w/GS, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, MLS, TLS, GLS, WAAS PA, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; § 97.35 COPTER SIAPs, § 97.37 Takeoff Minima and Obstacle Departure Procedures. Identified as follows:

** * * Effective Upon Publication*

| FDC date | State | City | Airport | FDC No. | Subject |
|---|---|---|---|---|---|
| 12/05/07 | CA | CHICO | CHICO MUNI | 6/7633 | VOR/DME RWY 13L, AMDT 7B. |
| 12/04/07 | NC | KINSTON | KINSTON REGL JETPORT AT STALLINGS FLD. | 6/7677 | RNAV (GPS) RWY 5, AMDT 1A. |
| 12/15/06 | AZ | PHOENIX | PHOENIX SKY HARBOR INTL | 6/8608 | ILS RWY 7L, AMDT 10A. |
| 12/22/06 | GA | ATLANTA | NEWNAN COWETA COUNTY | 6/9072 | RNAV (GPS) RWY 14, ORIG. |
| 12/22/06 | GA | ATLANTA | NEWNAN COWETA COUNTY | 6/9073 | RNAV (GPS) RWY 32, AMDT 1. |
| 12/22/06 | GA | ATLANTA | NEWNAN COWETA COUNTY | 6/9074 | LOC RWY 32, AMDT 1. |
| 12/22/06 | GA | ATLANTA | NEWNAN COWETA COUNTY | 6/9075 | VOR/DME–A, AMDT 7. |
| 12/27/06 | MN | MINNEAPOLIS | FLYING CLOUD | 6/9250 | COPTER OR ILS RWY 10R, ORIG–C. |

[FR Doc. E7–30 Filed 1–8–07; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF COMMERCE

### Office of the Secretary

### 15 CFR Part 6

**[Docket No.: 0612213340–6339–01]**

**RIN 0690–AA35**

## Civil Monetary Penalties; Adjustments

**AGENCY:** Office of the Secretary, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule is being issued to adjust civil monetary penalties (CMPs) provided by law within the jurisdiction of the Department of Commerce (the Department). Recent changes to the International Emergency Economic Powers Act (IEEPA), as amended by the USA PATRIOT Improvement and Reauthorization Act of 2005 (Patriot Act), Public Law 109–177, increased the penalties for two violations. The intent of this rule is to make the Department's regulations consistent with those changes.

**DATES:** This rule is effective January 9, 2007.

**ADDRESSES:** Office of General Counsel, Department of Commerce, 1401 Constitution Avenue, NW., MS 5876, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Peter Robbins, 202–482–0846.

**SUPPLEMENTARY INFORMATION:** As part of its obligations under the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, as amended by the Debt Collection Improvement Act of 1996, the Department regularly evaluates CMPs to ensure that they continue to maintain their deterrent value and that penalty amounts due to the Federal Government are properly accounted for and collected. Under some circumstances, the Department may also need to adjust a portion of the CMPs within its jurisdiction in order to make them consistent with statutory changes.

The recent Patriot Act adjusted certain CMPs under IEEPA. A civil monetary penalty is defined as any penalty, fine, or other sanction that:

1. Is for a specific monetary amount as provided by Federal law;
2. Is assessed or enforced pursuant to Federal law; and
3. Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

This rule adjusts the affected CMPs that are codified at 15 CFR 6.4(a)(4) and 15 CFR 6.4(a)(5) in order to make them consistent with the statutory changes. The actual penalty assessed for a particular violation will continue to be dependent upon a variety of factors.

## Rulemaking Requirements

It has been determined that this rule is not significant for purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the Department for good cause finds that notice and an opportunity for comment required by the Administrative Procedure Act are unnecessary for this rulemaking. It is unnecessary to ask for notice and comment because the USA Patriot Act changed two CMPs within the Department's jurisdiction. As such, the corresponding changes to the Department's regulations are wholly non-discretionary. This rule merely

adjusts the Department's CMPs according to the statutory mandate. For the same reasons, there exists good cause to waive the thirty day delay in effectiveness of the rule, pursuant to 5 U.S.C. 553(d)(3).

Because notice and opportunity for comment are not required by 5 U.S.C. 553, or any other law, a Regulatory Flexibility Analysis is not required and none was prepared.

This rule does not contain information collection requirements for purposes of the Paperwork Reduction Act.

**List of Subjects in 15 CFR Part 6**

Law enforcement, Penalties.

**Lisa Casias,**

*Deputy Chief Financial Officer and Director for Financial Management.*

■ For the reasons set forth in the preamble, subtitle A of Title 15 of the Code of Federal Regulations is amended as follows:

## PART 6—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

■ 1. The authority citation for part 6 continues to read as follows:

**Authority:** Sec. 4, as amended, and sec. 5, Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–134, 110 Stat. 1321, 28 U.S.C. 2461 note.

■ 2. Section 6.4 is amended by revising the introductory text and paragraphs (a)(4) and (a)(5) to read as follows:

### § 6.4 Adjustments to penalties.

The civil monetary penalties provided by law within the jurisdiction of the respective agencies or bureaus of the Department, as set forth below in this section, are hereby adjusted in accordance with the inflation adjustment procedures prescribed in Section 5, from the amounts of such penalties in effect prior to December 14, 2004, to the amounts of such penalties, as thus adjusted, except for the penalties stated in paragraphs (a)(4) and (a)(5) which became adjusted on March 9, 2006.

(a) * * *

(4) 50 U.S.C. 1705(a), International Emergency Economic Powers Act—Export Administration Regulation Violation, from $11,000 to $50,000.

(5) 50 U.S.C. 1705(a), International Emergency Economic Powers Act—Chemical Weapons Convention Implementation Act, Import Restriction Violation, from $11,000 to $50,000.

* * * * *

[FR Doc. E7–85 Filed 1–8–07; 8:45 am]

BILLING CODE 3510–17–P

## FEDERAL TRADE COMMISSION

## 16 CFR Part 18

## Guides for the Nursery Industry

**AGENCY:** Federal Trade Commission.

**ACTION:** Confirmation of guides.

**SUMMARY:** The Federal Trade Commission (''FTC'' or ''Commission'') has completed its regulatory review of the Guides for the Nursery Industry (''Guides'' or ''Nursery Guides''), as part of the Commission's systematic review of all current Commission regulations and guides, and, with the exception of correcting a misspelled word, has determined to retain the Guides in their current form.

**DATES:** This action is effective as of January 9, 2007.

**ADDRESSES:** Requests for copies of this notice should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580. The notice also is available on the Internet at the Commission's Web site, *http://www.ftc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Janice Podoll Frankle, (202) 326–3022, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580. E-mail: *jfrankle@ftc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The Commission has determined, as part of its oversight responsibilities, to review its rules and guides periodically to seek information about their costs and benefits as well as their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission.

### II. Background

The Commission issued its Nursery Guides in 1979.[1] These Guides address numerous sales practices for outdoor plants, trees, and flowers, including deceptive claims regarding quantity, size, grade, kind, species, age, maturity, condition, vigor, hardiness, growth ability, price, and origin or place where grown.

In 1994, as part of its periodic review, the Commission amended the Nursery Guides.[2] Specifically, the Commission amended Guide 6 (Plants collected from the wild state) and the related definitions. Guide 6 now advises sellers that it is unfair or deceptive to offer for sale plants collected from the wild state without disclosing that fact.[3] Additionally, the Commission amended Guides 1–8 to update legal terminology. Specifically, the Commission deleted the expressions ''it is an unfair trade practice'' and ''has the capacity and tendency or effect of deceiving purchasers,'' neither of which the Commission uses in its orders, rules, or guides. The Commission substituted the language ''it is an unfair or deceptive act or practice'' and ''misrepresents directly or by implication.'' [4]

On June 13, 2006, the Commission published a **Federal Register** notice (''FRN'') seeking comment on the Nursery Guides as part of the Commission's ongoing project to review periodically its rules and guides to determine their current effectiveness and impact.[5] The FRN sought comment on the continuing need for the Guides; the costs and benefits of the Guides; how the 1994 amendments to Guide 6 affected the nursery industry and purchasers; and what effects, if any, technological or economic changes have had on the Guides.

### III. Regulatory Review Comments

The Commission received two comments in response to the FRN,[6] one from an individual [7] and one from the American Nursery & Landscape Association (''ANLA''). ANLA, a national trade organization formed in 1875, represents nursery and greenhouse crop growers, landscape design and installation professionals, independent garden retailers, horticultural distributors, and industry suppliers. ANLA stated that these entities collectively comprise what is commonly referred to as the ''green industry,'' which generates annual economic output estimated at over $147 billion. According to ANLA, the Nursery Guides cover many of the

[1] Industry guides are administrative interpretations of laws issued by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. 16 CFR 1.5.

[2] 59 FR 64546 (December 14, 1994).

[3] Guide 6 also provides that plants propagated from plants lawfully collected from the wild state may be designated as ''nursery-propagated.''

[4] *See* the Commission's 1983 Statement on Deception found in the appendix to Cliffdale Associates, 103 F.T.C. 110, 174 (1984).

[5] 71 FR 34045 (June 13, 2006).

[6] The comments are cited in this notice by the name of the commenter. All comments are on the public record and available for public inspection in the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC, from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. The comments also are available on the Internet at the Commission's Web site, *http://www.ftc.gov.*

[7] Barb Sachau (''Sachau'').

activities of its members and the industry.

ANLA's comments, which responded to each of the eleven FRN questions,[8] indicated that the Nursery Guides serve a useful purpose and should remain in effect in their current form. ANLA stated that it did not have any proposals for changing the Guides [9] and did not have any ''specific observations'' about what effects, if any, changes in relevant technology, economic conditions, or environmental conditions had on the Guides. ANLA observed that the Guides ''have been generally adopted and become part of routine business practice at least among legitimate and respectable industry firms'' and that the Nursery Guides ''provide a framework for addressing the bad actors.'' ANLA stated that its sense was that the Guides have imposed minimal costs on purchasers because they ''merely convey the performance standards that should be met'' when the industry engages in advertising and labeling that it otherwise conducts. Further, ANLA said that it did not believe the Guides have imposed any significant burdens on industry businesses.

Concerning FRN question 5 (how the 1994 amendments to Guide 6 regarding plants collected from the wild state have affected the nursery industry and purchasers), ANLA stated that the intent of the 1994 amendments—which it supported—was to protect consumers because wild-collected plants often suffer high mortality. It noted, however, if wild-collected plants have been established in the nursery for at least a growing season, the surviving plants regain vigor and thus the consumer is more assured of purchasing viable plants. ANLA opined that the Guide 6 ''nursery-propagated'' designation helps conservationists and consumers interested in preserving these wild populations because they may want to purchase only truly nursery-propagated and grown plants.

Sachau's comment related solely to wild-collected plants, and did not indicate that any changes needed to be made to the Guides. Sachau stated that no wild-collected plants should be sold by any U.S. nursery. Sachau indicated that such plants were usually collected on national taxpayer-owned land, and that taking plants from this land was ''stealing.'' Sachau stated that stealing plants from national land should be a criminal offense, and suggested specific fines to be imposed on anyone caught stealing from nationally-owned land. With regard to Sachau's comments, the Commission notes that Guide 6 refers only to plants ''lawfully'' collected from the wild state. Moreover, to the extent that it is not already a crime, the FTC does not have the authority to make collecting plants from the wild state on national lands a criminal offense.

In light of the comments received, and in the absence of any opposition to the Guides, the Commission concludes that there is a continuing need for the Nursery Guides. The comments provide evidence that the Guides serve a useful purpose, while imposing minimal costs on the industry, and the Commission has no evidence to the contrary. Accordingly, with the exception of correcting the misspelling of the word ''bulblets'' [10] in § 18.1(c)(9), the Commission has determined to retain the Nursery Guides in their current form.

## IV. Conclusion

For the reasons described above, the Commission has determined to retain the current Nursery Guides.

## List of Subjects in 16 CFR Part 18

Advertising, Nursery, Trade practices.

## Text of Amendments

■ For the reason set forth in the preamble, 16 CFR part 18 is amended as follows:

## PART 18—GUIDES FOR THE NURSERY INDUSTRY

■ 1. Section 18.1 is amended by revising paragraph (c)(9) to read as follows:

### § 18.1 Deception (general).

* * * * *

(c)(9) That bulblets are bulbs.

* * * * *

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. E7–52 Filed 1–8–07; 8:45 am]

BILLING CODE 6750–01–P

[8] Because ANLA did not provide substantive information in response to every question and some responses overlapped with others, this FRN does not discuss each question separately.

[9] In response to FRN question 9 (whether the Guides overlap or conflict with other federal, state or local laws or regulations), ANLA stated that it did not see any fundamental conflict. It indicated that the nursery industry recently worked with the National Institutes for Standards and Technology to develop industry guidelines for marketing plants sold in packages or in containers. ANLA stated that the ''Industry Guide to Marketing Container Plants'' (''Industry Guide'') ''was necessitated by the widespread use of marketing terminology (10-inch pot, 1 gallon pot) that was viewed as not conforming with weights and measures consumer labeling requirements.'' ANLA suggested that if the Commission decided to retain the Nursery Guides, it might want to reference the Industry Guide because it contains useful supplemental information. ANLA, however, did not propose any specific text or section of the Guides for this supplemental information. Because the Industry Guide addresses matters of state law, as opposed to compliance with the FTC Act or other laws enforced by the FTC, the Commission believes that it is potentially confusing to reference the Industry Guide in the Nursery Guides.

[10] ''Bulblets'' was incorrectly spelled ''bublets.''

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 9309]**

**RIN 1545–BD40**

## Qualified Amended Returns

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations that state the rules relating to qualified amended returns by providing circumstances that end the period within which a taxpayer may file an amended return that constitutes a qualified amended return. The IRS uses qualified amended returns to determine whether an underpayment exists that is potentially subject to the accuracy-related penalty on underpayments. Among other things, these final regulations provide that the period for filing a qualified amended return is terminated once the IRS has served a John Doe summons on a third party with respect to the taxpayer's tax liability. In addition, for taxpayers who have claimed tax benefits from undisclosed listed transactions, the regulations provide that the period for filing a qualified amended return is terminated once the IRS requests information related to the transaction that is required to be included on a list under section 6112 from any person who made a tax statement to or for the benefit of the taxpayer, or any person who gave material aid, assistance, or advice to the taxpayer. The regulations also provide that the date on which published guidance is issued announcing a settlement initiative for a listed transaction in which penalties, in whole or in part, are compromised or waived is an additional date by which a taxpayer must file a qualified amended return.

**DATES:** *Effective Date:* These regulations are effective January 9, 2007. *Applicability Dates:* For dates of applicability, see § 1.6664–1(b)(3).

**FOR FURTHER INFORMATION CONTACT:** Laura Urich Daly, 202–622–4940 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Background

This document contains Final Regulations under 26 CFR part 1 relating to qualified amended returns. Temporary regulations (TD 9186) relating to qualified amended returns were published in the **Federal Register** (70 FR 10037) on March 2, 2005. A notice of proposed rulemaking (REG–122847–04) cross-referencing the temporary regulations was published in the **Federal Register** (70 FR 10062) for the same day. A correction (70 FR 36345) and a correcting amendment (70 FR 36344) to the regulations were published in the **Federal Register** on June 23, 2005, and a correction to the correction was published in the **Federal Register** (70 FR 43635) on July 28, 2005. No written or electronic comments were received from the public in response to the notice of proposed rulemaking and no public hearing was requested or held. The proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed. The revisions are discussed below.

## Explanation of Revisions

The final regulations clarify the applicability date of the regulations. Under the Special Rules section, the sentence in the proposed and temporary regulations regarding disclosure pursuant to § 1.6011–4 was removed in these final regulations because it could be incorrectly interpreted to provide relief from the section 6707A penalty. These final regulations are not intended to have any effect upon the applicability of the section 6707A penalty. In addition, examples one, four, five, six, and seven in the proposed and temporary regulations were further clarified. Finally, example eight in the proposed and temporary regulations was removed as unnecessary.

No other substantive revisions were made to the proposed and temporary regulations or the corrections to those regulations. These final regulations do, however, include revisions to the table of contents to the regulations under section 6664.

## Special Analyses

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

## Drafting Information

The principal author of this regulation is Laura Urich Daly, Office of the Associate Chief Counsel (Procedure & Administration), Administrative Provisions and Judicial Practice Division.

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

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

## PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.6664–0 is amended by adding entries for § § 1.6664–1(b)(3) and 1.6664–2(c)(3)(i), (ii) and (5), and revising the entry for § 1.6664–2(c)(4) to read as follows:

**§ 1.6664–0 Table of contents.**

* * * * *

**§ 1.6664–1 Accuracy-related and fraud penalties; definitions, effective date and special rules.**

* * * * *

(b) * * *

(3) Qualified amended returns.

**§ 1.6664–2 Underpayment.**

* * * * *

(c) * * *

(3) * * *

(i) General rule.

(ii) Undisclosed listed transactions.

(4) Special rules.

(5) Examples.

* * * * *

■ **Par. 3.** Section 1.6664–1 is amended by:

■ 1. Revising the section heading.

■ 2. Adding paragraph (b)(3).

The revision and addition read as follows:

**§ 1.6664–1 Accuracy-related and fraud penalties; definitions, effective date and special rules.**

* * * * *

(b) * * *

(3) *Qualified amended returns.* Sections 1.6664–2(c)(1), (c)(2), (c)(3)(i)(A), (c)(3)(i)(B), (c)(3)(i)(C), (c)(3)(i)(D)(*2*), (c)(3)(i)(E), and (c)(4) are applicable for amended returns and requests for administrative adjustment filed on or after March 2, 2005. Sections 1.6664–2(c)(3)(i)(D)(*1*) and (c)(3)(ii)(B) and (C) are applicable for amended returns and requests for administrative adjustment filed on or after April 30, 2004. The applicability date for § 1.6664–2(c)(3)(ii)(A) varies depending upon which event occurs under § 1.6664–2(c)(3)(i). For purposes of § 1.6664–2(c)(3)(ii)(A), the date described in § 1.6664–2(c)(3)(i)(D)(*1*) is applicable for amended returns and requests for administrative adjustment filed on or after April 30, 2004. For purposes of § 1.6664–2(c)(3)(ii)(A), the dates described in § 1.6664–2(c)(3)(i)(A), (B), (C), (D)(*2*), and (E) are applicable for amended returns and requests for administrative adjustment filed on or after March 2, 2005. Section 1.6664–2(c)(1) through (c)(3), as contained in 26 CFR part 1 revised as of April 1, 2004 and as modified by Notice 2004–38, 2004–1 C.B. 949, applies with respect to returns and requests for administrative adjustment filed on or after April 30, 2004 and before March 2, 2005. Section 1.6664–2(c)(1) through (3), as contained in 26 CFR part 1 revised as of April 30, 2004, applies with respect to returns and requests for administrative adjustment filed before April 30, 2004.

**§ 1.6664–1T [Removed]**

■ **Par. 4.** Section 1.6664–1T is removed.

■ **Par. 5.** Section 1.6664–2(c) is revised to read as follows:

**§ 1.6664–2 Underpayment.**

* * * * *

(c) *Amount shown as the tax by the taxpayer on his return*—(1) *Defined.* For purposes of paragraph (a) of this section, the *amount shown as the tax by the taxpayer on his return* is the tax liability shown by the taxpayer on his return, determined without regard to the items listed in paragraphs (b)(1), (2), and (3) of this section, except that it is reduced by the excess of—

(i) The amounts shown by the taxpayer on his return as credits for tax withheld under section 31 (relating to tax withheld on wages) and section 33 (relating to tax withheld at source on nonresident aliens and foreign corporations), as payments of estimated tax, or as any other payments made by the taxpayer with respect to a taxable year before filing the return for such taxable year, over

(ii) The amounts actually withheld, actually paid as estimated tax, or actually paid with respect to a taxable year before the return is filed for such taxable year.

(2) *Effect of qualified amended return.* The *amount shown as the tax by the taxpayer on his return* includes an amount shown as additional tax on a qualified amended return (as defined in paragraph (c)(3) of this section), except that such amount is not included if it relates to a fraudulent position on the original return.

(3) *Qualified amended return defined*—(i) *General rule.* A *qualified amended return* is an amended return, or a timely request for an administrative adjustment under section 6227, filed after the due date of the return for the taxable year (determined with regard to extensions of time to file) and before the earliest of—

(A) The date the taxpayer is first contacted by the Internal Revenue Service (IRS) concerning any examination (including a criminal investigation) with respect to the return;

(B) The date any person is first contacted by the IRS concerning an examination of that person under section 6700 (relating to the penalty for promoting abusive tax shelters) for an activity with respect to which the taxpayer claimed any tax benefit on the return directly or indirectly through the entity, plan or arrangement described in section 6700(a)(1)(A);

(C) In the case of a pass-through item (as defined in § 1.6662–4(f)(5)), the date the pass-through entity (as defined in § 1.6662–4(f)(5)) is first contacted by the IRS in connection with an examination of the return to which the pass-through item relates;

(D)(*1*) The date on which the IRS serves a summons described in section 7609(f) relating to the tax liability of a person, group, or class that includes the taxpayer (or pass-through entity of which the taxpayer is a partner, shareholder, beneficiary, or holder of a residual interest in a REMIC) with respect to an activity for which the taxpayer claimed any tax benefit on the return directly or indirectly.

(*2*) The rule in paragraph (c)(3)(i)(D)(*1*) of this section applies to any return on which the taxpayer claimed a direct or indirect tax benefit from the type of activity that is the subject of the summons, regardless of whether the summons seeks the production of information for the taxable period covered by such return; and

(E) The date on which the Commissioner announces by revenue ruling, revenue procedure, notice, or announcement, to be published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), a settlement initiative to compromise or waive penalties, in whole or in part, with respect to a listed transaction. This rule applies only to a taxpayer who participated in the listed transaction and for the taxable year(s) in which the taxpayer claimed any direct or indirect tax benefits from the listed transaction. The Commissioner may waive the requirements of this paragraph or identify a later date by which a taxpayer who participated in the listed transaction must file a qualified amended return in the published guidance announcing the listed transaction settlement initiative.

(ii) *Undisclosed listed transactions.* An *undisclosed listed transaction* is a transaction that is the same as, or substantially similar to, a listed transaction within the meaning of § 1.6011–4(b)(2) (regardless of whether § 1.6011–4 requires the taxpayer to disclose the transaction) and was neither previously disclosed by the taxpayer within the meaning of § 1.6011–4 or § 1.6011–4T, nor disclosed under Announcement 2002–2 (2002–1 C.B. 304), (see § 601.601(d)(2)(ii) of this chapter) by the deadline therein. In the case of an *undisclosed listed transaction* for which a taxpayer claims any direct or indirect tax benefits on its return (regardless of whether the transaction was a listed transaction at the time the return was filed), an amended return or request for administrative adjustment under section 6227 will not be a *qualified amended return* if filed on or after the earliest of—

(A) The dates described in paragraph (c)(3)(i) of this section;

(B) The date on which the IRS first contacts any person regarding an examination of that person's liability under section 6707(a) with respect to the undisclosed listed transaction of the taxpayer; or

(C) The date on which the IRS requests, from any person who made a tax statement to or for the benefit of the taxpayer or from any person who gave the taxpayer material aid, assistance, or advice as described in section 6111(b)(1)(A)(i) with respect to the taxpayer, the information required to be included on a list under section 6112 relating to a transaction that was the same as, or substantially similar to, the undisclosed listed transaction, regardless of whether the taxpayer's information is required to be included on that list.

(4) *Special rules.* (i) A qualified amended return includes an amended return that is filed to disclose information pursuant to § 1.6662–3(c) or § 1.6662–4(e) and (f) even though it does not report any additional tax liability. See § 1.6662–3(c), § 1.6662–4(f), and § 1.6664–4(c) for rules relating to adequate disclosure.

(ii) The Commissioner may by revenue procedure prescribe the manner in which the rules of paragraph (c) of this section regarding qualified amended returns apply to particular classes of taxpayers.

(5) *Examples.* The following examples illustrate the provisions of paragraphs (c)(3) and (c)(4) of this section:

*Example 1.* T, an individual taxpayer, claimed tax benefits on its 2002 Federal income tax return from a transaction that is substantially similar to the transaction identified as a listed transaction in Notice 2002–65, 2002–2 C.B. 690 (Partnership Entity Straddle Tax Shelter). T did not disclose his participation in this transaction on a Form 8886, ''Reportable Transaction Disclosure Statement,'' as required by § 1.6011–4. On June 30, 2004, the IRS requested from P, T's material advisor, an investor list required to be maintained under section 6112. The section 6112 request, however, related to the type of transaction described in Notice 2003–81, 2003–2 C.B. 1223 (Tax Avoidance Using Offsetting Foreign Currency Option Contracts). T did not participate in (within the meaning of § 1.6011–4(c)) a transaction described in Notice 2003–81. T may file a qualified amended return relating to the transaction described in Notice 2002–65 because T did not claim a tax benefit with respect to the listed transaction described in Notice 2003–81, which is the subject of the section 6112 request.

*Example 2.* The facts are the same as in *Example 1,* except that T's 2002 Federal income tax return reflected T's participation in the transaction described in Notice 2003–81. As of June 30, 2004, T may not file a qualified amended return for the 2002 tax year.

*Example 3.* (i) Corporation X claimed tax benefits from a transaction on its 2002 Federal income tax return. In October 2004, the IRS and Treasury Department identified the transaction as a listed transaction. In December 2004, the IRS contacted P concerning an examination of P's liability under section 6707(a) (as in effect prior to the amendment to section 6707 by section 816 of the American Jobs Creation Act of 2004 (the Jobs Act), Public Law 108–357 (118 Stat. 1418)). P is the organizer of a section 6111 tax shelter (as in effect prior to the amendment to section 6111 by section 815 of the Jobs Act) who provided representations to X regarding tax benefits from the transaction, and the IRS has contacted P about the failure to register that transaction. Three days later, X filed an amended return.

(ii) X's amended return is not a qualified amended return, because X did not disclose the transaction before the IRS contacted P. X's amended return would have been a qualified amended return if it was submitted prior to the date on which the IRS contacted P.

*Example 4.* The facts are the same as in *Example 3* except that, instead of contacting P concerning an examination under section 6707(a), in December 2004, the IRS served P with a John Doe summons described in section 7609(f) relating to the tax liability of participants in the type of transaction for which X claimed tax benefits on its return. X cannot file a qualified amended return after the John Doe summons has been served regardless of when, or whether, the transaction becomes a listed transaction.

*Example 5.* On November 30, 2003, the IRS served a John Doe summons described in section 7609(f) on Corporation Y, a credit card company. The summons requested the identity of, and information concerning, United States taxpayers who, during the taxable years 2001 and 2002, had signature authority over Corporation Y's credit cards issued by, through, or on behalf of certain offshore financial institutions. Corporation Y complied with the summons, and identified, among others, Taxpayer B. On May 31, 2004, before the IRS first contacted Taxpayer B concerning an examination of Taxpayer B's Federal income tax return for the taxable year 2002, Taxpayer B filed an amended return for that taxable year, that showed an increase in Taxpayer B's Federal income tax liability. Under paragraph (c)(3)(i)(D) of this section, the amended return is not a qualified amended return because it was not filed before the John Doe summons was served on Corporation Y.

*Example 6.* The facts are the same as in *Example 5.* Taxpayer B continued to maintain the offshore credit card account through 2003 and filed an original tax return for the 2003 taxable year claiming tax benefits attributable to the existence of the account. On March 21, 2005, Taxpayer B filed an amended return for the taxable year 2003, that showed an increase in Taxpayer B's Federal income tax liability. Under paragraph (c)(3)(i)(D) of this section, the amended return is not a qualified amended return because it was not filed before the John Doe summons for 2001 and 2002 was served on Corporation Y, and the return reflects benefits from the type of activity that is the subject of the John Doe summons.

*Example 7.* (i) On November 30, 2003, the IRS served a John Doe summons described in section 7609(f) on Corporation Y, a credit card company. The summons requested the identity of, and information concerning, United States taxpayers who, during the taxable years 2001 and 2002, had signature authority over Corporation Y's credit cards issued by, through, or on behalf of certain offshore financial institutions. Taxpayer C did not have signature authority over any of Corporation Y's credit cards during either 2001 or 2002 and, therefore, was not a person described in the John Doe summons.

(ii) In 2003, Taxpayer C first acquired signature authority over a Corporation Y credit card issued by an offshore financial institution. Because Taxpayer C did not have signature authority during 2001 or 2002 over a Corporation Y credit card issued by an offshore financial institution, and was therefore not covered by the John Doe summons served on November 30, 2003, Taxpayer C's ability to file a qualified amended return for the 2003 taxable year is not limited by paragraph (c)(3)(i)(D) of this section.

* * * * *

**§ 1.6664–2T [Removed]**

■ **Par. 6.** Section 1.6664–2T is removed.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: December 21, 2006.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. E6–22645 Filed 1–8–07; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD05–06–120]**

**RIN 1625–AA87**

## Security Zone; Potomac and Anacostia Rivers, Washington, DC and Arlington and Fairfax Counties, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone encompassing certain waters of the Potomac River and Anacostia River in order to safeguard high-ranking public officials from terrorist acts and incidents. This action is necessary to ensure the safety of persons and property, and prevent terrorist acts or incidents. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Baltimore.

**DATES:** This rule is effective from 8 a.m. on January 23, 2007, through 8 a.m. on January 24, 2007.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD05–06–120 and are available for inspection or copying at Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The Department of Homeland Security designated the January 23, 2007 State of the Union Address a National Special Security Event (NSSE). The Coast Guard is establishing this security zone to support the United States Secret Service, the designated lead Federal agency for an NSSE, in their efforts to coordinate security operations and establish a secure environment for this highly visible and publicized event. This temporary security zone of short duration is necessary to provide for the security of high-ranking United States officials and the public at large. Additionally, the publication of an NPRM is contrary to the public interest, as immediate action is required to address the ongoing threat to U.S. national interests.

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

### Background and Purpose

The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. Due to increased awareness that future terrorist attacks are possible, the Coast Guard, as lead Federal agency for maritime homeland security, has determined that the Coast Guard Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. This

security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

The Captain of the Port Baltimore is establishing a security zone to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against a gathering of high-ranking United States officials at or near the U.S. Capitol Building would have. This temporary security zone applies to all waters of the Potomac River, from the Woodrow Wilson Memorial Bridge upstream to the Key Bridge, including the waters of the Anacostia River downstream from the Highway 50 Bridge to the confluence with the Potomac River, including the waters of the Georgetown Channel Tidal Basin. Vessels underway at the time this security zone is implemented will immediately proceed out of the zone. We will issue written and broadcast Notices to Mariners to further publicize the security zone and any revisions to the zone.

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

**Regulatory Evaluation**

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

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate, transit or anchor on the Potomac River, from the Woodrow Wilson Memorial Bridge upstream to the Key Bridge, including the waters of the Anacostia River downstream from the Highway 50 Bridge to the confluence with the Potomac River, including the waters of the Georgetown Channel Tidal Basin, from 8 a.m. on January 23, 2007 through 8 a.m. on January 24, 2007. This security zone will not have a significant economic impact on a substantial number of small entities due to a lack of seasonal vessel traffic associated with recreational boating and commercial fishing during the effective period. Further, vessels with compelling interests that outweigh the port's security needs may be granted waivers from the requirements of the security zone.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please contact one of the points of contact listed under **FOR FURTHER INFORMATION CONTACT**.

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule establishes a security zone.

Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are available in the docket.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T05–120 to read as follows:

**§ 165.T05–120 Security Zone; Potomac and Anacostia Rivers, Washington, DC and Arlington and Fairfax Counties, VA.**

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

(b) *Location.* The following area is a security zone: All waters of the Potomac River, from shoreline to shoreline, bounded by the Woodrow Wilson Memorial Bridge upstream to the Key Bridge, and all waters of the Anacostia River, from shoreline to shoreline, downstream from the Highway 50 Bridge to the confluence with the Potomac River, including the waters of the Georgetown Channel Tidal Basin.

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

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

(3) Persons desiring to transit the area of the security zone must first obtain authorization from the Captain of the Port Baltimore. To seek permission to transit the area, the Captain of the Port Baltimore can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 8 a.m. on January 23, 2007, through 8 a.m. on January 24, 2007.

Dated: December 18, 2006.

**Brian D. Kelley,**

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

[FR Doc. E7–58 Filed 1–8–07; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[COTP SAVANNAH 06–160]**

**RIN 1625–AA87**

## Security Zone, Elba Island LNG mooring Slip, Savannah River, Savannah, GA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Coast Guard is establishing a permanent security zone due to changes in Liquefied Natural Gas (LNG) tankship mooring arrangements following the activation of two new berths within a slip at the Southern LNG Facility on the Savannah River. The security zone includes all the waters from surface to bottom of the northeastern most mooring dolphin to the southeastern most mooring dolphin and continues west along the North and South shoreline of the mooring slip to the shoreline of the right descending bank of the Savannah River. This regulation is necessary to protect life and property on the navigable waters of the Savannah River and within the LNG slip due to potential security risks associated with the LNG Facility.

**DATES:** This interim rule is effective January 9, 2007. Comments and related material must reach the Coast Guard on or before March 12, 2007.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket [COTP Savannah 06–160], will become part of this docket and will be available for inspection or copying at Marine Safety Unit Savannah, Juliette Gordon Low Federal Building, Suite 1017, 100 W. Oglethorpe, Savannah, Georgia 31401, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Robert Webb, Waterways Management Officer, Marine Safety Unit Savannah; (912) 652–4353.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. To protect the LNG slip from potential sabotage and unauthorized access prior to a LNG ship arrival, we are publishing this interim rule with request for comments that will become effective upon publication in the **Federal Register.** Additionally, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this interim rule effective upon publication in the **Federal Register.** Delaying implementation of this rule any longer to await public notice and comment would be contrary to the public interest because of the adverse effect on the safety of navigation in the Savannah River, vessel congestion, and the safety and security of LNG transfer operations in the port.

Even though, we did not publish an NPRM, we still encourage you to participate in this rulemaking by submitting comments and related material to the docket. We will accept comments for 60 days, after which we intend to publish the final rule. If you submit comments, please include your name and address, identify the docket number for this rulemaking [COTP Savannah 06–160], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this interim rule in view of them.

## Public Meeting

We do not plan to hold a public meeting on the interim rule. But you may submit a request for a meeting by writing to MSU Savannah (see **ADDRESSES** above) explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at the time and place announced by a later notice in the **Federal Register**.

## Background and Purpose

In May of 2002, Southern LNG, Inc., submitted a letter of intent to expand the LNG facility on Elba Island that would nearly double the LNG storage capacity and substantially increase the number of LNG tankship arrivals. The expansion project, completed in early 2006, resulted in the creation of two new berths within a slip at the Southern LNG Facility on the Savannah River. The design of the new slip inadvertently creates a safe refuge off the Savannah River with unrestricted access to LNG berths. As a result, the LNG facility and arriving LNG vessels are put at risk of sabotage or other adverse action that could result in significant damage to property and loss of life.

This concern was confirmed by an incident on June 6, 2006, when a sailing vessel entered the LNG slip and anchored for six hours, one day before the scheduled arrival of an LNG carrier. This incident raised security concerns and prompted the LNG facility to conduct a visual inspection of the above water mooring features and a complete underwater survey, in turn delaying the LNG vessel. The visual inspection and underwater survey was necessary to ensure no objects that could potentially harm the vessel or facility were left in the slip. Although the incident did not result in any harm to the facility or vessel, it was recognized by the Coast Guard that a potential vulnerability exists in the security of the LNG slip.

Additionally, as the demand for natural gas continues to grow, Southern LNG plans to expand its current operation, potentially increasing both the size and frequency of LNG vessel arrivals and further concerns over a potential accidental spill or intentional release of LNG. The risks and hazards from an LNG spill will vary depending on the size of the spill, environmental conditions, and the site at which the spill occurs. Hazards can include cryogenic burns to the ship's crew and people nearby or potential damage to the LNG ship from contact with the cryogenic LNG. Vaporization of the liquid LNG can occur once a spill occurs and subsequent ignition of the vapor cloud could cause fires and overpressures that could injure people or cause damage to the tanker's structure, other LNG tanks, or nearby structures.

Therefore, the incident of June 6, 2006, discussed above, the hazards associated with the transportation of LNG, and the expansion of Elba Island LNG facility necessitate making this interim rule effective upon publication with a 60-day request for comment period. Additionally, this security zone is necessary to protect the berths and moored LNG vessels within the LNG slip from potential sabotage and unauthorized access prior to an LNG ship arrival.

## Discussion of Interim Rule

The Security Zone encompasses the following area: All the waters from surface to bottom of the northeastern most mooring dolphin located at approximately 32[deg] 05.01' North, 080[deg] 59.38' West, to the southeastern most mooring dolphin located at approximately 32[deg] 04.49' North, 080[deg] 59.20' West, and continues west along the North and South shoreline of the mooring slip to the shoreline of the right descending bank of the Savannah River. All marine traffic is prohibited from entering this zone unless authorized by the Captain of the Port (COTP).

## Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. These regulations will have minimal impact on recreational and commercial vessels and is necessary to protect the berths and moored LNG vessels within the LNG slip from potential sabotage and unauthorized access prior to an LNG ship arrival. This security zone is outside the channel and outside recreational vessel grounds. It encompasses waters inside the LNG terminal piers. Therefore, it should have a minimal impact on recreational and commercial vessels.

## Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This security zone will only restrict access to a limited area, immediately surrounding an LNG facility, where vessels should not be operating due to the danger associated with the facility.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposal so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. Small businesses may also send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Environment**

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Checklist'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A Section 165.751 is added to read as follows:

**§ 165.751 Security Zone: LNG mooring Slip, Savannah River, Savannah, Georgia.**

(a) *Security Zone*. The following area is a security zone: All the waters from surface to bottom of the northeastern most mooring dolphin located at approximately 32[deg]05.01' North, 080[deg]59.38' West, to the southeastern most mooring dolphin located at approximately 32[deg]04.49' North, 080[deg]59.20' West, and continues west along the North and South shoreline of the mooring slip to the shoreline of the right descending bank of the Savannah River. All marine traffic is prohibited from entering this zone unless authorized by the Captain of the Port (COTP).

(b) *Applicability*. This section applies to all vessels including naval and other public vessels, except vessels that are engaged in the following operations: (1) Law enforcement, security, or search and rescue; (2) servicing aids to navigation; (3) surveying, maintenance, or improvement of waters in the security zone; or (4) actively engaged in escort, maneuvering, or support duties for an LNG tankship.

(c) *Regulations*. In accordance with the general regulations in § 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Savannah or vessels engaged in activities defined in paragraph (b).

(d) *Reporting of Violations.* Violations of this section should be reported to the Captain of the Port, Savannah, at (912) 652–4353. In accordance with the general regulations in § 165.13 of this part, no person may cause or authorize the operation of a vessel in the security zone contrary to the provisions of this section.

Dated: October 27, 2006.

**D.W. Murk,**

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

[FR Doc. 07–38 Filed 1–8–07; 8:45 am]

**BILLING CODE 4910–15–M**

## DEPARTMENT OF TRANSPORTATION

## Federal Transit Administration

## 49 CFR Part 601

**[Docket FTA–2006–22428]**

**RIN 2132–AA89**

## Emergency Procedures for Public Transportation Systems

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Final rule

**SUMMARY:** This rulemaking establishes a new subpart in 601 of Title 49 of the Code of Federal Regulations, to establish emergency relief procedures for granting relief from Federal transit policy statements, circulars, guidance documents, and regulations in times of national or regional emergencies.

**DATES:** *Effective Date:* The effective date of this rule is February 8, 2007.

**FOR FURTHER INFORMATION CONTACT:** Bonnie L. Graves, Attorney-Advisor, Legislation and Regulations Division, 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, *Bonnie.Graves@dot.gov*.

**SUPPLEMENTARY INFORMATION:**

### Availability of the Final Rule

You may download this rule from the Department's Docket Management System (*http://dms.dot.gov*) by entering docket number 22428 in the search field or from the Government Printing Office's Federal Register Main Page at *http://www.gpoaccess.gov/fr/index.html*. Users may also download an electronic copy of this document using a modem and suitable communications software from the GPO Electronic Bulletin Board Service at (202) 512–1661.

### I. Background

On August 8, 2006, the Federal Transit Administration (FTA) published a notice of proposed rulemaking (NPRM) to establish an ''Emergency Relief Docket'' for granting relief from Federal transit policy statements, circulars, and guidance documents, in times of national or regional emergency (71 FR 44957). The NPRM was in response to the aftermath of Hurricanes Katrina and Rita, during which FTA received numerous requests for relief from policy statements, circulars, guidance documents, and regulations, from grantees and subgrantees in the immediate disaster zone as well as from grantees and subgrantees in areas receiving evacuees.

The NPRM comment period remained open until October 10, 2006. FTA received 14 comments to the docket. FTA reviewed and considered all comments submitted. Commenters included the City of Lincoln, NE; the Metro Regional Transit Authority of Akron, OH; the Portage Area Regional Transportation Authority (OH); Congressman Tim Ryan (OH); Earthquake Solutions (CA); the Akron Metropolitan Area Transportation Study (OH); Omnitrans (CA); the Licking County Transit Board (OH); the Washington Metropolitan Area Transit Authority (DC); Laketran (OH); the Alaska Department of Transportation; the American Public Transportation Association (APTA); the California Department of Transportation; and one individual. In addition, Senator DeWine (OH) wrote to FTA's Administrator, James S. Simpson, to bring to his attention the comments made by the Akron Metro Regional Transit Authority. FTA posted Senator DeWine's letter and Administrator Simpson's response in the docket.

### II. Discussion of Comments

Two commenters urged FTA not to employ emergency relief dockets. The commenters stated that relief from administrative requirements can be granted with or without a formal request and with or without public consultation. Several commenters stated a concern that requiring grantees and subgrantees to request relief through emergency relief dockets would slow response to emergencies. Others stated they should be permitted to use their federally-funded equipment in times of emergency and notify FTA of the issue as soon as possible but not later than 30 days after the event.

In response, we agree with commenters that grantees and subgrantees should have maximum flexibility to assist local responders during an emergency. We want to emphasize that an Emergency Relief Docket will most likely be utilized in the *aftermath* of an emergency that has regional or national implications. There is no question that a toxic chemical spill, a levee break, or other imminent life-threatening situation requiring immediate evacuation of a local area requires fast action by first responders, including local transit agencies. In cases such as these, the grantee or subgrantee would not request relief through the emergency relief docket; it would simply work with local authorities to evacuate people as quickly as possible, consistent with local emergency plans. However, if a toxic chemical spill or a major flood or other event required *ongoing* relief efforts over several days or weeks, or the emergency impacted a large geographical area, one or more grantees and subgrantees might need to request relief from policies, circulars, guidance or regulations, and in such cases the Emergency Relief Docket would be used.

Three commenters asked how they would notify FTA of the need for relief if there was no electricity or phone service. The NPRM contemplated the inability to access the electronic docket by providing that grantees and subgrantees could contact any FTA regional office, and ask the regional office to submit their request for relief to the docket. While acknowledging that in extreme situations it may be several days before a grantee or subgrantee could contact FTA to request relief from administrative requirements, we believe the option of contacting any regional office or FTA headquarters by telephone or mail, is sufficient if the electricity is not working. And again, FTA notes the purpose of the Emergency Relief Docket is to provide relief in the aftermath of regional or national emergencies, not during imminent life-threatening situations.

In the NPRM, FTA proposed that the emergency relief procedures would be triggered by a Presidential declaration of national or regional emergency. We sought comment on whether the proposed emergency procedures should also be triggered by a State Governor's declaration of emergency. Eight commenters supported the trigger of relief procedures for emergency declarations made by Governors, and one commenter expressed that a Mayoral declaration of emergency in the District of Columbia should trigger the relief procedures, as the Mayor is the highest ranking public official in the jurisdiction. Two commenters stated that an appropriate trigger for relief

would be a local declaration of emergency.

In response, FTA believes that a declaration of emergency by a State Governor or the Mayor of the District of Columbia should trigger emergency relief procedures, in addition to a federal declaration of emergency by the President, and we have included this in the final rule. We decline to extend the relief procedures to local declarations of emergency, as the frequency of such events would be unmanageable by FTA. Grantees and subgrantees experiencing local emergencies should work with their FTA regional office if they need relief from administrative requirements in the aftermath of such emergencies.

In the NPRM, FTA requested comments on whether we should proactively extend relief from certain policies, circulars, guidance documents and regulations to the geographical area(s) most impacted by an emergency, rather than waiting for grantees and subgrantees to request relief. Eight commenters were supportive of this idea. Two commenters suggested that FTA create ''menus of relief'' most likely needed in disaster situations, and grant the entire menu of relief sua sponte where the need is obvious. One commenter also expressed that FTA should clearly identify those issues for which relief is not expected to be granted; for example, civil rights and non-discrimination.

In response to the support for proactive relief, we are including two additional elements in this final rule. First, FTA will establish, by January 31 of each year, an Emergency Relief Docket for that calendar year. We will publish a notice in the **Federal Register** indicating the establishment of the Emergency Relief Docket and the docket number. Second, FTA may, at the discretion of the Administrator, proactively grant relief from certain administrative requirements upon a State or Federal declaration of emergency, or in anticipation of such declaration. If FTA makes the decision to proactively grant relief, we will post this information in the Emergency Relief Docket.

As for the ''menus of relief'' suggested by two commenters, FTA will consider this idea further outside of the rulemaking process. Any such ''menus of relief'' would be likely to change over time and with different types of emergencies, so flexibility is required. FTA agrees that civil rights and non-discrimination protections, such as Title VI, the Americans with Disabilities Act, and Environmental Justice, all of which ensure access to mobility for transit-dependent populations, require special consideration. We note that we do not have authority to waive statutory provisions, only regulatory provisions. FTA will work closely with grantees and subgrantees, the U.S. DOT, and others, as appropriate, if there is a request for relief from administrative requirements relating to civil rights and non-discrimination provisions.

In the NPRM, FTA proposed that requests for relief would be conditionally granted for three business days, and sought comment on whether three business days was a sufficient amount of time to provide comments on petitions for relief. Two commenters stated that relief from administrative requirements does not constitute a binding obligation that would require a public comment period of any length. One commenter felt that three days would allow the transit agency to address immediate needs, but expressed concern that continuing relief efforts should not be delayed while waiting for final approval. Others expressed concern that the three business day conditional approval may not be sufficient, and that limiting the conditional approval to three days created uncertainty. One commenter suggested a provision be added to the rule that would allow the transit agency to continue its efforts until FTA has made a decision.

In response, while public consultation on relief from administrative procedures may not be required, FTA believes it is in the interest of the public to have a process that is open and transparent. FTA is confident that it can and will respond to requests for relief within three business days; however, to address commenters' concerns, a provision has been added to the final rule, stating that if FTA fails to post a response to the request for relief to the docket within three business days, the grantee or subgrantee may assume its petition is granted until and unless FTA states otherwise. This allows the grantee or subgrantee to continue its efforts until FTA has made a final decision. In all cases, FTA shall post a response to the docket, so there is no uncertainty as to FTA's decision on the request for relief.

FTA proposed that any member of the public could request a hearing on any petition, and that FTA could reopen any docket and reconsider any decision made. Two commenters stated that there should be no provision for public hearings, and suggested that FTA should not ''second-guess'' decisions made. One commenter stated that the only review process should be an appeal of a denied request for relief. One commenter suggested that if a docket is reopened, FTA should notify the grantee or subgrantee that submitted the request for relief. Finally, one commenter stated that a grantee's or subgrantee's judgment and actions in times of emergency should be considered reasonable unless proven otherwise.

In response, we have removed the public hearing provision. FTA may, however, in its discretion, contact the grantee or subgrantee that submitted the request for relief, or any party that submits comments to the docket, to obtain more information prior to making a decision. FTA has retained the provision that allows us to reconsider any decision made. We have added language to this section stating that one reason for reconsidering our decision would be at the request of a grantee or subgrantee upon denial of a request for relief. In addition, we have added language stating that we will notify a grantee or subgrantee if we are going to reconsider a decision.

FTA proposed that a petition for relief must contain certain information, including the policy statement, circular, guidance document and/or rule from which the grantee or subgrantee seeks relief. One commenter stated that petitions for relief should not follow any prescribed format. The commenter stated that it would be unduly burdensome to identify specific regulatory and guidance provisions during or in immediate anticipation of an emergency. In response, FTA notes the ''required information'' provision for a request for relief requires grantees and subgrantees to submit only the minimum information necessary to assist FTA in making a decision. Further, we note that in order to request relief from a specific administrative requirement, the grantee or subgrantee should know the requirement from which they are requesting relief. A description of the requirement such that an FTA employee would be able to accurately determine the requested relief would be sufficient; it is preferred, but not required, that a grantee or subgrantee also include the circular number and/or regulatory citation.

In the NPRM, FTA requested comments on private sector involvement in emergency relief, and whether the procedures contained in the NPRM would provide the necessary relief while also allowing the private sector to participate in transit relief efforts. A number of commenters provided input on this issue. Two commenters stated that charter regulations should not be elevated to a higher importance than other regulatory provisions. Some commenters objected to the proposed requirement that grantees and subgrantees would have to

call not only their local charter companies, but also notify the charter associations of their intent to provide service that might be considered charter service. Some felt this would create significant delay in responding to evacuation needs. One commenter pointed out that any interested transportation provider could contact the local Emergency Management Agency in advance to notify them of their availability to respond.

In response, FTA has removed the provision requiring grantees and subgrantees to make good faith efforts to contact private charter or school bus operators to determine whether those entities are willing to provide the service. FTA notes that a current charter rulemaking is underway that would exempt emergency services from the charter provisions. Members of the public interested in that rulemaking may wish to review the docket by going to *http://dms.dot.gov* and entering docket number 22657.

In the NPRM, FTA stated that we do not have the independent authority to grant relief from U.S. DOT regulations, such as the Americans with Disabilities Act (49 CFR Part 37) or the Common Grant Rule (49 CFR Part 18). We proposed that if a grantee or subgrantee needed relief from a U.S. DOT regulation, the grantee or subgrantee would submit a request for relief to FTA's Emergency Relief Docket in the same manner it would request relief from FTA regulations. FTA would then work with DOT to process the petition for relief, including a request for a hearing, if any. Two commenters recommended that waivers of U.S. DOT regulations should be incorporated into FTA's emergency procedures through delegation of waiver authority to FTA.

In response, we note that the Secretary of Transportation has not delegated waiver authority of U.S. DOT regulations to FTA. FTA, however, works very closely in consultation with U.S. DOT in emergency situations; the consultation process will be invisible to grantees or subgrantees requesting relief and will not delay FTA's response to a request for relief.

Finally, two commenters asserted that the NPRM appeared to be in conflict with Executive Order 13132, Federalism, specifically citing section 3(c) which states, ''[w]ith respect to Federal statutes and regulations administered by the States, the national government shall grant the States the maximum administrative discretion possible. Intrusive Federal oversight of State administration is neither necessary nor desirable.'' The commenters also cited section 5(b) which states, ''[a]gencies shall not submit to the Congress legislation that would: (b) attach to Federal grants conditions that are not reasonably related to the purpose of the grant[.]''

In response, FTA notes that the purpose of the rulemaking is to grant relief from FTA administrative requirements. The emergency relief docket will not change any regulatory requirements, therefore it will not have a substantial 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. We also note that this rulemaking is not legislation submitted to Congress; it is a rulemaking. Further, the rulemaking does not attach conditions to the grants that are not reasonably related to the purpose of the grant.

## III. Rulemaking Analysis And Notices

*Executive Order 12866*

This final rule is nonsignificant for purposes of Executive Order 12866 and the Department of Transportation's Regulatory Policies and Practices. The final rule will establish emergency procedures and requests for relief from Federal transit regulations.

*Federalism Assessment*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). FTA believes this rule will not impose any requirements that would have substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

*Executive Order 13175*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

*Regulatory Flexibility Act and Executive Order 13272*

Section 603 of the Regulatory Flexibility Act (RFA) requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever an agency is required by 5 U.S.C. 553 to publish a general notice of proposed rulemaking for any proposed rule. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. FTA has determined that the impact on entities affected by this rule will not be significant. The effect of this rule is to relieve entities of administrative requirements in times of regional or national emergency. Accordingly, the Administrator of FTA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

*Unfunded Mandates Reform Act of 1995*

This rule will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $128.1 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

*Paperwork Reduction Act*

There are no new information collection requirements in this final rule.

*Regulation Identifier Number (RIN)*

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

*Privacy Act*

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

**List of Subjects in 49 CFR Part 601**

Administrative practice and procedures; Organization, functions and procedures.

■ For the reasons set forth in the preamble, amend part 601 of title 49 of the Code of Regulations as follows:

## PART 601—[AMENDED]

■ Add subpart D, consisting of § § 601.40 through 601.47, to read as follows:

**Subpart D—Emergency Procedures for Public Transportation Systems**

Sec.
601.40 Applicability.
601.41 Petitions for relief.
601.42 Emergency relief docket.
601.43 Opening the docket.
601.44 Posting to the docket.
601.45 Required information.
601.46 Processing of petitions.
601.47 Review procedures.

**Authority:** 49 U.S.C. 5141 and 5334; 49 CFR 1.51.

## Subpart D—Emergency Procedures for Public Transportation Systems

### § 601.40 Applicability.

This part prescribes procedures that apply to FTA grantees and subgrantees when the President has declared a national or regional emergency, when a State Governor has declared a state of emergency, when the Mayor of the District of Columbia has declared a state of emergency, or in anticipation of such declarations.

### § 601.41 Petitions for relief.

In the case of a national or regional emergency or disaster, or in anticipation of such a disaster, any FTA grantee or subgrantee may petition the Administrator for temporary relief from the provisions of any policy statement, circular, guidance document or rule.

### § 601.42 Emergency relief docket.

(a) By January 31st of each year, FTA shall establish an Emergency Relief Docket in the publicly accessible DOT Docket Management System (DMS) (*http://dms.dot.gov*).

(b) FTA shall publish a notice in the **Federal Register** identifying, by docket number, the Emergency Relief Docket for that calendar year. A notice shall also be published in the previous year's Emergency Relief Docket identifying the new docket number.

(c) If the Administrator, or his/her designee, determines that an emergency event has occurred, or in anticipation of such an event, FTA shall place a message on its web page (*http://www.fta.dot.gov*) indicating the Emergency Relief Docket has been opened and including the docket number.

### § 601.43 Opening the docket.

(a) The Emergency Relief Docket shall be opened within two business days of an emergency or disaster declaration in which it appears FTA grantees or subgrantees are or will be impacted.

(b) In cases in which emergencies can be anticipated, such as hurricanes, FTA shall open the docket and place the message on the FTA web page in advance of the event.

(c) In the event a grantee or subgrantee believes the Emergency Relief Docket should be opened and it has not been opened, that grantee or subgrantee may submit a petition in duplicate to the Administrator, via U.S. mail, to: Federal Transit Administration, 400 Seventh Street, SW., Washington, DC 20590; via telephone, at: (202) 366–4043; or via fax, at (202) 366–3472, requesting opening of the Docket for that emergency and including the information in § 601.45. The Administrator in his/her sole discretion shall determine the need for opening the Emergency Relief Docket.

### § 601.44 Posting to the docket.

(a) All petitions for relief must be posted in the docket in order to receive consideration by FTA.

(b) The docket is publicly accessible and can be accessed 24 hours a day, seven days a week, via the Internet at the docket facility's Web site at *http://dms.dot.gov.* Petitions may also be submitted by U.S. mail or by hand delivery to the DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW, Washington, DC 20590.

(c) In the event a grantee or subgrantee needs to request immediate relief and does not have access to electronic means to request that relief, the grantee or subgrantee may contact any FTA regional office or FTA headquarters and request that FTA staff submit the petition on their behalf.

(d) Any grantee or subgrantee submitting petitions for relief or comments to the docket must include the agency name (Federal Transit Administration) and that calendar year's docket number. Grantees and subgrantees making submissions by mail or hand delivery should submit two copies.

### § 601.45 Required information.

A petition for relief under this section shall:

(a) Identify the grantee or subgrantee and its geographic location;

(b) Specifically address how an FTA requirement in a policy statement, circular, or agency guidance will limit a grantee's or subgrantee's ability to respond to an emergency or disaster;

(c) Identify the policy statement, circular, guidance document and/or rule from which the grantee or subgrantee seeks relief; and

(d) Specify if the petition for relief is one-time or ongoing, and if ongoing identify the time period for which the relief is requested. The time period may not exceed three months; however, additional time may be requested through a second petition for relief.

### § 601.46 Processing of petitions.

(a) A petition for relief will be conditionally granted for a period of three (3) business days from the date it is submitted to the Emergency Relief Docket.

(b) FTA will review the petition after the expiration of the three business days and review any comments submitted thereto. FTA may contact the grantee or subgrantee that submitted the request for relief, or any party that submits comments to the docket, to obtain more information prior to making a decision.

(c) FTA shall then post a decision to the Emergency Relief Docket. FTA's decision will be based on whether the petition meets the criteria for use of these emergency procedures, the substance of the request, and the comments submitted regarding the petition.

(d) If FTA fails to post a response to the request for relief to the docket within three business days, the grantee or subgrantee may assume its petition is granted until and unless FTA states otherwise.

### § 601.47 Review Procedures.

(a) FTA reserves the right to reopen any docket and reconsider any decision made pursuant to these emergency procedures based upon its own initiative, based upon information or comments received subsequent to the three business day comment period, or at the request of a grantee or subgrantee upon denial of a request for relief. FTA shall notify the grantee or subgrantee if it plans to reconsider a decision.

(b) FTA decision letters, either granting or denying a petition, shall be posted in the appropriate Emergency Relief Docket and shall reference the document number of the petition to which it relates.

Issued in Washington, DC, this 4th day of January 2007.

**James S. Simpson,**

*FTA Administrator.*

[FR Doc. E7–102 Filed 1–8–07; 8:45 am]

BILLING CODE 4910–57–P

# Proposed Rules

Federal Register
Vol. 72, No. 5
Tuesday, January 9, 2007

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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 537

**RIN 3206–AK51**

### Repayment of Student Loans

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing proposed regulations to revise the rules governing the authority to offer student loan repayment benefits to current Federal employees or candidates for Federal jobs when necessary to recruit or retain highly qualified personnel. These revisions include certain policy changes and clarifications to assist agencies in taking full advantage of the Federal student loan repayment program.

**DATES:** Comments must be received on or before March 12, 2007.

**ADDRESSES:** Send or deliver comments to Jerome D. Mikowicz, Deputy Associate Director for Pay and Leave Administration, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200, FAX: (202) 606–0824, or e-mail at *pay-performance-policy@opm.gov.*

**FOR FURTHER INFORMATION CONTACT:** Gene Holson by telephone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management (OPM) is issuing proposed regulations to revise the rules implementing 5 U.S.C. 5379, which allow agencies to offer student loan repayment benefits to current Federal employees or candidates for Federal jobs when necessary to recruit or retain highly qualified personnel. The primary purpose of this revision is to make part 537 more readable and usable. However, we also are proposing substantive changes based on experience to date to improve program administration in the agencies and promote alignment between this authority and related authorities that support recruitment and retention efforts. The following table lists, by specific regulatory section, the proposed substantive changes and provides a brief description of the purpose and/or effect of each change.

| Proposed rule | Description of proposed change |
|---|---|
| § 537.102 | *Definitions.* The current language in the definition of *employee* regarding the exclusion of certain types of employees would be moved to proposed § 537.104, which deals with employee eligibility.<br>New definitions of *student loan repayment benefit* and *loan payment* would be added to distinguish more clearly between the benefit credited to the employee and the loan payments made to a loan holder by an agency. |
| § 537.103(h) | *Documentation.* The requirement for documentation would be revised to cover only actions taken to approve a student loan repayment benefit. The current language requires documentation in each case in which an employee is ''considered'' for a student loan repayment benefit. |
| § 537.104 | *Employee eligibility.* Paragraph (a) would revise the current language in § 537.104 to clarify when an employee in a time-limited appointment may receive student loan repayment benefits.<br>Paragraph (b) would be modified to incorporate language currently found in the definition of *employee.*<br>Paragraph (c) would provide a cross reference to the provisions of § 537.108, which deal with loss of eligibility for student loan repayment benefits. |
| § 537.105 | *Criteria for payment.* This section would be rewritten to focus more clearly on the criteria that must be met to justify the approval of student loan repayment benefits.<br>The provisions for written documentation and the timing of recruitment-related approvals would be clarified and moved to § 537.106, which deals with payment conditions and procedures. (See § 537.106(a)(3) and (4).)<br>*Current Federal employees.* Proposed paragraph (c) would provide that an agency may not authorize student loan repayment benefits to recruit an individual from outside the agency who is currently employed in the Federal service. The intent of the student loan repayment authority is to help agencies recruit individuals for Federal service, not to compete with other agencies for current Federal employees. This restriction would be consistent with current OPM guidance and the rules concerning inter-agency competition when providing recruitment and retention incentives under 5 CFR part 575. |
| § 537.106(a) | *General conditions.* These provisions establish standards and requirements necessary to provide for reasonable uniformity across agencies, as required by 5 U.S.C. 5379(g). Proposed paragraph (a)(4) would clarify that a service agreement may be signed before a job candidate begins serving in the position for which he or she was recruited. This paragraph would also incorporate language currently found in § 537.105(b). |
| § 537.106(b) | *Age of student loans.* Proposed paragraph (b)(3) would clarify that, although these regulations do not impose a limit on the age of a student loan, an agency may specify in its own plan that only student loans made within a certain timeframe are eligible for repayment. |
| § 537.106(c)(3) | *Benefit cap.* A new paragraph would clarify that the full gross amount of the student loan repayment benefit (before deducting any tax withholdings from that gross amount) counts toward the benefit cap. |
| § 537.107(a) | *Contingent additional benefits.* A new sentence would clarify that a service agreement may address the possibility that the agency may modify the agreement to provide student loan repayment benefits in addition to those fixed in the agreement based on contingencies or conditions specified in the agreement. For example, benefits in a later year could be contingent on budget levels. |

| Proposed rule | Description of proposed change |
|---|---|
| § 537.107(b) | *Agreement modifications.* The current sentence on ''increases'' and ''renewals'' would be removed. The replacement sentence would clarify that the agency and the employee may mutually agree to modify a service agreement to provide additional student loan repayment benefits for additional service without the need for a new service agreement. (A new service agreement would require additional service of at least 3 years. In contrast, an agreement modification could, for example, add just 1 year of additional service.) The possibility of payment increases would now be addressed in the new sentence added to paragraph (a).<br>*Periods in a non-pay status.* A new rule would provide that periods of leave without pay, or other periods during which the employee is not in a pay status, would not count toward completion of the required service period. This means the originally projected service completion date must be extended by the total amount of time spent in non-pay status. However, as provided by 5 CFR 353.107, absence because of uniformed service or compensable injury is considered creditable toward the required service period upon reemployment. |
| § 537.107(d) | *Service period commencement.* A new paragraph would be added to address when a service period begins. |
| § 537.107(e) | *Reimbursement provision in service agreement.* A new provision would require agencies to include in any service agreement a provision addressing whether or not the individual will be required to reimburse the agency for student loan repayment benefits if he or she transfers to a different agency during the service period. (Also see proposed § 537.109(b)(2), which would incorporate language currently found in § 537.109(d)(2).) |
| § 537.108(a) | *Loss of eligibility.* Proposed paragraph (a)(3) would clarify that loss of eligibility based on a condition in the service agreement would occur only when the agreement expressly states that a violation of the condition will result in the loss of eligibility. |
| § 537.109(c) | *Reimbursement under a modified service agreement.* Current language would be modified to clarify what would happen when an agency and an employee mutually agree to modify an existing service agreement to provide additional student loan repayment benefits for additional service (e.g., a 4th year following an initial 3-year service period). The modified service agreement may stipulate that if the employee completes the initial service period but fails to complete the additional service period, he or she would be required to reimburse the paying agency only for the amount of any student loan repayment benefits received during the additional service period. (Also see proposed § 537.107(b) regarding modified service agreements.) |
| § 537.110(a) | *Records retention.* Current language would be modified to clarify that a record on a determination to provide student loan repayment benefits must be retained for at least 3 years after the end of the employee's service period as specified in the service agreement. We are deleting the provision regarding an earlier date linked to an OPM program review because as a practical matter a program review may not necessarily mean each case is reviewed individually. |
| § 537.110(b) | *Reports.* A new provision would require agencies to report on the student loan repayment benefits they provided during the previous calendar year rather than during the previous fiscal year. Currently, agencies are required to report to OPM by the end of the calendar year on the student loan repayment benefits they provided during the previous fiscal year. However, the law imposes a calendar year limitation on the amount of student loan repayment benefits an agency may provide to an employee. Also, we note agencies are currently required to report to OPM on their use of other recruitment and retention flexibilities (e.g., recruitment, relocation, and retention incentives under 5 CFR part 575) on a calendar year basis. Therefore, we are proposing this change to simplify reporting requirements for agencies. The proposed regulation would require agencies to report to OPM by March 31st of each year on their use of the student loan repayment authority during the previous calendar year.<br>In paragraphs (b)(1) and (b)(2), we propose to replace ''employees selected to receive'' with ''employees who received'' because an individual may be selected to receive student loan repayment benefits during one reporting period, but not actually receive benefits until the following reporting period. This change would be consistent with our approach for reporting data on student loan repayments in our annual report to Congress. |

**E.O. 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

**Regulatory Flexibility Act**

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

**List of Subjects in 5 CFR Part 537**

Administrative practice and procedure, Government employees, Students, Wages.

U.S. Office of Personnel Management.

**Linda M. Springer,**

*Director.*

Accordingly, OPM is proposing to revise 5 CFR part 537 to read as follows:

## PART 537—REPAYMENT OF STUDENT LOANS

Sec.
537.101 Purpose.
537.102 Definitions.
537.103 Agency student loan repayment plans.
537.104 Employee eligibility.
537.105 Criteria for payment.
537.106 Conditions and procedures for providing student loan repayment benefits.
537.107 Service agreements.
537.108 Loss of eligibility for student loan repayment benefits.
537.109 Employee reimbursements to the Government.
537.110 Records and reports.

**Authority:** 5 U.S.C. 5379(g).

### § 537.101 Purpose.

This part implements 5 U.S.C. 5379, which authorizes agencies to establish a student loan repayment program for the purpose of recruiting or retaining highly qualified personnel. Under such a program, an agency may agree to repay (by direct payment to the loan holder on behalf of the employee) all or part of any outstanding qualifying student loan or loans previously taken out by a job candidate to whom an offer of employment has been made, or by a current employee of the agency.

### § 537.102 Definitions.

*Agency* has the meaning given that term in subparagraphs (A) through (E) of 5 U.S.C. 4101(1).

*Authorized agency official* means the head of an Executive agency or an official who is authorized to act for the head of the agency in the matter concerned.

*Employee* means an employee of an agency who satisfies the definition of the term in 5 U.S.C. 2105.

*Loan payment* means the net payment made by an agency to the holder of a student loan (after deducting any tax withholdings that may be made from the

gross student loan repayment benefit credited to the employee).

*Service agreement* means a written agreement between an agency and an employee (or job candidate) under which the employee (or job candidate) agrees to a specified period of service in exchange for student loan repayment benefits, subject to the conditions set forth under this part.

*Student loan* means—

(1) A loan made, insured, or guaranteed under parts B, D or E of title IV of the Higher Education Act of 1965; or

(2) A health education assistance loan made or insured under part A of title VII of the Public Health Service Act or under part E of title VIII of that Act.

*Student loan repayment benefit* means the benefit provided to an employee under this part in which an agency repays (by a direct payment on behalf of the employee) a qualifying student loan previously taken out by such employee. The dollar value of this benefit is the gross amount credited to the employee at the time of a loan payment to the holder of the student loan, before deducting any employee tax withholdings from that gross amount as described in § 537.106(a)(6)(iii). A student loan repayment benefit is not considered basic pay for any purpose.

*Time-limited appointment* means an appointment of temporary duration including—

(1) A temporary appointment under 5 CFR part 316, subpart D, or similar authority;

(2) A term appointment under 5 CFR part 316, subpart C, or similar authority;

(3) An overseas limited appointment with a time limitation under 5 CFR part 301, subpart B;

(4) A limited term or limited emergency appointment in the Senior Executive Service, as defined in 5 U.S.C. 3132(a), or an equivalent appointment made for similar purposes;

(5) A Veterans Recruitment Appointment under 5 CFR part 307;

(6) A Presidential Management Fellow appointment under 5 CFR 213.3102(ii) and 5 CFR 213.3102(jj);

(7) A Federal Career Intern appointment under 5 CFR 213.3202(o); and

(8) An appointment under the fellowship and similar programs authority at 5 CFR 213.3102(r).

**§ 537.103 Agency student loan repayment plans.**

Before providing student loan repayment benefits under this part, an agency must establish a student loan repayment plan. This plan must include the following elements:

(a) The designation of officials with authority to review and approve offering student loan repayment benefits (which may parallel the approval delegations used for other recruitment, relocation, and retention incentives);

(b) The situations in which the student loan repayment authority may be used;

(c) The criteria to meet or consider in authorizing student loan repayment benefits, including criteria for determining the size and timing of the loan payment(s);

(d) A system for selecting employees (or job candidates) to receive student loan repayment benefits that ensures fair and equitable treatment;

(e) The requirements associated with service agreements (including a basis for determining the length of service to be required if it is greater than the statutory minimum);

(f) The procedures for making loan payments;

(g) The provisions for recovering any amount outstanding from an employee who fails to satisfy a service agreement and conditions for waiving an employee's obligation to reimburse the agency for payments made under this part; and

(h) Documentation and recordkeeping requirements sufficient to allow reconstruction of each action to approve a student loan repayment benefit.

**§ 537.104 Employee eligibility.**

(a) Subject to the conditions in 5 U.S.C. 5379 and this part, an authorized agency official may approve student loan repayment benefits to recruit a highly qualified job candidate or retain a highly qualified employee who, during the service period established under a service agreement (consistent with § 537.107), will be serving under—

(1) An appointment other than a time-limited appointment; or

(2) A time-limited appointment if—

(i) The employee (or job candidate) will have at least 3 years remaining under the appointment after the beginning of the service period established under a service agreement; or

(ii) The time-limited appointment authority leads to conversion to another appointment of sufficient duration so that his or her employment with the agency is projected to last for at least 3 additional years after the beginning of the service period established under a service agreement.

(b) An employee occupying a position that is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character is ineligible for student loan repayment benefits.

(c) An employee becomes ineligible for student loan repayment benefits under the conditions described in § 537.108.

**§ 537.105 Criteria for payment.**

(a) *General criteria.* Before authorizing student loan repayment benefits for an employee (or job candidate), an agency must make a written determination that—

(1) The employee (or job candidate) is highly qualified and otherwise eligible (as described in § 537.104); and

(2)(i) In a case where the authorization is granted to recruit a job candidate to fill an agency position, the agency otherwise would encounter difficulty in filling a position with a highly qualified individual; or

(ii) In a case where the authorization is granted to retain a current employee of the agency, the employee otherwise is likely to leave the agency for employment outside the Federal service and it is essential to retain the employee based on the employee's high or unique qualifications or a special need of the agency.

(b) *Retention considerations.* In making a determination under paragraph (a)(2)(ii) of this section, an agency must consider the extent to which the employee's departure would affect the agency's ability to carry out an activity or perform a function that is deemed essential to its mission.

(c) *Current Federal employees.* An agency may not authorize student loan repayment benefits to recruit an individual from outside the agency who is currently employed in the Federal service.

(d) *Selecting employees.* When selecting employees (or job candidates) to receive student loan repayment benefits, agencies must ensure that benefits are awarded without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition.

**§ 537.106 Conditions and procedures for providing student loan repayment benefits.**

(a) *General conditions.* (1) Student loan repayment benefits may be provided at the discretion of the agency and are subject to such terms, limitations, or conditions as may be mutually agreed to in writing by the agency and the employee (or job candidate) as part of a service agreement under § 537.107.

(2) The student loan to be repaid must be a qualifying student loan as set forth in paragraph (b) of this section.

(3) The agency must document in writing each approval of student loan repayment benefits. An authorized

agency official must review and approve each written determination. The written determination must show the employee (or job candidate) meets the criteria specified in § 537.105.

(4) An authorized agency official must approve student loan repayment benefits in connection with a recruitment action before the job candidate actually enters on duty in the position for which he or she was recruited. The agency and the job candidate may sign the service agreement before the job candidate begins serving in the position, but the agency may not begin making loan payments until the job candidate begins serving in the position.

(5) Student loan repayment benefits are in addition to basic pay and any other form of compensation otherwise payable to the employee involved.

(6) Appropriate tax withholdings must be deducted or applied at the time any payment is made. Since these tax implications could create a financial hardship for the recipient of the student loan repayment benefit, agencies may lessen the impact of tax withholdings on an employee's paycheck in one of the following ways:

(i) Make smaller payments at periodic intervals throughout the year, rather than issue payments under this part in one lump sum;

(ii) Allow the employee to write a check to the agency to cover his or her tax liability, rather than have the tax liability withheld from the employee's paycheck;

(iii) Deduct the amount of taxes to be withheld from the student loan repayment benefit before the balance is issued as a loan payment to the holder of the loan.

**Note to § 537.106(a)(6):** Contact the Internal Revenue Service for further details concerning these options, as well as the tax withholding implications of payments under this part.

(b) *Qualifying student loans.* (1) The agency may make loan payments only for student loan debts that are outstanding at the time the agency and the employee (or job candidate) enter into a service agreement. Before authorizing loan payments, an agency must verify with the holder of the loan that the employee (or job candidate) has an outstanding student loan that qualifies for repayment under this part. The agency must verify remaining balances to ensure that loans are not overpaid.

(2) The agency may repay more than one loan if the employee's student loan repayment benefit does not exceed the limits set forth in paragraph (c) of this section.

(3) These regulations do not impose a limit on the age of a student loan for qualification purposes. The agency may, however, specify in its agency plan that only student loans made within a certain timeframe are eligible for repayment.

(c) *Benefit amount.* (1) In determining the amount of student loan repayment benefits to approve, an agency must consider the employee's (or job candidate's) value to the agency and how far in advance the agency is permitted to commit funds. If an agency decides to make additional student loan repayment benefits contingent on budget levels or other factors, it must address these contingent benefits in the written service agreement as described in § 537.107(a).

(2) The amount of student loan repayment benefits provided by an agency is subject to both of the following limits:

(i) $10,000 per employee per calendar year; and

(ii) A total of $60,000 per employee.

(3) In applying the limits in paragraph (c)(2) of this section, the agency must count the full student loan repayment benefit (i.e., before deducting any tax withholdings as described in paragraph (a)(6)(iii) of this section).

(d) *Employee responsibility.* Loan payments made by an agency under this part do not exempt an employee from his or her responsibility and/or liability for any loan(s) the individual has taken out. The employee also is responsible for any income tax obligations resulting from the student loan repayment benefit.

**§ 537.107 Service agreements.**

(a) Before an employing agency makes any loan payments for an employee, the employee (or job candidate) must sign a written service agreement to complete a specified period of service with the agency and to reimburse the agency for the student loan repayment benefit when required by § 537.109. The service agreement also may specify any other employment conditions the agency considers to be appropriate, including the employee's (or job candidate's) position and the duties he or she is expected to perform, his or her work schedule, and his or her level of performance. (See §§ 537.108 and 537.109.) The service agreement may address the possibility that, during the period the agreement is in effect, the agency may modify the agreement to provide student loan repayment benefits in addition to those fixed in the agreement based on contingencies or conditions specified in the agreement.

(b) The minimum period of service to be established under a service agreement is 3 years, regardless of the amount of student loan repayment benefits authorized. The agency and the employee may mutually agree to modify an existing service agreement, subject to the limitations at § 537.106(c)(2), to provide additional student loan repayment benefits for additional service without the need for an entirely new service agreement (which would require a new 3-year minimum service period). Periods of leave without pay, or other periods during which the employee is not in a pay status, do not count toward completion of the required service period. Thus, the service completion date must be extended by the total amount of time spent in non-pay status. However, as provided by 5 CFR 353.107, absence because of uniformed service or compensable injury is considered creditable toward the required service period upon reemployment.

(c) A service agreement made under this part in no way constitutes a promise of, or right or entitlement to, appointment, continued employment, or noncompetitive conversion to the competitive service. This condition should be stated in the service agreement.

(d) The service period begins on the date specified in the service agreement. That beginning date may not be—

(1) Earlier than the date the service agreement is signed; or

(2) Earlier than the date the individual begins serving in the position for which he or she was recruited (when student loan repayment benefits are approved to recruit a job candidate to fill an agency position).

(e) The service agreement must contain a provision addressing whether the individual would be required to reimburse the paying agency for student loan repayment benefits if he or she voluntarily separates from the paying agency to work for another agency before the end of the service period. (See § 537.109(b)(2).)

(f) The agency may include in a service agreement specific conditions (in addition to those required by law) that trigger the loss of eligibility for student loan repayment benefits and/or a requirement that the employee reimburse the agency for student loan repayment benefits already received. (See §§ 537.108(a)(3) and 537.109(a)(2).) However, a service agreement may not require reimbursement based on—

(1) An employee's failure to maintain performance at a particular level (unless

the employee is separated based on unacceptable performance); or

(2) An involuntary separation for reasons other than misconduct or unacceptable performance (e.g., an involuntary separation resulting from a reduction in force or medical reasons).

**§ 537.108 Loss of eligibility for student loan repayment benefits.**

(a) An employee receiving student loan repayment benefits from an agency is ineligible for continued benefits from that agency if the employee—

(1) Separates from the agency;

(2) Does not maintain an acceptable level of performance, as determined under standards and procedures prescribed by the agency; or

(3) Violates a condition in the service agreement, if the agreement specifically provides that eligibility is lost when the condition is violated.

(b) For the purpose of applying paragraph (a)(2) of this section, an acceptable level of performance is one that is equivalent to level 3 (''Fully Successful'' or equivalent) or higher, as described in 5 CFR 430.208(d). An employee loses eligibility for student loan repayment benefits if his or her most recent official performance evaluation does not meet this requirement.

**§ 537.109 Employee reimbursements to the Government.**

(a) An employee is indebted to the Federal Government and must reimburse the paying agency for the amount of any student loan repayment benefits received under a service agreement if he or she—

(1) Fails to complete the period of service required in the applicable service agreement (except as provided by paragraph (b) of this section); or

(2) Violates any other condition that specifically triggers a reimbursement requirement under the agreement.

(b) An agency may not apply paragraph (a) of this section based on an employee's failure to complete the required period of service established under a service agreement if—

(1) The employee is involuntarily separated for reasons other than misconduct or unacceptable performance; or

(2) The employee leaves the paying agency voluntarily to enter into the service of any other agency, unless reimbursement to the agency is otherwise required in the service agreement, as provided by § 537.107(e).

(c) If an agency and an employee mutually agree to modify an existing service agreement to provide additional student loan repayment benefits for additional service (as provided by § 537.107(b)), the modified service agreement may stipulate that, if the employee completes the initial service period but fails to complete the additional service period, he or she is required to reimburse the paying agency only for the amount of any student loan repayment benefits received during the additional service period.

(d) If an employee fails to reimburse the paying agency for the amount owed under paragraph (a) of this section, a sum equal to the amount outstanding is recoverable from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, or through the appropriate provisions governing Federal debt collection if the individual is no longer a Federal employee.

(e) An authorized agency official may waive, in whole or in part, a right of recovery of an employee's debt if he or she determines that recovery would be against equity and good conscience or against the public interest. (See 5 U.S.C. 5379(c)(3).)

(f) Any amount reimbursed by, or recovered from, an employee under this section must be credited to the appropriation account from which the amount involved was originally paid. Any amount so credited must be merged with other sums in such account and must be available for the same purposes and time period, and subject to the same limitations (if any), as the sums with which merged. (See 5 U.S.C. 5379(c)(4).)

**§ 537.110 Records and reports.**

(a) Each agency must keep a record of each determination to provide student loan repayment benefits under this part and make such records available for review upon request by OPM. Such a record may be destroyed when 3 years have elapsed since the end of the service period specified in the employee's service agreement.

(b) By March 31st of each year, each agency must submit a written report to OPM containing information about student loan repayment benefits it provided to employees during the previous calendar year. Each report must include the following information:

(1) The number of employees who received student loan repayment benefits;

(2) The job classifications of the employees who received student loan repayment benefits; and

(3) The cost to the Federal Government of providing student loan repayment benefits.

[FR Doc. E7–101 Filed 1–8–07; 8:45 am]

BILLING CODE 6325–39–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2006–26696; Directorate Identifier 2006–SW–19–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Robinson Helicopter Company Model R44 and R44 II Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes adopting a new airworthiness directive (AD) for robinson Helicopter Company (Robinson) Model R44 and R44 II helicopters that have a certain seat belt buckle (buckle) assembly installed. The AD would require removing the buckle assembly and the buckle assembly spacer, and replacing them with airworthy parts. This proposal is prompted by an accident in which a seat belt failed, and also by reports of cracking in the buckle assembly stainless support strap (support strap). The actions specified by the proposed AD are intended to prevent cracking in the support strap and failure of a seat belt.

**DATES:** Comments must be received on or before March 12, 2007.

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

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

You may get the service information identified in this proposed AD from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505, telephone (310) 539–0508, fax (310) 539–5198.

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

**FOR FURTHER INFORMATION CONTACT:** Venessa Stiger, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5337, fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number ''FAA–2006–26696, Directorate Identifier 2006–SW–19–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

## Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Management System (DMS) Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located at the plaza level of the Department of Transportation Nassif Building in Room PL–401 at 400 Seventh Street, SW., Washington, DC. Comments will be available in the AD docket shortly after the DMS receives them.

## Discussion

This document proposes adopting a new AD for Robinson model R44 helicopters, through serial number (S/N) 1576, and Model R44 II helicopters, through S/N 11107, that have a C628–4, revision M or prior, buckle assembly installed. The AD would require, within 100 hours time-in-service, removing the buckle assembly and the A130–52 buckle assembly spacer, and replacing them with a C628–4, revision N buckle assembly and a new A130–52 buckle assembly spacer. The A130–52 buckle assembly spacers have been redesigned to be slightly longer than the previous A130–52 buckle assembly spacers, to reduce friction in the joint. This proposal is prompted by an investigation in which a seat belt failed during an accident, and also by reports of cracking in the buckle assembly support strap. Excessive bending of the buckles can damage their stainless support straps. The actions specified by the proposed AD are intended to prevent cracking in the support strap and failure of a seat belt.

We have reviewed Robinson Service SB–56, dated March 29, 2006, which describes procedures for inspecting the buckle assemblies for cracks and replacing the buckle assemblies. This proposed AD would not require inspecting the buckle assemblies for cracks.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would require removing any C628–4, revision M or prior, buckle assembly and any A130–52 buckle assembly spacer, and replacing them with a C628–4, revision N buckle assembly and a new A130–52 buckle assembly spacer. Replacing the buckle assembly and buckle assembly spacer with a C628–4, Revision N buckle assembly and a new A130–52 buckle assembly spacer would be the terminating action for the requirements of this proposed AD. The replacement would be required to be accomplished by following specified portions of the service bulletin described previously.

We estimate that this proposed AD would affect 900 helicopters of U.S. registry, and replacing a buckle assembly would take approximately 0.2 work hour per buckle to accomplish at an average labor rate of $80 per work hour. Required parts would cost approximately $105 for each C628–4, revision N buckle assembly, and $8.25 for each A130–52 buckle assembly spacer. Based on these figures, the total cost impact of the proposed AD on U.S. operators would be $517 for each helicopter, or $465,300 for the entire fleet, assuming that four buckle assemblies and buckle assembly spacers are replaced in each helicopter.

## Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. Additionally, 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 draft economic evaluation of the estimated costs to comply with this proposed AD. See the DMS to examine the draft economic evaluation.

## 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.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 a new airworthiness directive to read as follows:

**Robinson Helicopter Company:** Docket No. FAA–2006–26696; Directorate Identifier 2006–SW–19–AD.

*Applicability:* Model R44 helicopters, through serial number (S/N) 1576, and Model R44 II helicopters, through S/N 11107, with a seat belt buckle assembly (buckle assembly) part number C628–4, revision M or prior, installed, certificated in any category.

*Compliance:* Required within 100 hours time-in-service, unless accomplished previously.

To prevent cracking in the buckle assembly stainless support strap and failure of a seat belt, accomplish the following:

(a) Remove the buckle assembly and any A130–52 buckle assembly spacer, and replace them with a C628–4, revision N buckle assembly and a new A130–52 buckle assembly spacer, in accordance with the Compliance Procedure, paragraph 3, in Robinson Helicopter Company Service Bulletin SB–56, dated March 29, 2006. The new A130–52 buckle assembly spacers have been redesigned to be slightly longer than the previous A130–52 buckle assembly spacers, to reduce friction in the joint.

**Note:** Inspecting the buckle assembly for cracks is not required by this AD.

(b) Replacing the buckle assembly and buckle assembly spacer with a C628–4, Revision N buckle assembly and a new A130–52 buckle assembly spacer is a terminating action for the requirements of this AD.

(c) to request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Los Angeles Aircraft Certification Office, FAA, ATTN: Venessa Stiger, Aviation Safety Engineer, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5337, fax (562) 627–5210, for information about previously approved alternative methods of compliance.

Issued in Fort Worth, Texas, on December 18, 2006.

**David A. Downey,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 07–26 Filed 1–8–07; 8:45 am]

**BILLING CODE 4910–13–M**

## CONSUMER PRODUCT SAFETY COMMISSION

## 16 CFR Part 1500

## Children's Jewelry Containing Lead; Advance Notice of Proposed Rulemaking; Request for Comments and Information

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Consumer Product Safety Commission (CPSC or Commission) is considering whether there may be a need to ban children's metal jewelry containing more than 0.06% lead by weight in metal components. This advance notice of proposed rulemaking (ANPR) initiates a rulemaking proceeding under the Federal Hazardous Substances Act (FHSA). The Commission is soliciting written comments concerning the risks of injury associated with children's jewelry containing lead, the regulatory options discussed in this notice, other possible ways to address these risks, and the economic impacts of the various regulatory alternatives. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risk of injury described in this notice.

**DATES:** Written comments and submissions in response to this document must be received by March 12, 2007.

**ADDRESSES:** Comments should be e-mailed to *cpsc-os@cpsc.gov*. Comments should be captioned ''Children's Jewelry Containing Lead ANPR.'' Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland 20814, or delivered to the same address (telephone (301) 504–7923). Comments also may be filed by facsimile to (301) 504–0127.

**FOR FURTHER INFORMATION CONTACT:** Kristina Hatlelid, PhD, M.P.H., Directorate for Health Sciences, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504–7254, e-mail *khatlelid@cpsc.gov*.

**SUPPLEMENTARY INFORMATION:**

### A. Background

On May 16, 2006, the CPSC docketed Sierra Club's request for a ban on children's jewelry containing more than 0.06% lead by weight as a petition under the Federal Hazardous Substances Act (FHSA) (Petition No. HP 06–1). 71 FR 35416. Information obtained from the petition and CPSC staff investigations indicate that excess lead exposure may result when children ingest metal jewelry containing more than 0.06% lead by weight in metal components. On December 11, 2006, the Commission voted to grant the petition and begin a rulemaking proceeding to address the risk of injury described in this notice.[1]

### B. The Risk of Injury

The scientific community generally recognizes a level of 10 micrograms of lead per deciliter of blood (μg/dL) as a level of concern with respect to lead poisoning in children. Continuing national, state and local efforts to remove lead hazards from children's environments (*e.g.*, eliminating lead from household paint, gasoline, and food cans) have resulted in reductions in mean blood lead levels (BLLs) and in the number of children with BLLs exceeding 10 μg/dL. Data from a recent national survey indicated that an estimated 310,000 U.S. children aged one to five years have BLLs exceeding this level (about 1.6 percent of children aged one to five years). Currently, lead-based paint in older housing remains the most common source for excess lead exposure for children, but exposures from other sources of lead, such as certain ethnic medicines, imported candy and spices, ceramicware, and other types of consumer products, including jewelry, have been documented.

Investigations by the CPSC Laboratory staff indicated that the extractability of lead from children's metal jewelry is strongly associated with the lead content of these items. Staff investigations also indicated that when metal jewelry is ingested by children, excess lead exposure is likely for items that contain more than 0.06% lead, and that the amount of exposure likely increases with increasing lead content in the item.

### C. Statutory Authority

This proceeding is conducted pursuant to the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261 *et seq.* Section 2(f)(1)(A) of the FHSA defines ''hazardous substance'' to include any substance or mixture of substances which is toxic and may cause substantial illness as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children. 15 U.S.C. 1261(f)(1)(A).

Under section 2(q)(1)(B) of the FHSA, a substance is a ''banned hazardous substance'' if the Commission determines that, ''notwithstanding such cautionary labeling as is or may be required under this Act for that substance, the degree or nature of the hazard involved in the presence or use

[1] Acting Chairman Nancy A. Nord filed a statement which is available from the Office of the Secretary or on the Commission's Web site at *http://www.cpsc.gov*.

of such [hazardous] substance in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substance, when so intended or packaged, out of the channels of interstate commerce'' 15 U.S.C. 1261(q)(1)(B).

A ban under section 2(q)(1)(B) of the FHSA may be used to reach articles intended for use in the household that are determined to be hazardous substances under section 3(a)(1). Section 3(a)(1) of the FHSA provides that the Commission may, by regulation, declare to be a ''hazardous substance'' any substance or mixture of substances which meets the requirements of section 2(f)(1)(A). 15 U.S.C. 1262(a)(1). If the section 3(a)(1) proceeding resulted in a determination that jewelry containing more that 0.06% lead was a hazardous substance, then, if the article is ''intended for use by children,'' the jewelry would be banned automatically under section 2(q)(1)(A) of the FHSA. 15 U.S.C. 1261(q)(1)(A). Section 3(a)(2) specifies the procedures for issuance of a regulation declaring a substance or mixture of substances to be a ''hazardous substance.'' 15 U.S.C. 1262(a)(2).

Sections 2(q)(2) and 3(f) through 3(i) specify the procedures for issuing a rule classifying a substance as a banned hazardous substance under section 2(q)(1)(B) of the Act. 15 U.S.C. 1261(q)(2), 1262(f)–(i). In accordance with section 3(f), this proceeding is commenced by issuance of this ANPR. 15 U.S.C. 1262(f). After considering any comments submitted in response to this ANPR, the Commission will decide whether to issue a proposed rule and a preliminary regulatory analysis in accordance with section 3(h) of the FHSA. 15 U.S.C. 1262(h). If a proposed rule is issued, the Commission would then consider the comments received in response to the proposed rule in deciding whether to issue a final rule and a final regulatory analysis. 15 U.S.C. 1262(i).

**D. Regulatory Alternatives**

One or more of the following alternatives could be used to reduce the identified risks associated with children's metal jewelry containing lead.

1. *Mandatory rule.* The Commission could issue a rule declaring children's metal jewelry containing lead to be a banned hazardous substance.

2. *Labeling rule.* The Commission could issue a rule requiring specified warnings and instructions for children's metal jewelry containing lead.

3. *Existing standard.* The Commission could adopt an existing standard, in whole or in part, as a proposed regulation.

4. *Voluntary standard.* If the industry developed, adopted, and substantially conformed to an adequate voluntary standard, the Commission could defer to the voluntary standard in lieu of issuing a mandatory rule.

5. *Corrective Actions under Section 15 of the FHSA.* The Commission has authority under section 15 of the FHSA, 15 U.S.C. 1274, to pursue corrective actions on a case-by-case basis if the Commission determines that a product constitutes a banned hazardous substance.

**E. Existing Standards**

CPSC staff reviewed existing State standards relevant to lead in children's metal jewelry promulgated in California and Illinois. On September 22, 2006, legislation was enacted in California on lead containing jewelry, A.B. No. 1681. This law provides, in part, for phased-in compliance of specified materials to be used in jewelry for retail sale in California. This law contains a number of provisions separated by type of material used in the product or components, and by whether the product is for children aged six years and younger. Children's products must contain less than 0.06 percent lead in certain metallic components, and certain other components are limited to less than 0.02 percent lead. Lead content in children's jewelry is limited to less than 0.06 percent by September 1, 2007, and plastic and rubber components to less than 0.02 percent by August 31, 2009. The use of glass or crystal is limited to a total of one gram in the product unless it contains less than 0.02 percent lead by weight and has no intentionally added lead.

On June 20, 2006, the State of Illinois enacted Public Act 094–0879, which amends the Illinois Lead Poisoning Prevention Act to define a ''lead bearing substance'' as, in part, ''any item containing or coated with lead such that the lead content is more than six-hundredths of one percent (0.06%) lead by total weight.'' This act restricts the use of lead bearing substances and bans their use ''in or upon any items, including, but not limited to, clothing, accessories, jewelry, decorative objects, edible items, candy, food, dietary supplements, toys, furniture, or other articles used by or intended to be and chewable by children.'' This act covers children aged six years and younger.

Canada has also established regulations concerning lead in children's jewelry under ''The Children's Jewellery Regulations,'' effective May 10, 2005. The regulations provide limits both for lead content (600 mg/kg; equivalent to 0.06 percent) and ''migratable'' or accessible lead (90 mg/kg) for children's jewelry items imported, advertised, or sold in Canada. Children's jewelry is defined as ''jewellery item(s) which is (are) designed, sized, decorated, packaged, and/or otherwise produced, advertised or sold in such a manner as to make it reasonably apparent that the item(s) is intended to attract, appeal to, or be worn primarily by a child under the age of 15 years.''

These standards offer vastly differing requirements for test methods, test materials, product categories, age categories, and so forth. Provisions in standards that do not address jewelry do not fall within the scope of this proceeding. At this time, CPSC staff is focusing on metal jewelry containing lead because the available data indicate that such products could be hazardous due to their lead content and potential for exposure. More information concerning potential lead exposure of other non-metal materials that may be used in jewelry is needed before staff can assess whether other non-metal materials used in jewelry present a hazard. Furthermore, additional information and data must be obtained before staff can properly assess the appropriate test or test methodology to be used, the appropriate product or products to be addressed, and the appropriate age group to be covered under any proposed regulation.

**F. Economic Considerations**

CPSC staff gathered data on certain classifications of jewelry and toy manufacturers. The U.S. Census Bureau, using the North American Industry Classification System, provides data on three types of manufacturers: Jewelry (Except Costume); Jewelers' Material and Lapidary Work; and Costume Jewelry and Novelty Manufacturing. Of these, the Jewelry (Except Costume) manufacturers, which deal primarily with precious metals, constitute about 76 percent of the value of jewelry manufacturing shipments; the Costume category accounts for about ten percent of shipments. For 2004, the total value of shipments for all three classifications was more than $7.8 billion. The data indicated that nearly 3,000 establishments produce jewelry items in the U.S. Most of these are relatively small; almost 60 percent have one to four employees and 84 percent have fewer than 20 employees. All but 19 firms have fewer than 500 employees (the definition of small business used by

the U.S. Small Business Administration). As of 2004, domestic production was about 24 percent of the total U.S. market, with products from Israel, India, Belgium, China, Thailand, and Italy making up about three-quarters of jewelry imports by value.

Because children's jewelry may include toy jewelry, staff considered data for toy, doll, and stuffed animal accessories that may include jewelry items. The value of shipments of these products is approximately $30 million annually, although this figure includes many products that would not be considered jewelry. Finally, staff considered manufacturing of craft kits and supplies, which would include jewelry-making kits. The value of shipments for this category is about $180 million annually. This figure also includes many products that would not be considered jewelry.

While this information provides an overview of U.S. manufacturing of jewelry and related toy products, the data do not allow staff to analyze the specific impact of any potential regulation of lead in children's jewelry. Further, while staff has information about the overall economic impact of excess lead exposure in children, there is no information available that addresses the effect of lead exposures specifically from children's jewelry. While reducing lead in children's jewelry could result in reduced lead exposure in children, the extent of the reduction and the resulting benefits may be difficult to quantify. Comments on these issues and on costs and benefits of a potential rule are specifically solicited.

### G. Solicitation of Information and Comments

This ANPR is an initial step in a proceeding that could result in a mandatory rule banning children's metal jewelry containing more than 0.06% lead by weight in metal components. All interested persons are invited to submit to the Commission their comments on any aspect of the alternatives discussed above. In particular, CPSC solicits the following additional information:

1. Information on any children believed to have been injured or killed as a result of ingesting metal jewelry containing lead, including the ages of such children, and their BLLs;
2. The circumstances under which these injuries and deaths occurred, including information on the suspected metal jewelry product;
3. The costs to manufacturers of redesigning children's metal jewelry to remove the risk from lead or the cost of removing children's metal jewelry containing lead from the market;
4. A description of substitutes for children's metal jewelry containing lead that could reduce the described risk of injury;
5. Comparisons of the costs and utility of using lead in children's metal jewelry versus any available substitute products;
6. Other information on the potential costs and benefits of potential rules;
7. Steps that have been taken by industry or others to reduce the risk of injury to children due to lead from metal jewelry products;
8. The likelihood and nature of any significant economic impact of a rule on small entities;
9. Alternatives the Commission should consider, as well as the costs and benefits of those alternatives to minimize the burdens or costs to small entities;
10. The costs and benefits of mandating a testing requirement;
11. The costs and benefits of mandating a quality control/quality assurance program requirement and/or recordkeeping requirement;
12. The market share of children's jewelry relative to all jewelry for both precious and costume (non-precious) jewelry;
13. The estimated average expected life of a piece of jewelry (precious and non-precious) and/or an estimated number of jewelry pieces in U.S. households;
14. The distribution of jewelry sales by manufacturing and/or retail price for both precious and costume (non-precious) jewelry; and
15. Information on the lead content and accessibility of lead in non-metallic materials and components used in children's jewelry containing lead including, but not limited to, plastics, rubber, crystals, glass and ceramics.

Also, in accordance with section 3(f) of the FHSA, the Commission solicits:

1. Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.
2. Any existing standard or portion of a standard which could be issued as a proposed regulation.
3. A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so.

Comments should be e-mailed to *cpsc-os@cpsc.gov.* Comments should be captioned ''Children's Jewelry Containing Lead ANPR.'' Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland 20814, or delivered to the same address (telephone (301) 504–7923). Comments also may be filed by facsimile to (301) 504–0127. All comments and submissions should be received no later than March 12, 2007.

### H. FHSA Enforcement During the Pendency of the Rulemaking

Manufacturers, importers and retailers of children's jewelry are reminded that the Federal Hazardous Substances Act of its own force bans articles of children's jewelry that meet the statutory definition of a ''banned hazardous substance.'' 15 U.S.C. 1261(q)(1). The CPSC Compliance staff therefore intends to continue enforcing the statute as appropriate during the pendency of this rulemaking. To avoid problems, manufacturers, importers and retailers are advised to follow the guidance provided in the Interim Enforcement Policy for Children's Metal Jewelry Containing Lead (February 3, 2005) which is available on the CPSC Web site at *http://www.cpsc.gov/BUSINFO/pbjewelgd.pdf.*

Dated: January 4, 2007.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E7–109 Filed 1–8–07; 8:45 am]

BILLING CODE 6355–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Parts 101, 125 and 141

**[Docket No. RM07–2–000]**

## Accounting and Reporting Requirements for Nonoperating Public Utilities and Licensees

Issued December 21, 2006.

**AGENCY:** Federal Energy Regulatory Commission, Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is proposing to amend its accounting and reporting regulations, in Parts 101 and 141, to require public utilities and licensees to continue to follow the Commission's Uniform System of Accounts (USofA) and to file annual and quarterly financial reports when they have ceased making jurisdictional sales of electric energy, or providing jurisdictional transmission service, but continue collecting amounts pursuant to

a Commission-accepted tariff or rate schedule, or a Commission order. The proposed rulemaking is intended to close a gap in the Commission's regulations which apply now only to operating public utilities and licensees. Under the existing regulations, the Commission cannot oversee, monitor, or audit costs that provide information necessary to the Commission's oversight responsibilities and the protection of the public interest.

The Commission also is seeking comments regarding the applicability of Part 125, Preservation of Records of Public Utilities and Licensees, to public utilities or licensees which have ceased operations, as described above, but continue to collect amounts pursuant to a Commission-approved tariff or rate schedule, or a Commission order. This notice of proposed rulemaking reasonably interprets the current language of Part 125 to require the continued application of Part 125 to nonoperating public utilities and licensees, but seeks comments as to whether revisions to Part 125 may be necessary.

**DATES:** Comments are due February 8, 2007.

**ADDRESSES:** You may submit comments identified by Docket No. RM07–2–000 by one of the following methods:

- *Agency Web Site: http://www.ferc.gov.* Follow the instructions found in the Comment Procedures Section of the preamble for submitting comments via the eFiling link.
- *Mail:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

**FOR FURTHER INFORMATION CONTACT:**

Jane Stelck, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6648, *jane.stelck@ferc.gov.*

Thomas Russo (Technical), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8792, *thomas.russo@ferc.gov.*

Michael Krauthamer, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6159, *michael.krauthamer@ferc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

1. The Federal Energy Regulatory Commission (Commission) is proposing to amend the accounting and reporting requirements in Parts 101 and 141 of its regulations to require public utilities and licensees to continue to follow the Commission's Uniform System of Accounts (USofA) [1] and to file quarterly and annual financial reports [2] when they have ceased to make jurisdictional sales of electric energy or to provide jurisdictional transmission service but continue to collect amounts pursuant to a Commission-accepted tariff or rate schedule, or a Commission order. These proposed regulations are intended to close a gap in current accounting and reporting requirements that no longer apply when the operations of a public utility or licensee are discontinued. The resulting gap leaves unreported information and data which are important to the Commission's administration of its jurisdictional responsibilities under the Federal Power Act (FPA).[3] Specifically, these changes are intended to address a situation, for example, in which a nuclear generating plant may shut down its operations but continue to collect decommissioning and other administrative costs pursuant to a Commission order. For this purpose, the Commission proposes additions and revisions to Parts 101 and 141 of the Commission's regulations, as follows: (1) Add a new category, designated ''nonoperating'' to the classification of utilities subject to compliance with the USofA in the General Instructions of Part 101; and (2) revise §§ 141.1, 141.2 and 141.400 of Part 141 to require nonoperating public utilities and licensees whose operations have ceased but who continue to collect amounts pursuant to a Commission tariff or rate schedule, or a Commission order, to continue to comply with the Commission's reporting requirements.

2. The Commission is also seeking comments on the applicability of Part 125, which sets forth record retention requirements for public utilities and licensees. This notice of proposed rulemaking reasonably interprets the current language of Part 125 to provide that the requirements of Part 125 continue to apply to nonoperating entities who continue to collect amounts pursuant to a Commission-approved tariff or rate schedule, or a Commission order. The Commission seeks comments, however, as to whether Part 125 may require particular revisions.

## II. Background

3. The Commission's regulations in Parts 101 and 141 require public utilities and licensees whose sales or transmission service exceed certain prescribed levels to follow the USofA and to file annual and quarterly financial reports, Forms No. 1, 1–F, and 3–Q, respectively. This information is necessary to enable the Commission to fulfill its statutory responsibilities under the FPA and is essential to the Commission's decisionmaking process. The information, which is publicly available, also allows customers, state commissions, and others to evaluate the rates charged for sales of electric energy and transmission of electric energy.

4. Under the Commission's existing regulations, public utilities and licensees are relieved of these accounting and reporting requirements when they cease making sales or providing transmission. This is true even when these nonoperating public utilities and licensees continue to collect amounts pursuant to a Commission-approved tariff or rate schedule, or a Commission order.

## III. Discussion

5. In recent years, this accounting and reporting gap has been highlighted when, for example, nuclear generating plants shut down but continue to collect decommissioning and other administrative costs under a Commission-accepted tariff or rate schedule, or a Commission order.[4] The amounts collected by these companies are material and may span a decade or longer.[5] The occurrence of these and the potential occurrence of similar circumstances impede the Commission's ability to collect information, monitor, or audit the underlying costs when accounting and reporting requirements no longer apply. The Commission has a continuing need to have access to books and records and to receive periodic financial reports for any jurisdictional entity, even when that entity has ceased operations but continues to collect amounts pursuant to a Commission-accepted tariff or rate schedule, or a Commission order. Without Commission oversight, customers and ratepayers cannot be

[1] 18 CFR Part 101.

[2] 18 CFR Part 141.

[3] 16 U.S.C. 824 *et seq.*

[4] *See, e.g., Connecticut Yankee Atomic Power Company*, 92 FERC ¶ 61,005 (2000) (approving decommissioning cost collections.)

[5] For example, Connecticut Yankee collected $16.7 million per year in decommissioning funds from 2000 to 2004 and $93 million in 2005 and 2006. *Id.*

assured that these billings are just and reasonable.

6. To remedy this gap in the regulations and to ensure that the Commission has all necessary information to perform its oversight duties, this rulemaking proposes to add a new classification in Part 101, General Instructions, *Classification of utilities*, which will apply the USofA to nonoperating Major and Nonmajor public utilities and licensees. Additionally, the Commission proposes revisions to the reporting requirements contained in Part 141 of its regulations to require that nonoperating public utilities and licensees that have ceased operation, but continue to collect amounts pursuant to a Commission-accepted tariff or rate schedule, or a Commission order, continue to file annual and quarterly reports pursuant to these regulations.

7. At this time, the Commission is not proposing any additions or revisions to Part 125, which requires public utilities and licensees to retain records for designated periods of time. This proposed rulemaking is based on a reasonable reading of the current language in Part 125, that the requirements of Part 125 continue to apply to nonoperating public utilities and licensees even when their respective operations cease but they continue to collect amounts under a Commission-accepted tariff or rate schedule or a Commission order. We seek comments, however, as to whether revisions to Part 125 may be necessary.

8. At this time, it is anticipated that the proposed regulations will affect only a few entities, and that reporting and compliance requirements will not be burdensome.

9. Finally, the Commission proposes that these accounting and reporting requirements become effective 30 days after publication of the Final Rule in the **Federal Register**.

## IV. Information Collection Statement

The following collections of information contained in this proposed rule are being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.[6] OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.[7]

Comments are solicited on the need for this information, whether the information will have practical utility, the accuracy of the provided burden estimated, ways to enhance the quality, utility, clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The Commission expects that only a very small number of public utilities and licensees would be affected by the proposed rule. The Commission also anticipates there will be a minimal impact, if any, on these entities.

*Information Collection Costs:* The Commission seeks comments on the costs to comply with these requirements. The Commission anticipates that there will be minimal impact relative to the costs of compliance.

*Title:* FERC Form No. 1, ''Annual report of Major electric utilities, licensees, and others''; FERC Form No. 1–F; ''Annual report for Nonmajor public utilities and licensees''; FERC Form No. 3–Q, ''Quarterly financial report of electric utilities, licensees, and natural gas companies''; and FERC–555.

*Action:* Proposed information collections.

*OMB Control Nos.:* 1902–0021; 1902–0029; 1902–0205, and 1902–0098.

*Respondents:* Businesses or other for profit.

*Frequency of responses:* Annually and quarterly.

*Necessity of the Information:* The information maintained and collected under the requirements of Parts 101 and 141 is essential to the Commission's oversight duties. Under the existing regulations, nonoperating public utilities and licensees are not required to follow the USofA, or submit financial reports when sales of electric energy or transmission of electric energy cease, even when they continue to bill amounts pursuant to a Commission-accepted tariff or rate schedule, or a Commission order. Without access to accounting books and records and periodic financial reports, the Commission cannot conduct rate reviews, audits and other oversight activities with respect to these public utilities and licensees.

*Internal Review:* The Commission has reviewed the requirements pertaining to the USofA and to its financial reports and has determined that the proposed changes are necessary. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the public industry. The Commission has assured itself, by means of internal review, that there is specific, objective support associated with the information requirements.

10. 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 Chief Information Officer, phone (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov*].

11. To submit comments concerning the collection of information and the associated burden estimates, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission] Phone: (202) 395–4650, fax: (202) 395–7285.

## V. Environmental Statement

12. 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.[8] 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 actions that involve accounting and financial reporting.[9] The rules proposed here address the need for nonoperating utilities and licensees to continue compliance with the USofA and to meet the reporting requirements of part 141 for so long as they continue to collect amounts pursuant to a Commission-approved tariff or rate schedule, or a Commission order. Therefore, this notice of proposed rulemaking falls within the categorical exemptions provided in the Commission's regulations, and, as a result neither an environmental impact statement nor an environmental assessment is required.

## VI. Regulatory Flexibility Act Certification

13. The Regulatory Flexibility Act of 1980[10] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect. Because most public utilities and licensees do not fall within the definition of ''small entity,''[11] the

[6] 44 U.S.C. 3507(d).

[7] *See* 5 CFR 1320.11.

[8] *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[9] 18 CFR 380.4(a)(5), (16); *see also* 18 CFR 380.4(a)(3).

[10] 5 U.S.C. 601–12.

[11] *See* 5 U.S.C. 601(3).

Commission certifies that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

**VII. Comment Procedures**

14. The Commission invites comments on the matters and proposals in this notice, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due February 8, 2007. Reply comments will be due 30 days thereafter. Comments must refer to Docket No. RM07–2–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

15. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

16. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

**VIII. Document Availability**

17. 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.

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

19. User assistance is available for eLibrary and the Commission's Web site during normal business hours from our Help Line at (202) 502–8222 or the Public Reference Room at (202) 502–8371 Press 0, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov.*

**List of Subjects**

*18 CFR Part 101*

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

*18 CFR Part 141*

Electric power, Reporting and recordkeeping requirements.

By direction of the Commission.

**Magalie R. Salas,**

*Secretary.*

In consideration of the foregoing, the Commission proposes to amend parts 101 and 141, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

## PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

1. The authority citation for part 101 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, 7651–7615o.

2. Amend Part 101, General Instructions, 1. *Classification of utilities*, to add a new paragraph A.(3) and to revise the first sentence in paragraph B to read as follows:

**General Instructions**

*1. Classification of Utilities.*

A. * * *

(3) *Nonoperating.* Utilities and licensees formerly designated as Major or Nonmajor that have ceased operation but continue to collect amounts pursuant to a Commission-accepted tariff or rate schedule, or a Commission order.

B. This system applies to Major, Nonmajor, and Nonoperating utilities and licensees. * * *

* * * * *

## PART 141—STATEMENTS AND REPORTS (SCHEDULES)

3. The authority citation for part 141 continues to read as follows:

**Authority:** 15 U.S.C. 79; 16 U.S.C. 791a–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

4. Revise § 141.1(b)(1)(i) to read as follows:

**§ 141.1 FERC Form No. 1, Annual report of Major electric utilities, licensees and others.**

* * * * *

(b) *Filing requirements*—(1) *Who must file*—(i) *Generally.* Each Major and each Nonoperating (formerly designated as Major) electric utility (as defined in part 101 of Subchapter C of this chapter) and other entity, *i.e.*, each corporation, person or licensee as defined in section 3 of the Federal Power Act (16 U.S.C. 792 *et seq.*), including any agency, authority, or other legal entity or instrumentality engaged in generation, transmission, distribution, or sale of electric energy, however produced, throughout the United States and its possessions, having sales or transmission service equal to Major or Nonoperating (formerly designated as Major) as defined above, whether or not the jurisdiction of the Commission is otherwise involved, shall prepare and file electronically with the Commission the FERC Form No. 1 pursuant to the General Instructions set out in that form.

* * * * *

5. Revise § 141.2(b)(1)(i) to read as follows:

**§ 141.2 FERC Form No. 1–F, Annual report for Nonmajor public utilities and licensees.**

* * * * *

(b) *Filing requirements*—(1) *Who must file*—(i) *Generally.* Each Nonmajor and each Nonoperating (formerly designated as Nonmajor) public utility and licensee as defined by the Federal Power Act, which is considered Nonmajor as defined in Part 101 of this chapter, shall prepare and file with the Commission an original and conformed copies of FERC Form No. 1–F pursuant to the General Instructions set out in that form.

* * * * *

6. In § 141.400, revise paragraphs (b)(1)(i), (b)(2) introductory text, and (b)(3) introductory text, to read as follows:

* * * * *

**§ 141.400 FERC Form No. 3–Q, Quarterly financial report of electric utilities, licensees, and natural gas companies.**

* * * * *

(b) *Filing Requirements*—(1) *Who must file*—(i) *Generally.* Each electric utility and each Nonoperating (formerly designated as Major or Nonmajor) electric utility (as defined in part 101 of subchapter C of this chapter) and other entity, *i.e.*, each corporation, person, or licensee as defined in section 3 of the Federal Power Act (16 U.S.C. 792 *et seq.*), including any agency or instrumentality engaged in generation,

transmission, distribution, or sale of electric energy, however produced, throughout the United States and its possessions, having sales or transmission service, whether or not the jurisdiction of the Commission is otherwise involved, must prepare and file with the Commission FERC Form No. 3–Q pursuant to the General Instructions set out in that form.

* * * * *

(2) Each Major and Nonoperating (formerly designated as Major) (as defined in Part 101 of subchapter C of this chapter) public utility and licensee must file the quarterly financial report form as follows:

* * * * *

(3) Nonmajor and Nonoperating (formerly designated as Nonmajor) public utilities and licensees must file the quarterly financial report form as follows:

* * * * *

[FR Doc. E6–22692 Filed 1–8–07; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 67

**[Docket No. FEMA–B–7702]**

### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

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

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

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

**FOR FURTHER INFORMATION CONTACT:** William R. Blanton, Jr., Engineering Management Section, Mitigation Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

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

**National Environmental Policy Act**

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

**Regulatory Flexibility Act**

As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

**Regulatory Classification**

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

**Executive Order 13132, Federalism**

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

**Executive Order 12988, Civil Justice Reform**

This proposed rule meets the applicable standards of Executive Order 12988.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

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

## PART 67—[AMENDED]

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

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

**§ 67.4 [Amended]**

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

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **Calhoun County, Alabama and Incorporated Areas** | | | | |
| Coosa River | Talladega County Line | None | +479 | Calhoun County (Unincorporated Areas). |
| | Etowah County Line | None | +510 | |

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **ADDRESSES** | | | | |
| **Town of Ohatchee** | | | | |
| Maps are available for inspection at 7801 Alabama Highway 77, Ohatchee, AL 36271. | | | | |
| Send comments to The Honorable Joseph K. Roberson, Mayor, Town of Ohatchee, 7801 Alabama Highway 77, Ohatchee, AL 36271. | | | | |
| **Calhoun County (Unincorporated Areas)** | | | | |
| Maps are available for inspection at 507 Francis Street W, Jacksonville, AL 36265. | | | | |
| Send comments to The Honorable Rudy Abbott, Chairman, Calhoun County, 1702 Nobel Street, Suite 103, Anniston, AL 36201. | | | | |
| **De Kalb County, Alabama, and Incorporated Areas** | | | | |
| Big Wills Creek | Approximately 7,000 feet downstream of confluence with Little Wills Creek. | None | +672 | Town of Collinsville, De Kalb County (Unincorporated Areas). |
| | Approximately 10,000 feet upstream of confluence with Little Wills Creek. | None | +680 | |
| Big Wills Creek | Approximately 2,500 feet upstream of confluence with Hammond Branch. | None | +963 | Town of Hammondville. |
| | Approximately 5,000 feet upstream of confluence with Hammond Branch. | None | +980 | |
| Bib Wills Creek | Confluence with Davis Gap Creek | None | +783 | De Kalb County (Unincorporated Areas). |
| | Appoximately 2,000 feet upstream of confluence with Davis Gap Creek. | None | +786 | |
| Davis Gap Creek | Confluence with Big Wills Creek | None | +783 | De Kalb County (Unincorporated Areas). |
| | Approximately 1,500 feet upstream of confluence with Big Wills Creek. | None | +786 | |
| Ivy Creek | Confluence with Town Creek | None | +1,152 | De Kalb County, (Unincorporated Areas). |
| | Approximately 1,000 feet upstream of confluence with Town Creek. | None | +1,154 | |
| Little Wills Creek | Confluence with Big Wills Creek | None | +674 | Town of Collinsville, De Kalb County (Unincorporated Areas). |
| | Church Avenue Crossing | None | +710 | |
| Little Wills Creek | Approximately 1,500 feet upstream of SR 68 Crossing | None | +734 | Town of Collinsville. |
| | Approximately 2,500 feet upstream of SR 68 Crossing | None | +738 | |
| Little Wills Creek Tributary | Approximately 5,000 feet upstream of confluence with Little Wills Creek. | None | +729 | Town of Collinsville. |
| | Approximately 5,700 feet upstream of confluence with Little Wills Creek. | None | +731 | |
| Little Wills Valley Branch | Approximately 2,500 feet downstream of 41st Street South Crossing. | None | +839 | De Kalb County (Unincorporated Areas). |
| | Approximately 2,000 feet downstream of 41st Street South Crossing. | None | +843 | |
| Phillips Branch | Approximately 200 feet upstream of South Sauty Creek. | None | +1,166 | City of Rainsville, De Kalb County (Unincorporated Areas). |
| | Approximately 1,000 feet upstream of South Sauty Creek. | None | +1,171 | |
| Piney Creek | Approximately 7,000 feet downstream of Horton Road Crossing. | None | +1,199 | City of Rainsville, Town of Shiloh, De Kalb County (Unincorporated Areas). |
| | Confluence with Piney Creek Tributary | None | +1,215 | |
| Town Creek | Approximately 1,000 feet upstream of confluence with Bynum Mill Branch. | None | +1,124 | City of Rainsville, De Kalb County (Unincorporated Areas). |
| | Approximately 2,000 feet upstream of SR35 Crossing | None | +1,175 | |

*National Geodetic Vertical Datum.
#Depth in feet above ground.
+North American Vertical Datum.

**ADDRESSES**

**City of Rainsville**

Maps are available for inspection at 70 McCurdy Avenue, Rainsville, AL 35988.
Send comments to The Honorable Donnie Chandler, Mayor, City of Rainsville, P.O. Box 309, Rainsville, AL 35986.

**Town of Collinsville**

Maps are available for inspection at 39 Post Office Street, Collinsville, AL 35961.
Send comments to The Honorable Jimmy Carter, Mayor, Town of Collinsville, P.O. Box N, Collinsville, AL 35961.

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |

**Town of Hammondville**

Maps are available for inspection at 37699 U.S. Highway 11, Hammondville, AL 35989.
Send comments to The Honorable Larry Watson, Mayor, Town of Hammondville, P.O. Box 329, Valley Head, AL 35989.

**Town of Shiloh**

Maps are available for inspection at 111 Grand Avenue, Suite 200, Fort Payne, AL 35967.
Send comments to The Honorable Charles D. Liles, Mayor, Town of Shiloh, P.O. Box 924, Rainsville, AL 35986.

**De Kalb County (Unincorporated Areas)**

Maps are available for inspection at 111 Grand Avenue, Suite 200, Fort Payne, AL 35967.
Send comments to The Honorable Sid Holcomb, Chairman, DeKalb County, 111 Grand Avenue, Suite 200, Fort Payne, AL 35967.

**Escambia County, Alabama and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Big Escambia Creek | U.S. 29 and U.S. 31 Crossing | None | +73 | Escambia County (Unincorporated Areas). |
| | Approximately 8,000 feet upstream of U.S. 9 and U.S. 31 Crossing. | None | +78 | |
| Burnt Corn | Approximately 6,200 feet upstream of confluence with Murder Creek. | None | +88 | Escambia County (Unincorporated Areas). |
| | Approximately 1,500 feet upstream of confluence with Little Juniper Creek. | None | +109 | |
| Conecuh River | Approximately 6,000 feet upstream of confluence with Murder Creek. | None | +79 | Town of Riverview, Escambia County (Unincorporated Areas). |
| | Approximately 31,000 feet upstream of confluence with Murder Creek. | None | +86 | |
| Franklin Mill Creek | Approximately 4,000 feet upstream of confluence with Murder Creek. | None | +69 | Escambia County (Unincorporated Areas). |
| | Approximately 4,000 feet upstream of Booth Boulevard Crossing. | None | +91 | |
| King Branch | Confluence with Murder Creek | None | +90 | Escambia County (Unincorporated Areas). |
| | Martin Luther King Drive Crossing | None | +109 | |
| Mantle Branch | Confluence with Conecuh River | None | +82 | Escambia County (Unincorporated Areas). |
| | Forrest Avenue (U.S. 29) Crossing | None | +82 | |
| Murder Creek | Approximately 11,000 feet upstream of confluence with Conecuh River. | None | +81 | Escambia County (Unincorporated Areas). |
| | Approximately 10,000 feet upstream of confluence with King Branch. | None | +95 | |

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

**ADDRESSES**

**Town of Riverview**

Maps are available for inspection at 4190 Highway 41, Brewton, AL 36426.
Send comments to The Honorable Carl O. Smith, Mayor, Town of Riverview, PO Box 2368, Riverview, AL 36427.

**Escambia County (Unincorporated Areas)**

Maps are available for inspection at 314 Belleville Avenue, Brewton, AL 36426.
Send comments to The Honorable Larry W. White, Chairman, Escambia County Commission, P.O. Box 848, Brewton, AL 36427.

**Etowah County, Alabama, and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Coosa River | St. Clair County Line | None | +511 | City of Southside. |
| | Approximately 25,000 feet upstream of SR 77 Crossing. | None | +516 | |
| Coosa River | Approximately 1,000 feet downstream of confluence with Big Cove Creek. | None | +524 | Town of Hokes Bluff. |
| | Approximately 35,000 feet upstream of confluence with Big Cove Creek. | None | +529 | |
| Greenway Creek | Hooke Street Crossing | None | +523 | City of Gadsden. |
| | Springfield Avenue Crossing | None | +530 | |
| Little Cove Creek | U.S. 278 Crossing | None | +524 | Town of Hokes Bluff. |
| | Approximately 6,000 feet upstream of U.S. 278 Crossing. | None | +524 | |
| Locust Fork of Black Warrior River. | Approximately 7,500 feet downstream of Payne Branch. | None | +821 | Town of Walnut Grove, Etowah County (Unincorporated Areas). |

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| | Approximately 1,000 feet upstream of Payne Branch | None | +827 | |
| Payne Branch | Confluence with Locust Fork of Black Warrior River | None | +824 | Town of Walnut Grove. |
| | Ashville Road Crossing | None | +836 | |
| Town Creek | Approximately 3,000 feet upstream of Tuscaloosa Avenue Crossing. | None | +544 | City of Gadsden, Etowah County (Unincorporated Areas). |
| | Approximately 4,400 feet upstream of Tuscaloosa Avenue Crossing. | None | +554 | |

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

**ADDRESSES**

**City of Gadsden**

Maps are available for inspection at 90 Broad Street, Gadsden, AL 35901.
Send comments to The Honorable Steve Means, Mayor, City of Gadsden, 90 Broad Street, Gadsden, AL 35901.

**City of Southside**

Maps are available for inspection at 2255 Highway 77, Southside, AL 35907.
Send comments to The Honorable Wally Burns, Mayor, City of Southside, 2255 Highway 77, Southside, AL 35907.

**Town of Hokes Bluff**

Maps are available for inspection at 3301 Alford Bend Road, Hokes Bluff, AL 35903.
Send comments to The Honorable Tim Langdale, Mayor, Town of Hokes Bluff, 3301 Alford Bend Road, Hokes Bluff, AL 35903.

**Town of Walnut Grove**

Maps are available for inspection at 4012 Gadsden-Blountsville Rd., Walnut Grove, AL 35990.
Send comments to The Honorable Autry Works, Mayor, Town of Walnut Grove, 4012 Gadsden-Blountsville Road, Walnut Grove, AL 35990.

**Etowah County (Unincorporated Areas)**

Maps are available for inspection at 800 Forrest Avenue, Gadsden, AL 35901.
Send comments to The Honorable Tim N. Choate, Chairman, Etowah County Commission, 800 Forrest Avenue, Gadsden, AL 35901.

**Marshall County, Alabama, and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Guntersville Lake | Approximately 5,000 feet downstream of SR 69 Crossing. | None | +596 | City of Guntersville, Marshall County (Unincorporated Areas). |
| | SR 69 Crossing | None | +596 | |

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

**ADDRESSES**

**City of Guntersville**

Maps are available for inspection at 341 Gunter Avenue, Guntersville, AL 35976.
Send comments to The Honorable Robert Henbree, Mayor, City of Guntersville, 341 Gunter Avenue, Guntersville, AL 35976.

**Marshall County (Unincorporated Areas)**

Maps are available for inspection at 424 Blount Avenue, Guntersville, AL 35976.
Send comments to The Honorable Billy Cannon, Chairman, Marshall County Commission, 424 Blount Avenue, Guntersville, AL 35976.

**Talladega County, Alabama, and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Blue Eye Creek | Approximately 2,000 feet downstream of McLain Avenue Crossing. | None | +482 | Talladega County (Unincorporated Areas) |
| | Approximately 1,000 feet upstream of McLain Avenue Crossing. | None | +486 | |
| Coosa River | Approximately 13,000 feet downstream of confluence with Talladega Creek. | None | +413 | Talladega County (Unincorporated Areas) |
| | Approximately 3,000 feet downstream of confluence with Talladega Creek. | None | +414 | |
| Coosa River | Shelby County Line | None | +418 | Town of Lincoln, Talladega County (Unincorporated Areas). |
| | Calhoun County Line | None | +479 | |
| Crooked Creek | Approximately 4,500 feet downstream of 3rd Street Crossing. | None | +521 | Talladega County (Unincorporated Areas). |
| | Approximately 2,000 feet downstream of 3rd Street crossing. | None | +526 | |

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Griffin Branch | Approximately 7,800 feet downstream of Bon Air Road Crossing. | None | +421 | City of Childersburg, Town of Bon Air, Talladega County (Unincorporated Areas). |
| | U.S. Highway 280 Crossing | None | +469 | |
| Shirtee Creek | Odena Road Crossing | None | +465 | Talladega County (Unincorporated Areas). |
| | Approximately 3,000 feet upstream of Odena Road Crossing. | None | +471 | |
| Talladega Creek | Confluence with Coosa River | None | +417 | Talladega County (Unincorporated Areas). |
| | Approximately 8,000 feet upstream of confluence with Coosa River. | None | +418 | |
| Upper Shirtee Creek | Approximately 1,000 feet downstream of Old Birmingham Highway Crossing. | None | +516 | Talladega County (Unincorporated Areas). |
| | Old Birmingham Highway Crossing | None | +518 | |

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

**ADDRESSES**

**City of Childersburg**

Maps are available for inspection at 118 Sixth Avenue, SW, Childersburg, AL 35044.
Send comments to The Honorable B. J. Meeks, Mayor, City of Childersburg, 118 Sixth Avenue, SW, Childersburg, AL 35044.

**Town of Bon Air**

Maps are available for inspection at 500 Institute Lane, Talladega, AL 35161.
Send comments to The Honorable Pam Pilketon, Mayor, Town of Bon Air, P.O. Box 117, Bon Air, AL 35032.

**Town of Lincoln**

Maps are available for inspection at 33 Complex Drive, Linclon, AL 35096.
Send comments to The Honorable Carroll L. Watson, Mayor, City of Lincoln, 33 Complex Drive, Lincoln, AL 35096.

**Talladega County (Unincorporated Areas)**

Maps are available for inspection at 500 Institute Lane, Talladega, AL 35161.
Send comments to The Honorable Jimmy Roberson, Chairman, County Commission of Talladega, 1 Courthouse Square, Talladega, AL 35161.

**Columbia County, Florida and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Cannon Creek | Approximately 450 feet upstream of the confluence with Clay Hole Creek. | None | +70 | Columbia County (Unincorporated Areas). |
| | Approximately 650 feet upstream of Quail Heights Boulevard. | None | +136 | |
| Montgomery Outlet Stream | Approximately 900 feet upstream of the confluence with Alligator Lake. | *104 | +104 | City of Lake City. |
| | At the confluence with Lake Montgomery | *131 | +131 | |
| Lake Montgomery | Entire shoreline | *131.3 | +130.8 | City of Lake City. |
| Rose Creek | Approximately 1,350 feet upstream of the confluence with Clay Hole Creek. | None | +50 | Columbia County (Unincorporated Areas). |
| | Approximately 600 feet upstream of SW Tustennugee Avenue. | None | +88 | |
| Ponding Area 1 | An approximately 77 acre area at the intersection of Upchurch Road and Prairie Road. | None | +91.3 | Columbia County (Unincorporated Areas). |
| Ponding Area 2 | An approximately 10 acre area at the intersection of Troy Road and Callanan Road. | None | +93.6 | Columbia County (Unincorporated Areas). |
| Ponding Area 3a | An approximately 25 acre area at the intersection of County Road 252 and Holly Drive. | None | +103.2 | Columbia County (Unincorporated Areas). |
| Ponding Area 3b | An approximately 5 acre area at the intersection of Pine Lane and Forest Avenue. | None | +107.7 | Columbia County (Unincorporated Areas) |
| Ponding Area 3c | An approximately 5 acre area just west of Cherokee Road. | None | +104.2 | Columbia County (Unincorporated Areas). |
| Ponding Area 3d | An approximately 11 acre area just east of Cherokee Road. | None | +104.5 | Columbia County (Unincorporated Areas). |
| Ponding Area 3e | An approximately 5 acre area just east of Johnathan Road. | None | +105.3 | Columbia County (Unincorporated Areas). |

* National Geodetic Vertical Datum.
# Depth in feet above ground
+ North American Vertical Datum.

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |

**ADDRESSES**

**Columbia County (Unincorporated Areas)**

Maps are available for inspection at the Columbia County Courthouse, 173 Northeast Hernando Avenue, Lake City, Florida.
Send comments to Mr. Dale Williams, Columbia County Manager, P.O. Box 1529, Lake City, Florida 32056–1529.

**City of Lake City**

Maps are available for inspection at the Lake City City Hall, 205 North Marion Avenue, Lake City, Florida.
Send comments to Mr. Grayson Cason, Lake City City Manager, 205 North Marion Avenue, Lake City, Florida 32055.

**Gulf County, Florida and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Five Acre Farm Creek East .. | Approximately 800 feet downstream of County Route 381. | None | +23 | Gulf County (Unincorporated Areas). |
| | Approximately 1.0 mile upstream of County Route 381. | None | +26 | |
| Five Acre Farm Creek West | Approximately 1.6 miles downstream of State Route 71. | None | +25 | Gulf County (Unincorporated Areas). |
| | Just upstream of State Route 71 ..... | None | +26 | |
| Stone Mill Creek ..... | Approximately 0.4 mile downstream of State Route 71 | None | +30 | Gulf County (Unincorporated Areas), City of Wewahitchka. |
| | Approximately 2.8 miles upstream of State Route 71 | None | +31 | |

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

**ADDRESSES**

**Gulf County (Unincorporated Areas)**

Maps are available for inspection at the Gulf County Courthouse, 1000 Cecil G. Costin, Sr. Boulevard, Room 302, Port St. Joe, Florida.
Send comments to Mr. Carmen L. McLemore, Chairman of the Gulf County Board of Commissioners, 1000 Cecil G. Costin, Sr. Boulevard, Port St. Joe, Florida 32456.

**City of Wewahitchka**

Maps are available for inspection at the Wewahitchka City Hall, 109 South 2nd Street, Wewahitchka, Florida.
Send comments to Mr. Donald Minchew, Wewahitchka City Manager, 109 South 2nd Street, Wewahitchka, Florida 32465.

**Seminole County, Florida, and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Deep Lake ..... | ..... | None | +55 | Seminole County (Unincorporated Areas) |
| Lake Pickett ..... | ..... | None | +58 | Seminole County (Unincorporated Areas) |

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

**ADDRESSES**

**Seminole County (Unincorporated Areas)**

Maps are available for inspection at Seminole County Manager, 1101 East First Street, Sanford, FL 32771.
Send comments to Mr. Don Fisher, County Manager, Seminole County Services Building, 1101 East First Street, Sanford, FL 32771.

**Suwannee County, Florida and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Closed Basin Area 1A ..... | An area located approximately 0.8 mile southwest of the intersection of 104th Street and County Road 49. | None | +91 | Suwannee County (Unincorporated Areas) |
| Closed Basin Area 1B ..... | An area located approximately 460 feet east of the intersection of 112th Street and 109th Drive. | None | +100 | Suwannee County (Unincorporated Areas). |
| Closed Basin Area 1C ..... | An area located approximately 0.5 mile west of the intersection of 112th Street and County Road 49. | None | +91 | Suwannee County (Unincorporated Areas). |
| Closed Basin Area 1D ..... | An area located approximately 900 feet east of the intersection of 112th Street and County Road 49. | None | +115 | Suwannee County (Unincorporated Areas). |
| Closed Basin Area 1E ..... | An area located approximately 0.4 mile east of the intersection of 112th Street and County Road 49. | None | +125 | Suwannee County (Unincorporated Areas). |
| Closed Basin Area 1F ..... | An area located approximately 550 feet southeast of the intersection of 114th Terrace and County Road 49. | None | +104 | Suwannee County (Unincorporated Areas). |
| Closed Basin Area 2A ..... | An area located approximately 1,250 feet southeast of the intersection of 99th Lane and 146th Street. | None | +99 | Suwannee County (Unincorporated Areas). |
| Closed Basin Area 2B ..... | An area located approximately 0.25 mile northeast of the intersection of 99th Lane and 146th Street. | None | +98 | Suwannee County (Unincorporated Areas). |

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Closed Basin Area 2C | An area located approximately 0.4 mile east of the intersection of 99th Lane and 146th Street. | None | +93 | Suwannee County (Unincorporated Areas). |
| Closed Basin Area 2D | An area located approximately 0.6 mile southeast of the intersection of 99th Lane and 146th Street. | None | +93 | Suwannee County (Unincorporated Areas). |
| Closed Basin Area 2E | An area located approximately 0.7 mile northeast of the intersection of 99th Lane and 146th Street. | None | +104 | Suwannee County (Unincorporated Areas). |

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

**ADDRESSES**

**Suwannee County (Unincorporated Areas)**

Maps are available for inspection at the Suwannee County Coordinator's Office, Suwannee County Courthouse, 200 South Ohio/MLK Jr. Avenue, Live Oak, Florida.

Send comments to Mr. John Wooley, Suwannee County Coordinator, 224 Pine Avenue, Live Oak, Florida 32064.

**Union County, Georgia and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Akins Creek/Cooks Cove Branch. | At confluence with Nottely River (Upper Reach) | None | *1,829 | Union County (Unincorporated Areas). |
| | Approximately 1,690 feet upstream of Town Mountain Road. | None | *1,903 | |
| Anderson Creek | At confluence with Coosa Creek | None | *1,805 | Union County (Unincorporated Areas). |
| | Approximately 2,660 feet upstream of the confluence with Coosa Creek. | None | *2,015 | |
| Arkaqua Creek | At confluence with Nottely River (Upper Reach) | None | *1,832 | Union County (Unincorporated Areas). |
| | Approximately 11,170 feet upstream of Lower Trackrock Road. | None | *2,015 | |
| Barnes Creek | At confluence with Ivylog Creek | None | *1,790 | Union County (Unincorporated Areas). |
| | Just upstream of Ivylog Road | None | *1,810 | |
| Brasstown Creek | Approximately 1,100 feet downstream of Young Harris Highway. | None | *1,889 | Union County (Unincorporated Areas). |
| | Approximately 3,500 feet upstream of Young Harris Highway. | None | *1,931 | |
| Butternut Creek | At confluence with Nottely River (Upper Reach) | *1,786 | *1,783 | City of Blairsville, Union County (Unincorporated Areas). |
| | Approximately 8,210 feet upstream of Memory Gardens Drive. | None | *1,950 | |
| Conley Creek | Approximately 2,750 feet downstream of Murphy Highway. | None | *1,788 | Union County (Unincorporated Areas). |
| | Approximately 70 feet upstream of Ivylog Road | None | *1,852 | |
| Coosa Creek | Approximately 90 feet downstream of Blue Ridge Highway. | None | *1,802 | Union County (Unincorporated Areas). |
| | At confluence of East and West Forks Coosa Creek | None | *1,865 | |
| Dooley Creek | Approximately 130 feet downstream of John Smith Road West. | None | *1,653 | Union County (Unincorporated Areas). |
| | Approximately 855 feet upstream of R.T. Lance Road | None | *1,784 | |
| East Fork Coosa Creek | At confluence with Coosa Creek | None | *1,865 | Union County (Unincorporated Areas). |
| | Approximately 3,030 feet upstream of Crawley Gap Road. | None | *1,950 | |
| Ivylog Creek | Approximately 100 feet downstream of the confluence of Barnes Creek. | None | *1,789 | Union County (Unincorporated Areas). |
| | Approximately 3,280 feet upstream of Gumlog Road | None | *1,899 | |
| Jones Creek | At confluence with Youngcane Creek | None | *1,877 | Union County (Unincorporated Areas). |
| | Approximately 360 feet upstream of R Way Road | None | *1,955 | |
| Kiutuestia Creek | Approximately 50 feet downstream of Kiutuestia Creek Road. | None | *1,783 | Union County (Unincorporated Areas). |
| | Just downstream of Pleasant Grove Road | None | *1,884 | |
| Little Youngcane Creek | At confluence with Youngcane Creek | None | *1,877 | Union County (Unincorporated Areas). |
| | Approximately 50 feet upstream of Blue Ridge Highway. | None | *1,935 | |

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Nottely Lake | Entire Shoreline | None | *1,783 | Union County (Unincorporated Areas). |
| Nottely River (Lower Reach) | Approximately 3,465 feet downstream of John Smith Road West. | None | *1,600 | Union County (Unincorporated Areas). |
| | Approximately 8,180 feet upstream of John Smith Road West. | None | *1,615 | |
| Nottely River (Upper Reach) | Approximately 800 feet upstream of State Highway 515. | None | *1,782 | Union County (Unincorporated Areas). |
| | Approximately 50 feet upstream of Hatchet Creek Road. | None | *2,021 | |
| Stink Creek | At confluence with Nottely River (Upper Reach) | None | *1,889 | Union County (Unincorporated Areas). |
| | Approximately 200 feet upstream of Wolfstake Road East. | None | *2,007 | |
| Suches Creek | At confluence with Toccoa River | None | *2,107 | Union County (Unincorporated Areas). |
| | Approximately 6,520 feet upstream of Old Robert Harkins Drive. | None | *2,141 | |
| Toccoa River | Approximately 11,960 feet downstream of Parker Road. | None | *2,407 | Union County (Unincorporated Areas). |
| | Approximately 2,220 feet upstream of Gooch Road South. | None | *2,156 | |
| Town Creek | At confluence with Nottely River (Upper Reach) | *1,868 | *1,869 | Union County (Unincorporated Areas). |
| | Approximately 275 feet upstream of Fain Branch Road. | None | *1,994 | |
| Trackrock Branch | At confluence with Arkaqua Creek | None | *1,890 | Union County (Unincorporated Areas). |
| | Approximately 3,900 feet upstream of the confluence with Arkaqua Creek. | None | *1,920 | |
| West Fork Coosa Creek/ Hicks Gap Branch. | At confluence with Coosa Creek | None | *1,865 | Union County (Unincorporated Areas). |
| | Approximately 70 feet upstream of Mulky Gap Road | None | *1,945 | |
| Wolf Creek | At confluence with Nottely River (Upper Reach) | *1,865 | *1,866 | Union County (Unincorporated Areas). |
| | Approximately 1,375 feet upstream of Meadow Drive | None | *1,913 | |
| Youngcane Creek | Approximately 225 feet downstream of State Highway 515. | None | *1,817 | Union County (Unincorporated Areas). |
| | Approximately 2,420 feet upstream of Burnette Road | None | *1,984 | |

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

**ADDRESSES**

**City of Blairsville**

Maps are available for inspection at the Community Map Repository, City Hall, Blairsville, Georgia 30514.
Send comments to The Honorable Ray E. Potts, Mayor, City of Blairsville, City Hall, P.O. Box 307, Blairsville, Georgia 30514.

**Union County (Unincorporated Areas)**

Maps are available for inspection at the Community Map Repository, 114 Courthouse Street, Blairsville, Georgia 30512.
Send comments to Mr. Lamar Paris, Sole Commissioner, Union County, County Commissioner's Office, 114 Courthouse Street, Blairsville, Georgia 30512.

**Fall River County, South Dakota, and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Fall River | Confluence with Cheyenne River | None | +3,046 | The City of Hot Springs, Fall River County (Unincorporated Areas). |
| | Approximately 0.25 miles upstream of Battle Mountain Avenue. | +3,475 | +3,476 | |

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

**ADDRESSES**

**Fall River County (Unincorporated Areas)**

Maps are available for inspection at: County Courthouse, 906 North River Street, Hot Springs, South Dakota.
Send comments to: Mr. Glen Reaser, Chairman, Fall River County Commissioners, 906 North River Street, Hot Springs, South Dakota, 57747.

**City of Hot Springs**

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Maps are available for inspection at: City Hall, 303 North River Street, Hot Springs, South Dakota. Send comments to: The Honorable Carl Oberlitner, Mayor, City of Hot Springs, 303 North River Street, Hot Springs, South Dakota, 57747. | | | | |
| **Cumberland County, Tennessee, and Incorporated Areas** | | | | |
| Obed River | At Interstate Highway 40 | None | +1,674 | Cumberland County (Unincorporated Areas), City of Crossville. |
| | At confluence with Obed Creek | None | +1,702 | |
| Obed Creek | At confluence with Obed River | None | +1,702 | City of Crossville. |
| | Approximately 1,500 feet upstream of confluence with Town Branch. | None | +1,736 | |

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

**ADDRESSES**

**Cumberland County (Unincorporated Areas)**

Maps are available for inspection at: Cumberland County, 2 North Main Street, Suite 203, Crossville, TN 38555.
Send comments to the Honorable Brock Hill, Mayor, Cumberland County, 2 North Main Street, Suite 203, Crossville, TN 38555.

**City of Crossville**

Maps are available for inspection at: Cumberland County EOC, 42 Southbend Drive, Crossville, TN 38555.
Send comments to the Honorable J.H. Graham, Mayor, City of Crossville, 99 Municipal Avenue, Crossville, TN 38555.

| | | | | |
|---|---|---|---|---|
| **Fayette County Tennessee, and Incorporated Areas** | | | | |
| Cane Creek | At the confluence of Little Cypress Creek | *278 | +278 | Fayette County, (Unincorporated Areas), Town of Gallaway. |
| | Approximately 7,000 feet upstream of Centerpoint Drive. | None | +297 | |
| Cane Creek Tributary | At the confluence with Cane Creek | *285 | +284 | Town of Gallaway. |
| | Approximately 800 feet upstream of Highway 70 | *297 | +295 | |
| Cypress Creek | Just upstream of Highway 64 | *297 | +296 | Fayette County (Unincorporated Areas). |
| | Approximately 1,300 feet upstream of State Highway 196. | None | +310 | |
| Grays Creek | Approximately 1,980 feet southwest of the intersection of Seward Drive and Jacobs Way. | None | +343 | Fayette County (Unincorporated Areas). |
| | Approximately 4,980 feet southwest of the intersection of Seward Drive and Walnut Hill Way. | None | +359 | |
| North Fork Wolf River | At the confluence with Wolf River | *340 | +339 | Fayette County (Unincorporated Areas). |
| | Approximately 11,400 feet upstream of State Highway 76. | *361 | +361 | |

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

**ADDRESSES**

**Town of Gallaway**

Maps are available for inspection at 607 Watson Drive, Gallaway, TN 38036.
Send comments to The Honorable Elna Watson, Mayor, 607 Watson Drive, Gallaway, TN 38036.

**Fayette County (Unincorporated Areas)**

Maps are available for inspection at 16265 Highway 64, Suite 4, Somerville, TN 38068.
Send comments to The Honorable Rhea Taylor, Mayor, 10395 North Main Street, Somerville, TN 38068.

| | | | | |
|---|---|---|---|---|
| **Guadalupe County, Texas, and Incorporated Areas** | | | | |
| Cibolo Creek | Approximately 7,500 feet downstream from intersection with I–35. | *735 | +740 | City of Selma. |
| | Approximately 4,800 feet upstream from intersection with I–35. | *764 | +763 | |
| Dietz Creek | Approximately 2,000 feet downstream of I–35 | *749 | +751 | City of Selma. |
| | Approximately 4,000 feet upstream from I–35 | None | +767 | |
| Guadalupe River | Approximately 2,500 feet upstream from Confluence with Long Creek. | *550 | +558 | City of New Braunfels. |
| | At East County Line Road | *587 | +598 | |

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |

* National Geodetic Vertical Datum.
* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

**ADDRESSES**

**City of New Braunfels**

Maps are available for inspection at 424 South Castell, New Braunfels, TX 78130.
Send comments to The Honorable Bruce Boyer, Mayor, City of Braunfels, 424 South Castell, New Braunfels, TX 78130.

**City of Selma**

Maps are available for inspection at 9375 Corporate Dr., Selma, TX 78154.
Send comments to The Honorable James Parma, Mayor, City of Selma, 9375 Corporate Dr., Schertz, TX 78154.

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

Dated: December 22, 2006.

**David I. Maurstad,**

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

[FR Doc. E7–133 Filed 1–8–07; 8:45 am]

BILLING CODE 9110–12–P

# Notices

Federal Register

Vol. 72, No. 5

Tuesday, January 9, 2007

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 COMMERCE

### International Trade Administration

**[A–485–803]**

### Notice of Extension of Final Results of the 2004–2005 Antidumping Duty Administrative Review of Certain Cut-to-Length Carbon Steel Plate From Romania

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**DATES:** *Effective Date:* January 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Dena Crossland or John Drury, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3362 or (202) 482–0195, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On September 11, 2006, the Department of Commerce (''the Department'') published the preliminary results of this administrative review of certain cut-to-length carbon steel plate (''cut-to-length plate'') from Romania. *See Certain Cut-to-Length Carbon Steel Plate from Romania: Preliminary Results of the Antidumping Duty Administrative Review and Partial Rescission,* 71 FR 53377 (September 11, 2006) (''*Preliminary Results*''). In the *Preliminary Results* we stated that we would make our final determination for the antidumping duty review no later than 120 days after the date of publication of the preliminary results (*i.e.,* January 9, 2007).

#### Extension of Time Limit for Final Results

The Department is extending the time limit for the final results of the administrative review of the antidumping duty order on cut-to-length plate from Romania. This review covers the period August 1, 2004, through July 31, 2005.

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary results, to issue its final results by an additional 60 days. Due to the complexity of issues raised in this review segment, including the selection of date of sale for respondent's U.S. sales and the calculation of inland freight to port expenses, the completion of the final results within the 120-day period is not practicable.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by an additional 30 days until no later than February 8, 2007.

Dated: December 28, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretary, for Import Administration.*

[FR Doc. E7–55 Filed 1–8–07; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–848]**

### Freshwater Crawfish Tail Meat From the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative and New Shipper Reviews

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**DATES:** *Effective Date:* January 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Erin C. Begnal or Scot Fullerton, 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) 482–1442 or (202) 482–1386, respectively.

#### Background

On October 10, 2006, the Department of Commerce (''Department'') published the preliminary results of the administrative and new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China for the period September 1, 2004, through August 31, 2005. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2005 Administrative and New Shipper Reviews,* 71 FR 59432 (October 10, 2006) (''Preliminary Results''). The final results of these reviews are currently due by February 7, 2007.

#### Extension of Time Limit for Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and section 351.213(h)(1) of the Department's regulations, the Department shall issue final results in an administrative review of an antidumping duty order within 120 days after the date on which the notice of preliminary results is published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within the specified time period, section 751(a)(3)(A) of the Act allows the Department to extend this time period to 180 days.

The Department has determined that completion of the final results of the aligned administrative and new shipper reviews within the 120-day period is impracticable. The Department requires additional time to address the concerns of the interested parties as raised in their November 9, 2006, case briefs, and November 14, 2006, rebuttal briefs. Therefore, the Department is fully extending the time limit for completion of these final results to April 8, 2007, in accordance with section 751(a)(3)(A) of the Act. However, because April 8, 2007, falls on a Sunday, the final results will be due no later than, April 9, 2007, the next business day.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 27, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E7–44 Filed 1–8–07; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–891]**

### Hand Trucks and Certain Parts Thereof From the People's Republic of China; Preliminary Results and Partial Rescission of Administrative Review and Preliminary Results of New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review and a new shipper review of the antidumping duty order on hand trucks and certain parts thereof (hand trucks) from the People's Republic of China (PRC) covering the period December 1, 2004, through November 30, 2005. We have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in the final results of these reviews, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

**DATES:** *Effective Date:* January 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Eastwood or Nichole Zink, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–0049, respectively.

### Background

On December 1, 2005, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on hand trucks from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 70 FR 72109 (Dec. 1, 2005).

In accordance with 19 CFR 351.214(c), on December 27, 2005, the Department received a request to conduct both an administrative review and a new shipper review of the antidumping duty order from Since Hardware (Guangzhou) Co., Ltd. (Since Hardware), a producer/exporter of subject merchandise in the PRC.

In accordance with 19 CFR 351.213(b)(1), on December 30, 2005, the petitioners, Gleason Industrial Products, Inc. and Precision Products, Inc., requested that the Department conduct an administrative review for the following producers and/or exporters of the subject merchandise: Qingdao Huatian Hand Truck Co., Ltd. (Huatian); Qingdao Future Tool, Inc. (Future Tool); Qingdao Taifa Group Co. Ltd./Qindao Yinzhu Hang Truck Factory (collectively, ''Taifa''); True Potential Co., Ltd. (True Potential); and Shandong Machinery I&E Group Corp. (Shandong Machinery). Also on December 30, 2005, the Department received a request to conduct an administrative review from Aulita Quindao Manufacturing Co., Ltd. (Aulita), a producer/exporter of the subject merchandise, in accordance with 19 CFR 351.213(b)(2).

On January 3, 2006, Clipper Products, Inc., a U.S. importer of the subject merchandise, requested that the Department conduct an administrative review of Forecarry Corp. (Forecarry), an exporter of subject merchandise located in a third country, and its PRC supplier, Formost Plastics & Metalworks (Jiaxing) Co., Ltd. (Formost).

On February 1, 2006, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of hand trucks from the PRC for the period May 24, 2004, through November 30, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 71 FR 5241 (Feb. 1, 2006). On February 3, 2006, the Department also published in the **Federal Register** a notice of the initiation of the new shipper review of Since Hardware. *See Hand Trucks and Certain Parts Thereof from the People's Republic of China: Initiation of New Shipper Review,* 71 FR 5810 (Feb. 3, 2006).

On February 8, 2006, we issued a new shipper questionnaire to Since Hardware. We received Since Hardware's response to Section A of this questionnaire on February 23, 2006.

In February 2006 we issued quantity and value questionnaires to Aulita, Forecarry, Formost, Future Tool, Huatian, Shandong Machinery, True Potential, and Taifa. We received responses to these questionnaires between February 22 and March 3, 2006, from all companies except Aulita and Shandong Machinery.

On February 13, 2006, Since Hardware stated that it did not object to a rescission of its requested administrative review, so long as its sale was examined in the context of the new shipper review. *See* the ''Partial Rescission of Administrative Review'' section of this notice, below, for further discussion.

On February 15, 2006, we issued letters to all parties in both the administrative review and the new shipper review informing them of the correct period of review (POR). The POR for this segment of the proceeding is December 1, 2004, through November 30, 2005. On February 24, 2006, we published in the **Federal Register** a correction to the POR for the administrative review. **See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 71 FR 9519 (Feb. 24, 2006).

On February 28, 2006, Aulita withdrew its request for an administrative review within the time limits specified under 19 CFR 351.213(d)(1). *See* the ''Partial Rescission of Administrative Review'' section of this notice, below, for further discussion.

On March 3, 2006, we issued a letter to Shandong Machinery providing a second opportunity to respond to the Department's request for quantity and value information. Shandong Machinery did not respond to the Department's March 3, 2006, letter. *See* the ''Facts Available'' section of this notice, below, for further discussion.

On March 17, 2006, the Department determined that it was not practicable to examine individually all of the companies covered by the 2004–2005 administrative review, and thus it limited its examination to the largest producers/exporters that could reasonably be reviewed, pursuant to section 777A(c)(2)(B) of the Tariff Act of 1930, as amended (the Act). Therefore, on this date the Department selected Taifa as the sole respondent required to submit a full questionnaire response in the administrative review. *See* the March 17, 2006, memorandum from Irene Darzenta Tzafolias, Acting Office Director, to Stephen Claeys, Deputy Assistant Secretary, entitled ''Antidumping Duty Administrative Review of Hand Trucks and Certain Parts Thereof from the People's Republic of China: Selection of Respondents.''

On March 20, 2006, we issued the antidumping duty questionnaire to Taifa. Also on March 20, 2006, we issued a separate-rate questionnaire (*i.e.*, section A of the antidumping duty questionnaire) to Future Tool, Huatian,

and True Potential. We did not issue separate-rate questionnaires to Forecarry or Formost, because the former company is a third-country reseller (and thus it automatically qualifies for a separate rate; *see* the ''Separate Rates'' section, below, for further discussion) and the latter company informed the Department in its response to the quantity and value questionnaire that it had no exports to the United States to unaffiliated customers during the POR. Also on March 20, 2006, we issued a section A supplemental questionnaire to Since Hardware.

On March 31, 2006, the Department invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production (FOPs) in the new shipper review. Also on March 31, 2006, we received Since Hardware's responses to sections C and D of the Department's questionnaire.

On April 10, 2006, we received responses to section A of the questionnaire from Future Tool, Huatian, and True Potential, as well as a response from Since Hardware to the supplemental section A questionnaire. On April 20, 2006, we issued a supplemental questionnaire regarding sections A, C, and D to Since Hardware.

On May 1, 2006, Since Hardware agreed to waive the time limits applicable to the new shipper review and to permit the Department to conduct the new shipper review concurrently with the administrative review.

On May 2, 2006, the petitioners withdrew their request for an administrative review of Taifa, the company chosen as the mandatory respondent, and Huatian. *See* the ''Partial Rescission of Administrative Review'' section of this notice, below, for further discussion.

On May 4, 2006, we received a response from Since Hardware to the April 20, 2006, supplemental questionnaire.

On May 9, 2006, the Department reconsidered its decision to select only one company to provide a full questionnaire response in this review, and named the remaining three participating respondents as mandatory respondents. *See* the May 9, 2006, memorandum from Elizabeth Eastwood to Irene Darzenta Tzafolias entitled, ''Antidumping Duty Administrative Review of Hand Trucks and Certain Parts Thereof from the People's Republic of China: Revised Selection of Respondents.'' As a result, on this date, we issued sections A, C, and D of the antidumping duty questionnaire to Forecarry and sections C and D of the questionnaire to Future Tool and True Potential. On May 30, 2006, we received Forecarry's response to section A of the Department's questionnaire.

On May 31, 2006, the Department published in the **Federal Register** a notice indicating that it would conduct the new shipper review of Since Hardware concurrently with the 2004–2005 administrative review. *See Hand Trucks and Certain Parts Thereof from the People's Republic of China: Notice of Postponement of Time Limits for New Shipper Antidumping Duty Review in Conjunction with Administrative Review,* 71 FR 30867 (May 31, 2006). On June 8 and 28, 2006, respectively, we received Forecarry's responses to sections C and D of the Department's questionnaire.

On June 13 and June 23, 2006, we issued additional supplemental questionnaires to Since Hardware. On June 29, 2006, we received True Potential's response to sections C and D of the Department's questionnaire. Future Tool did not submit a response to sections C and D of the Department's questionnaire. *See* the ''Facts Available'' section of this notice, below, for further discussion.

On June 29, 2006, the Department solicited comments on surrogate country selection and publicly available information to value FOPs in the administrative review.

On June 30 and July 10, 2006, respectively, we received responses from Since Hardware to the Department's June 13 and 23, 2006, supplemental questionnaires.

From July 17 through 21, 2006, the Department conducted verification of the responses of Since Hardware at its offices in the PRC.

On August 3, 2006, the Department published in the **Federal Register** a notice of extension of time limits for the preliminary results of both the administrative and new shipper reviews until no later than January 2, 2007. *See Hand Trucks and Certain Parts Thereof From the People's Republic of China; Notice of Extension of Time Limits for Preliminary Results in Antidumping Duty Administrative Review and New Shipper Review,* 71 FR 44018 (Aug. 3, 2006).

On August 4, 2006, we issued a supplemental questionnaire to True Potential regarding its section A and C responses. On August 8, 2006, we issued a supplemental questionnaire to Forecarry regarding its section A through D responses. On August 18, 2006, we received True Potential's response to the section A and C supplemental questionnaire. On August 24, 2006, we issued a supplemental questionnaire to True Potential regarding its section D response. We received True Potential's response to this questionnaire on September 5, 2006. On September 15, 2006, we received Forecarry's response to the section A through D supplemental questionnaire. Also on September 15, 2006, the petitioners, Since Hardware, and True Potential submitted publicly available information for valuing the FOPs in both the administrative and new shipper reviews.

On October 19, 2006, we issued additional supplemental questionnaires regarding section D to Forecarry and True Potential. On October 24, 2006, we issued an additional supplemental questionnaire to Forecarry. On November 16, 2006, we received responses to these supplemental questionnaires from Forecarry and True Potential. On December 19, 2006, we issued a final supplemental questionnaire to Forecarry regarding outstanding deficiencies in its section D response. Forecarry's response to this questionnaire is due to the Department no later than January 3, 2007.

**Period of Review**

The POR covers December 1, 2004, through November 30, 2005.

**Scope of Order**

The product covered by this order consists of hand trucks manufactured from any material, whether assembled or unassembled, complete or incomplete, suitable for any use, and certain parts thereof, namely the vertical frame, the handling area and the projecting edges or toe plate, and any combination thereof.

A complete or fully assembled hand truck is a hand-propelled barrow consisting of a vertically disposed frame having a handle or more than one handle at or near the upper section of the vertical frame; at least two wheels at or near the lower section of the vertical frame; and a horizontal projecting edge or edges, or toe plate, perpendicular or angled to the vertical frame, at or near the lower section of the vertical frame. The projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the load.

That the vertical frame can be converted from a vertical setting to a horizontal setting, then operated in that horizontal setting as a platform, is not a basis for exclusion of the hand truck from the scope of this petition. That the vertical frame, handling area, wheels, projecting edges or other parts of the hand truck can be collapsed or folded is not a basis for exclusion of the hand truck from the scope of the petition.

That other wheels may be connected to the vertical frame, handling area, projecting edges, or other parts of the hand truck, in addition to the two or more wheels located at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition. Finally, that the hand truck may exhibit physical characteristics in addition to the vertical frame, the handling area, the projecting edges or toe plate, and the two wheels at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition.

Examples of names commonly used to reference hand trucks are hand truck, convertible hand truck, appliance hand truck, cylinder hand truck, bag truck, dolly, or hand trolley. They are typically imported under heading 8716.80.50.10 of the *Harmonized Tariff Schedule of the United States* (HTSUS), although they may also be imported under heading 8716.80.50.90. Specific parts of a hand truck, namely the vertical frame, the handling area and the projecting edges or toe plate, or any combination thereof, are typically imported under heading 8716.90.50.60 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope is dispositive.

Excluded from the scope are small two-wheel or four-wheel utility carts specifically designed for carrying loads like personal bags or luggage in which the frame is made from telescoping tubular material measuring less than ⅝ inch in diameter; hand trucks that use motorized operations either to move the hand truck from one location to the next or to assist in the lifting of items placed on the hand truck; vertical carriers designed specifically to transport golf bags; and wheels and tires used in the manufacture of hand trucks.

**Partial Rescission of Administrative Review**

Pursuant to 19 CFR 351.213(d)(1), the Secretary must rescind an administrative review if a party requesting a review withdraws the request within 90 days of the date of publication of the notice of initiation. As noted above, on April 28, 2006, Aulita timely withdrew its request for an administrative review, in accordance with 19 CFR 351.213(d)(1). In addition, on May 2, 2006, the petitioners withdrew their requests for an administrative review of Huatian and Taifa, in accordance with 19 CFR 351.213(d)(1). Therefore, because no other interested party requested a review of these companies, in accordance with 19 CFR 351.213(d)(1) and consistent with our practice, we are rescinding the administrative review of Aulita, Huatian, and Taifa for the POR.

Finally, as noted in the ''Background'' section of this notice, above, Since Hardware stated on February 13, 2006, that it did not object to the rescission of its requested administrative review, so long as its sale was examined in the context of the new shipper review. Therefore, because we are examining Since Hardware's sale in the context of the new shipper review, and in accordance with 19 CFR 351.213(d)(1), we are rescinding the administrative review for Since Hardware for the POR.

**Verification**

As provided in section 782(i) of the Act, we conducted verification of the sales and FOP information provided by Since Hardware. We used standard verification procedures, including on-site inspection of the manufacturer's facilities, and examination of relevant sales and financial records. Our verification results are set forth in the Since Hardware Verification Report. *See* the October 5, 2006, memorandum from Elizabeth Eastwood and Nichole Zink to James Maeder entitled, ''Verification of Sales and Factors Responses of Since Hardware (Guangzhou) Co., Ltd. in the New Shipper Review of Hand Trucks and Certain Parts Thereof from the People's Republic of China'' (Since Hardware Verification Report) for further discussion.

**Bona Fide Sale Analysis—Since Hardware**

For the reasons stated below, we preliminarily find that Since Hardware's reported U.S. sale during the POR is a *bona fide* sale, as required by 19 CFR 351.214(b)(2)(iv)(c), based on the totality of the facts on the record. Specifically, we find that the price reported for Since Hardware's hand truck sale was similar to the average unit value of U.S. imports of comparable hand trucks and certain parts thereof from the PRC during the POR. We also find that the quantity of the sale was within the range of shipment sizes of comparable goods imported from the PRC during the POR. Furthermore, Since Hardware provided documentation on a post-POR order at verification. The price of the post-POR order and the sale under review are identical. *See* the Since Hardware Verification Report at pages 9, 10, and Verification Exhibit 18. Finally, we looked to see whether the importer involved in this transaction is an actual commercial entity, and we found no reason to doubt the legitimacy of either the importing party or its agents involved in this new shipper review. *See* the December 29, 2006, memorandum to James Maeder from Elizabeth Eastwood and Nichole Zink entitled, ''Analysis of Since Hardware (Guangzhou) Co., Ltd.'s *Bona Fides* As A New Shipper,'' for further discussion of our price and quantity analysis.

Therefore, for the reasons mentioned above, the Department preliminarily finds that Since Hardware's sole U.S. sale during the POR was a *bona fide* commercial transaction.

**Non-Market Economy Country Status**

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (NME) country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See e.g., Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part*, 69 FR 70638 (Dec. 7, 2004). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

**Surrogate Country**

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV on the NME producer's FOPs, valued in a surrogate market-economy country or countries considered to be appropriate by the Department. Section 773(c)(4) of the Act requires the Department to utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The Department has determined that Egypt, India, Indonesia, the Philippines, and Sri Lanka are countries comparable to the PRC in terms of economic development. *See* the February 9, 2006, memoranda from Ron Lorentzen, Director, Office of Policy, to Irene Darzenta Tzafolias, Acting Director, Office 2, entitled, ''New Shipper Review of Hand Trucks from the People's Republic of China (PRC); Request for a List of Surrogate Countries'' and ''Antidumping Duty Administrative Review of Hand Trucks from the People's Republic of China (PRC); Request for a List of Surrogate Countries.'' Customarily, we select an appropriate surrogate country based on the availability and reliability of data

from the countries that are significant producers of identical or comparable merchandise. For PRC cases, the primary surrogate country has often been India if it is a significant producer of identical or comparable merchandise. In this case, based on publicly available information placed on the record (*e.g.*, world production data), India is a significant producer of the subject merchandise. Accordingly, we have considered India the surrogate country for purposes of valuing the FOPs because it meets the Department's criteria for surrogate-country selection. *See* the December 12, 2006, memorandum from Jill Pollack to the file entitled, ''2004–2005 Antidumping Duty Administrative and New Shipper Reviews on Hand Trucks and Certain Parts Thereof from the People's Republic of China: Selection of a Surrogate Country,'' for further discussion.

**Affiliation**

Section 771(33) of the Act states that the Department considers the following entities to be affiliated: (a) Members of a family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants; (b) any officer or director of an organization and such organization; (c) partners; (d) employer and employee; (e) any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization; (f) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (g) any person who controls any other person and such other person.

For purposes of affiliation, section 771(33) of the Act states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. In order to find affiliation between companies, the Department must find that at least one of the criteria listed above is applicable to the respondents.

To the extent that the affiliation provisions in section 771(33) of the Act do not conflict with the Department's application of separate rates and the statutory NME provisions in section 773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding. *See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review*, 69 FR 10410, 10413 (Mar. 5, 2004) (*Mushrooms*), unchanged in *Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 70 FR 54361 (Sept. 14, 2005).

Following these guidelines, we preliminarily determine that Forecarry and Formost are affiliated pursuant to section 771(33) of the Act. We also preliminarily determine that Forecarry and Formost should be assigned a single dumping margin for the purposes of this antidumping duty administrative review. Because the details of our affiliation analysis are proprietary in nature, we are unable to discuss them in this notice. Therefore, for further discussion of this issue, see the December 29, 2006, memorandum to James Maeder, Director, Office 2, from Jill Pollack, Senior Analyst, entitled, ''Antidumping Duty Administrative Review of Hand Trucks and Certain Parts Thereof from the People's Republic of China: Affiliation of Forecarry Corporation and Formost Plastics & Metalworks (Jianxing) Co., Ltd.''

**Facts Available**

*A. Application of Facts Available*

In accordance with section 776(a)(2)(A) of the Act, we preliminarily determine that the use of facts available is appropriate as the basis for the dumping margins for the following producers/exporters: Forecarry, Future Tool, Shandong Machinery, and the PRC-wide entity. Section 776(a)(2) of the Act provides that, if an interested party: (1) Withholds information that has been requested by the Department; (2) fails to provide information in a timely manner or in the form and manner requested, subject to subsections 782(c) and (e) of the Act; (3) significantly impedes a determination under the antidumping statute; or (4) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to the requirements listed in section 782(e)(1–5) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

1. Forecarry/Formost

As noted above, the Department selected Forecarry as a mandatory respondent in this administrative review on May 9, 2006, and at that time we issued the antidumping duty questionnaire to it. We received Forecarry's responses to the questionnaire on May 30, June 8, and June 28, 2006.

After analyzing these responses, we found that the company's FOP database was not reliable because it was not based on the books and records of the company's PRC supplier, Formost. Rather, this response was based primarily on estimated data and/or observed quantities that were unaccompanied by supporting calculation worksheets. Although we informed Forecarry of this deficiency and provided it several opportunities to correct it, as explained below, Forecarry failed to do so prior to the preliminary results.

We note that, in its response to the second supplemental on this topic, Forecarry claimed that it revised its methodology to base its FOPs on Formost's books and records. However, Forecarry did not provide supporting documentation that linked the reported data to the amounts recorded in Formost's accounting system. Forecarry merely provided POR invoices for certain material and energy factors, as well as partially translated pages from Formost's inventory, production, and labor records, but failed to explain how these documents support its reported FOPs. The deficiencies in Forecarry's responses are discussed in more detail below.

Throughout the course of this administrative review, we have requested that Forecarry reconcile its

reported FOPs to the amounts recorded in Formost's normal books and records. The first request is contained in Appendix V of the May 9 questionnaire, where the Department requested that Forecarry provide:

> Worksheets that illustrate how the costs reported on the audited financial statements (or, if your company does not have audited financial statements, on the tax filing) reconcile to the general ledger or trial balance and to the cost accounting system (*i.e.*, the source used to derive the reported input quantities, *e.g.*, materials sub-ledgers, production records, and inventory records). On the worksheets, identify the source documents for all major items shown and cross-reference the worksheets where appropriate (*i.e.*, link between worksheets). If your company does not have a cost accounting system, reconcile the general ledger or trial balance to the books and records normally kept by the company which were used to derive the reported quantity of each input consumed in the production of merchandise covered by the scope of the antidumping investigation/order.

*See* the Antidumping Duty Questionnaire at Appendix V (issued to Forecarry on May 9, 2006). Forecarry did not submit the reconciliation of its reported FOPs in its original questionnaire response.

On August 8, 2006, the Department issued a supplemental questionnaire to Forecarry that instructed Forecarry to:

> Ensure that, in this and all future responses, you submit all worksheets with narrative responses that will allow the Department to follow the flow of the worksheet and any adjustments necessary to calculate the submitted FOPs. Further, ensure that your worksheets demonstrate how the data recorded in Formost's accounting and production records were adjusted in order to derive the amount reported.

In its September 15, 2006, response to the August 8 supplemental questionnaire, Forecarry stated that it reported the weight of hand truck inputs based on the ''actual weight of a production sample of each part.'' However, Forecarry did not provide any worksheets demonstrating how the reported factors tied to the company's books and records, as requested.

On October 19, 2006, the Department issued a second supplemental questionnaire to Forecarry, instructing Forecarry to provide source documentation to support its reported FOPs and to provide the cost reconciliation requested in Appendix V of the Department's original questionnaire. *See* the October 19, 2006, letter to Forecarry at pages 1 and 2 of Attachment I. In response to the Department's second request for the FOPs reconciliation, Forecarry provided a worksheet that attempts to show a comparison between the weight of steel and aluminum tubing recorded as manufacturing costs, based on inventory records, to the weight recorded in the FOP database submitted to the Department, which was based on the actual weight of the various finished parts made from these materials. *See* Forecarry's November 16, 2006, supplemental response at page 4 and Exhibit 2. Forecarry also provided additional worksheets in response to the Department's request for a cost of production reconciliation. *See* Forecarry's November 16 supplemental response at Exhibit 1. However, Forecarry did not demonstrate how any of the records or worksheets provided in its November 16 response tie to Formost's normal books and records. As a result, the cost reconciliation was incomplete. Further, Forecarry did not explain how any of the reported FOPs were calculated or show how the reported FOPs tie to Formost's inventory or production records.

Regarding labor, we note in both its June 28, 2006, section D response and its September 15, 2006, supplemental response that Forecarry stated that Formost's reported labor factors were based on manager estimates of the labor required to produce the subject merchandise. In its September 15, 2006, response, Forecarry stated that there was no source documentation to support these managers' estimates. *See* Forecarry's September 15, 2006, supplemental response at page 14. In the October 19, 2006, supplemental questionnaire, the Department required Forecarry to ''provide documentation to support these estimates (*e.g.*, documents identifying the employees that work in a particular workshop, documents showing the number of hours worked within a specific amount of time (*e.g.*, week or month) by employees for that particular workshop, documents submitted to Chinese authorities, or payment documentation).'' *See* the Department's October 19, 2006, letter to Forecarry at page 5 of Attachment I. In response to the Department's request, Forecarry provided some partially translated workshop records that it claimed supported the managers' estimates of labor factors reported in its FOP database. However, because these documents are not fully translated, as required by the Department's questionnaire, the Department cannot determine whether they in fact support Forecarry's reported labor.

As described above, Forecarry failed to respond to the Department's requests for information in the form required. The absence of this information has significantly impeded this review because the Department has been unable to tie Forecarry's reported FOP database to Formost's books and records or any other appropriate source documentation. Forecarry failed to properly respond to the Department's requests, pursuant to section 782(d) of the Act, when it refused to provide documentation related to its reported FOPs. Forecarry's failure to provide the requested information prevented the Department from performing the calculations necessary to establish NV and determine whether Forecarry's U.S. sales were made at or below that NV.

As a threshold matter, a respondent's submitted sales and cost data must reconcile to its audited financial statements or other documentation deemed appropriate by the Department (*e.g.*, tax returns), in order for the Department to use that data in its margin calculations for that company. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review:Steel Concrete Reinforcing Bars from Latvia*, 71 FR 74900 (Dec. 13, 2006), and accompanying Issues and Decision Memorandum at Comment 1. Because Forecarry has not demonstrated that its reported FOP data ties to its books and records or other appropriate source documentation, Forecarry's entire FOP database is unuseable for purposes of these preliminary results. Moreover, because there is no acceptable FOP database to which we can compare Forecarry's U.S. sales information, we are also unable to use that information. Therefore, pursuant to section 782(e) of the Act, the Department must disregard all of Forecarry's U.S. sales and FOP data.

Finally, we find that the application of section 782(e) of the Act does not overcome Forecarry's failure to provide a useable response. *See* sections 782(e)(1), (3), and (4) of the Act. Because the information that Forecarry failed to supply is critical for purposes of the preliminary dumping calculations, the Department must resort to total facts otherwise available in determining the margin in its preliminary results, pursuant to sections 776(a)(2)(A)–(C) of the Act.

Nonetheless, the Department is providing Forecarry with a final opportunity to substantiate its reported FOPs by: (1) Reconciling its reported FOPs to Formost's normal books and records; and (2) demonstrating how the reported FOPs were calculated. Documentation that would enable the Department to substantiate these items would include, but is not limited to, worksheets that reconcile the reported factors for material inputs to Formost's

books and records, records from the relevant workshops and worksheets that tie these records to Formost's reported direct labor amounts, and worksheets that tie Formost's reported factors for electricity to meter readings or other appropriate source documentation. We are allowing Forecarry to provide this information no later than January 3, 2007. If we receive a timely response, we will consider this information for purposes of the final results.

2. Future Tool

As noted in the ''Background'' section, above, Future Tool responded to the Department's request for quantity and value data on February 22, 2006, and it submitted a response to section A of the questionnaire on April 10, 2006.

On May 9, 2006, the Department designated Future Tool as a mandatory respondent in this administrative review, and it issued the remaining sections of the questionnaire to the company on that date. However, Future Tool failed to respond to this request for information. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, because this company did not respond to sections C and D of the Department's questionnaire, the Department preliminarily finds that the use of total facts available is appropriate.

Moreover, as a result of its failure to respond to the Department's requests for information, Future Tool failed to establish its eligibility for a separate rate. Therefore, Future Tool is not eligible to receive a separate rate and will be part of the PRC-wide entity, subject to the PRC-wide rate. As noted above, this rate will be based on total facts available.

3. Shandong Machinery

As discussed in the ''Background'' section, above, on February 7, 2006, the Department requested that Shandong Machinery provide data on the quantity and value of its exports during the POR to the United States. The deadline to file a response was February 28, 2006. Because the Department did not receive a response from this company,[1] on March 3, 2006, we again issued a letter to Shandong Machinery with a second opportunity to respond to the Department's request for quantity and value information. Shandong Machinery also did not respond to the Department's March 3, 2006, letter. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, because this company did not respond to the Department's questionnaire, the Department preliminarily finds that the use of total facts available is appropriate. Moreover, Shandong Machinery failed to establish its eligibility for a separate rate. Therefore, Shandong will be part of the PRC-wide entity, subject to the PRC-wide rate. As noted above, this rate will be based on total facts available.

*B. Adverse Facts Available (AFA)*

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (Sept. 13, 2005); *see also Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (*SAA*). Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp.* v. *United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon*).

Each of the respondents was notified in the Department's questionnaires that failure to submit the requested information by the date specified might result in the use of facts available. Generally, it is reasonable to assume that Forecarry/Formost and the PRC-wide entity (including Shandong Machinery and Future Tool) possessed the records necessary for this administrative review and that, by not supplying the information the Department requested, these companies failed to cooperate to the best of their ability. In addition, none of the companies in this review argued that they were incapable of providing the information the Department requested, or requested that the Department modify its reporting requirements in accordance with 782(c)(1) of the Act. Accordingly, because Forecarry/Formost failed to submit useable FOP information, which was not only specifically requested by the Department, but was also fundamental to the dumping analysis, and PRC-wide entity (including Future Tool and Shandong Machinery) failed to respond to the Department's requests for information, we preliminarily find that these companies have not acted to the best of their abilities in this proceeding, within the meaning of section 776(b) of the Act. Therefore, an adverse inference is warranted in selecting from the facts otherwise available. *See Nippon*, 337 F.3d at 1382–83.

*C. Selection of an AFA Rate*

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) The petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. In reviews, the Department normally selects as AFA the highest rate determined for any respondent in any segment of the proceeding. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (Apr. 21, 2003). The Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit have consistently upheld the Department's practice. *See Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*); *NSK Ltd.* v. *United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less-than-fair-value (LTFV) investigation);

*Kompass Food Trading Int'l* v. *United States*, 24 CIT 678, 689 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd.* v. *United States*, 360 F. Supp. 2d 1339 at 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review). The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely

[1] The Department included documentation confirming delivery of the initial quantity and value questionnaire to Shandong Machinery in its March 3, 2006, letter at Attachment II.

manner.'' *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (Feb. 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See SAA* at 870; *see also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (Dec. 23, 2004); and *D&L Supply Co.* v. *United States*, 113 F.3d 1220, 1223 (Fed. Cir. 1997). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *See Rhone Poulenc*, 899 F.2d at 1190. Consistent with the statute, court precedent, and its normal practice, the Department has assigned the rate of 383.60 percent to the PRC-wide entity (including Shandong Machinery and Future Tool) and Forecarry/Formost as AFA. This rate was assigned in the investigation of this proceeding and is the highest rate determined for any party in any segment of this proceeding. *See Amended Final Determination of Sales at Less Than Fair Value: Hand Trucks and Certain Parts Thereof From the People's Republic of China*, 69 FR 65410 (Nov. 12, 2004) (*Hand Trucks Amended Final Determination*). As discussed below, this rate has been corroborated.

*D. Corroboration of Secondary Information*

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The *SAA* states that ''corroborate'' means to determine that the information used has probative value. *See SAA* at 870. The Department has determined that to have probative value, information must be reliable and relevant. *See SAA* at 870; *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (Nov. 6, 1996). The *SAA* also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See SAA* at 870. *See also Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627 (June 16, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 62560, 62561 (Nov. 5, 2003); and *Final Determination of Sales at Less Than Fair Value: Live Swine from Canada*, 70 FR 12181 (Mar. 11, 2005).

We are applying as AFA the highest rate from any segment of this administrative proceeding, which is the rate currently applicable to all exporters subject to the PRC-wide rate. The information upon which the AFA rate is based in the current review (*i.e.*, the PRC-wide rate of 383.60 percent) was the highest rate calculated based on information contained in the petition in the LTFV investigation. *See Hand Trucks Amended Final Determination*, 69 FR at 65411. This AFA rate is the same rate that the Department assigned to certain hand truck companies in the original LTFV determination. In the investigation, the Department determined the reliability of the margin contained in the petition by comparing the U.S. prices from the price quotes in the petition to prices of comparable products sold by Huatian, a mandatory respondent in the LTFV investigation, and found them to be comparable. The Department also compared the surrogate values used in the petition to the surrogate values selected for the final determination, and then adjusted and replaced certain values to make them more accurate. *Finally, the Department replaced the surrogate value ratios in the petition with those used in the final investigation. Therefore, in the investigation, we found this margin to be reliable. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Hand Trucks and Certain Parts Thereof From the People's Republic of China*, 69 FR 29509 (May 24, 2004), as amended by *Hand Trucks Amended Final Determination*, 69 FR at 65411. Further, the application of this margin was subject to comment from interested parties in that segment of the proceeding. The Department has received no information to date that warrants revisiting the issue of the reliability of the rate and no party has submitted comments challenging the reliability of this margin. Thus, the Department finds that the margin calculated in the LTFV investigation is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (Feb. 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co.* v. *United States*, 113 F.3d 1220, 1222 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present here. Further, the selected margin is currently the PRC-wide rate. As there is no information on the record of these reviews that indicates that this rate is not relevant as AFA for Forecarry/Formost and the PRC-wide entity, we determine that this rate is relevant.

Because the rate is both reliable and relevant, it has probative value. Accordingly, we determine that the highest rate determined in any segment of this administrative proceeding (*i.e.*, 383.60 percent) is corroborated (*i.e.*, it has probative value). We have assigned this AFA rate to exports of the subject merchandise by Forecarry/Formost and the PRC-wide entity, including Future Tool and Shandong Machinery.

**Separate Rates**

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate (*i.e.*, a PRC-wide rate).

Of the three respondents participating in these reviews, two of the companies (*i.e.*, Forecarry and Since Hardware) are owned wholly by entities located in

market-economy countries. Thus, for these two companies, because we have no evidence indicating that they are under the control of the PRC government, a separate-rate analysis is not necessary to determine whether they are independent from government control. *See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fifth New Shipper Review*, 66 FR 44331 (Aug. 23, 2001), citing *Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of Fifth New Shipper Review*, 66 FR 29080 (May 29, 2001) (where the respondent was wholly owned by a U.S. registered company); *Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (Jan. 8, 2001) (where the respondent was wholly owned by a company located in Hong Kong); and *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71105 (Dec. 20, 1999) (where the respondent was wholly owned by persons located in Hong Kong).

The remaining participating respondent, True Potential, is a privately owned company in the PRC. Thus, for True Potential, a separate-rate analysis is necessary to determine whether the export activities of this company is independent from government control. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (Apr. 30, 1996). To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities.

*1. De Jure Control*

Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

True Potential has placed on the administrative record documents to demonstrate an absence of *de jure* control (*i.e.*, the 1999 ''Company Law of the People's Republic of China''). As in prior cases, we have analyzed this law and have found it to establish sufficiently an absence of *de jure* control over privately owned companies in the PRC. *See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22546–47 (May 8, 1995) (*Furfuryl Alcohol*); and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571, 29573 (June 5, 1995) (unchanged in the final determination). We have no new information in this proceeding that would cause us to reconsider this determination with regard to True Potential.

*2. De Facto Control*

As stated in previous cases, there is evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide*, 60 FR at 29573; and *Furfuryl Alcohol*, 60 FR at 22546–47. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control that would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a government authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide*, 60 FR at 29573; and *Furfuryl Alcohol*, 60 FR at 22546–47.

True Potential has asserted the following: (1) It establishes its own export prices; (2) it negotiates orders without guidance from any government entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales and uses profits according to its business needs. Additionally, True Potential's questionnaire responses indicate that it did not coordinate its pricing during the POR with other exporters of the subject merchandise.

Consequently, we have preliminarily determined that True Potential has met the criteria for the application of a separate rate based on the documentation it has submitted on the record of this review.

**Normal Value Comparisons**

To determine whether sales of the subject merchandise by Since Hardware and True Potential to the United States were made at prices below NV, we compared each company's export prices (EPs) to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below.

**Export Price**

For Since Hardware and True Potential, we used EP methodology in accordance with section 772(a) of the Act for sales in which the subject merchandise was first sold prior to importation by the exporter outside the United States directly to an unaffiliated purchaser in the United States and for sales in which constructed export price was not otherwise indicated.

We calculated EP based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling charges in the PRC, in accordance with section 772(c)(2) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate rates from India (*see* the ''Surrogate Country'' section, above, for further discussion of our surrogate-country selection).

To value foreign inland trucking charges, we used truck freight rates published in an Indian logistics Web site that tracks freight rates for all of India (*i.e., http://www.infreight.com*). To value foreign brokerage and handling expenses, we calculated an average rate based on two different sources: (1) The December 2003–November 2004 data contained in Essar Steel's (Essar) February 28, 2005, public version

response submitted in the antidumping administrative review of Hot-Rolled Carbon Steel Flat Products from India; and (2) the November 2002–September 2003 data contained in Pidilite Industries' (Pidilite) March 9, 2004, public version response submitted in the antidumping duty investigation of Carbazole Violet Pigment 23 from India. *See Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review,* 71 FR 2018 (Jan. 12, 2006) (unchanged in the final results); and *Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India,* 69 FR 67306 (Nov. 17, 2004). Because the data from both Essar and Pidilite were outside of the POR, we applied Indian wholesale price index (WPI) inflators to them to make them contemporaneous with the POR before calculating an average foreign brokerage and handling expense rate. *See* the December 29, 2006, memorandum from Elizabeth Eastwood to the file entitled, ''Factors of Production Valuation Memorandum for the Preliminary Results of the First Administrative Review and Preliminary Results of the First New Shipper Review'' (Factor Valuation Memorandum) for a detailed description of the calculation of these surrogate values.

**Normal Value**

Section 773(c)(1) of the Act provides that the Department shall determine NV using a FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department will base NV on the FOPs because the presence of government controls on various aspects of the PRC economy renders price comparisons and the calculation of production costs invalid under its normal methodologies.

For purposes of calculating NV, we valued the PRC FOPs in accordance with section 773(c)(1) of the Act. The FOPs include, but are not limited to, hours of labor required, quantities of raw materials employed, amounts of energy and other utilities consumed, and representative capital costs, including depreciation. *See* section 773(c)(3) of the Act. In examining surrogate values, we selected, where possible, the publicly available value which was an average non-export value, representative of a range of prices within the POR or most contemporaneous with the POR, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China,* 69 FR 75294, 75300 (Dec. 16, 2004) (unchanged in the final results).

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by Since Hardware (adjusted as appropriate for our findings at verification) and True Potential for the POR for materials, energy, labor, by-products, and packing. *See* the Factor Valuation Memorandum. As the basis for NV, Since Hardware and True Potential reported FOP information for each separate stage of production, including the factors used in the production of all self-produced material and energy inputs, and by-products. We have valued the factors reported for each self-produced input for purposes of the preliminary results, in accordance with our practice. *See Polyvinyl Alcohol from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 71 FR 62086 (Oct. 23, 2006).

In accordance with 19 CFR 351.408(c)(1), where a producer sources an input from a market economy and pays for it in a market-economy currency, the Department employs the actual price paid to calculate the factors-based NV. *See Lasko Metal Products* v. *United States,* 43 F.3d 1442, 1445–1446 (Fed. Cir. 1994). Since Hardware reported that some of its inputs were purchased from market economies and paid for in market-economy currencies. *See* the ''Factor Valuations'' section of this notice, below, for further discussion.

**Factor Valuations**

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by the respondents for the POR. We relied on the factor specification data submitted by the respondents for the above-mentioned inputs in their questionnaire and supplemental questionnaire responses, where applicable, for purposes of selecting surrogate values.

To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values (except where noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401 (Fed. Cir. 1997). For a detailed description of all surrogate values used for the respondents, see the Factor Valuation Memorandum.

As explained above, Since Hardware provided evidence that it had purchased certain raw material inputs from market-economy suppliers and paid for them in market-economy currencies. Therefore, in accordance with 19 CFR 351.408(c)(1), the Department has determined to use the market-economy prices as reported by Since Hardware in order to value these inputs in instances where the inputs were obtained from both market-economy and NME suppliers because the market-economy inputs represent a significant quantity of the inputs and they were paid for in a market-economy currency.

Except where discussed below, we valued raw material inputs using December 2004–November 2005 weighted-average Indian import values derived from the *World Trade Atlas* Web site (*WTA*) (*see also* the Factor Valuation Memorandum). The Indian import statistics we obtained from the *WTA* were published by the Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce of India, and were reported in rupees. Indian surrogate values denominated in foreign currencies were converted to U.S. dollars using the applicable exchange rate for India from the Department's Web site. Where we could not obtain publicly available information contemporaneous with the POR with which to value factors, we adjusted the surrogate values for inflation using WPIs as published in the International Monetary Fund's *International Financial Statistics. See* the Factor Valuation Memorandum.

It is the Department's current practice that, where the facts developed in U.S. or third-country countervailing duty findings include the existence of subsidies that appear to be used generally (in particular, broadly available, non-industry-specific export subsidies), it is reasonable for the Department to consider that it has particular and objective evidence to support a reason to believe or suspect that prices of the inputs from the country granting the subsidies may be subsidized. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic*

*of China; Final Results of the 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part,* 66 FR 1953 (Jan. 10, 2001), and accompanying Issues and Decision Memorandum at Comment 1; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part,* 66 FR 57420 (Nov. 15, 2001), and accompanying Issues and Decision Memorandum at Comment 1; and *China National Machinery Imp. & Exp. Corp.* v. *United States*, 293 F. Supp. 2d 1334, 1339 (CIT 2003). Therefore, in instances where we relied on Indian import data to value inputs, in accordance with the Department's practice, we excluded imports from NME countries, Indonesia, the Republic of Korea, and Thailand to value the FOPs.

Finally, we excluded imports that were labeled as originating from an ''unspecified'' country from the average value because the Department could not be certain that they were not from either an NME or a country with general export subsidies.

**Surrogate Valuations**

We valued the following FOPs using India import statistics as published by the *WTA,* contemporaneous with the POR: Acetylene, aluminum rivets, aluminum sections, argon gas, axis of rotation, ball bearings, barium sulfate, brightening agents, bungee cable, butyl ether, carbon dioxide, dyes, epoxy resin, filler, hydrochloric acid, ink, iron rings, lacquer, light calcium carbonate, lock washers, muriate of potash, nitric acid, nuts, oxygen, PA resin, PE resin, PP resin, paint powder, pigment, phosphate, pins, phosphoric acid, plating pencils, rubber part, standard parts (*i.e.*, screws or bolts with nuts or washers), steel sand, steel rods, steel springs, sulfuric acid, tapping screws, tianna water, titanium dioxide, welded pipe, welding rod, zinc alloys, zinc chloride, and zinc ingots. We valued hot-rolled steel using Indian import statistics as published by the *WTA* covering the period December 2003 to November 2004. Because this data was from a period prior to the POR, we applied a WPI inflator to it to make it contemporaneous with the POR. We valued paraffin using Indian domestic market prices reported in *Chemical Weekly*, contemporaneous with the POR. *See* the Factor Valuation Memorandum.

We valued water using data from the Maharashtra Industrial Development Corporation. We applied a WPI inflator to this surrogate value to make it contemporaneous with the POR. *See id.*

We valued diesel oil and coal oil using data obtained from *Key World Energy Statistics 2005*, published by the International Energy Agency (IEA), for the first quarter of 2005. *See id.*

We valued electricity using the 2000 total average price per kilowatt hour for ''Electricity for Industry'' as reported in *Key World Energy Statistics 2003*, published by the IEA. We applied a WPI inflator to this surrogate value to make it contemporaneous with the POR. *See id.*

To value plastic bags, PS foam, tape, and instruction books (*i.e.*, the packing materials reported by the respondents), we used Indian import statistics as published by the *WTA*, contemporaneous with the POR. *See id.*

Regarding petrolatum, reported by Since Hardware, we did not value this factor because: (1) Surrogate value information was not available; and (2) the material was reported as being used in minimal amounts. In previous cases, where certain materials were reportedly consumed in very small amounts and the surrogate values for these materials were not available, the Department did not include surrogate values for these materials in its calculation of NV. *See Polyvinyl Alcohol from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 67434, 67439 (Nov. 7, 2005) (unchanged in the final results); *Synthetic Indigo from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000), and the accompanying Issues and Decision Memorandum at Comment 8; *Ferrovanadium and Nitrided Vanadium from the Russian Federation: Notice of Final Results of Antidumping Duty Administrative Review*, 62 FR 65656 (Dec. 15, 1997), and the accompanying Issues and Decision Memorandum at Comment 11; and *Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China,* 56 FR 55273 (Oct. 25, 1991).

For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's Web site, Expected Wages of Selected NME Countries, revised in November 2005, *http://ia.ita.doc.gov/wages/03wages/110805-2003-Tables/03wages-110805.html#table1*. The source of these wage rate data on Import Administration's Web site is the *Yearbook of Labour Statistics 2002, ILO (Geneva: 2002), Chapter 5B: Wages in Manufacturing*. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondents. *See id.*

To determine factory overhead, selling, general, and administrative expenses, and profit for the finished product, we relied on rates derived from the financial statements of Rexello Castors Private Limited (Rexello), an Indian producer of identical merchandise. We applied these ratios to the respondents' costs (determined as noted above). *See id.*

Finally, the respondents reported that they generated certain other by-products as a result of the production of hand trucks. We valued steel scrap using Indian import statistics as published by the *WTA*, contemporaneous with the POR. We valued aluminum scrap and recycled paint powder using Indian import statistics as published by the *WTA*, covering the period December 2002 to November 2003. Because this data was prior to the POR, we applied a WPI inflator to it to make it contemporaneous with the POR.

**Preliminary Results of Reviews**

We preliminarily determine that the following margins exist during the period December 1, 2004, through November 1, 2005:

| Exporter/manufacturer | Weighted-average margin percentage |
|---|---|
| Forecarry Corp./Formost Plastics & Metalworks (Jianxing) Co., Ltd. | 383.60 |
| Since Hardware (Guangzhou) Co., Ltd | 12.22 |
| True Potential Co., Ltd | 39.54 |
| PRC-Wide Rate [2] | 383.60 |

**Disclosure**

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will generally be held two days after the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d). Interested parties may

[2] We note that because both Future Tool and Shandong Machinery are part of the PRC-wide entity, they are subject to the PRC-wide rate.

submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs. *See* 19 CFR 351.309(d). Further, parties submitting written comments should provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of these administrative and new shipper reviews, which will include the results of its analysis of issues raised in any comments, and at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

**Assessment Rates**

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer- or customer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. For True Potential, we do not have the actual entered value because it was either not the importer of record for the subject merchandise or was unable to obtain the entered value data for its reported sales from the importer of record. For True Potential, we intend to calculate individual customer-specific assessment rates by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing that amount by the total quantity of the sales examined. To determine whether the duty assessment rates are *de minimis* (*i.e.*, less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate customer-specific *ad valorem* ratios based on export prices.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by these reviews if any importer- or customer-specific assessment rate calculated in the final results of these reviews is above *de minimis*.

For entries of the subject merchandise during the POR from companies not subject to these reviews, we will instruct CBP to liquidate them at the cash deposit rate in effect at the time of entry. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of the final results of these reviews for all shipments of hand trucks and certain parts thereof from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for all respondents will be the rates determined in the final results of review (except that if a rate is *de minimis*, *i.e.*, less than 0.50 percent, no cash deposit will be required); (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding (which were not reviewed in this segment of the proceeding) will continue to be the rate assigned in that segment of the proceeding (*i.e.*, Huatian and Taifa); (3) the cash deposit rate for the PRC-wide entity (including Future Tool and Shandong Machinery) will continue to be 383.60 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter.

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Notification to Importers**

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

These administrative and new shipper reviews and notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.213 and 351.214.

Dated: December 29, 2006.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E7–45 Filed 1–8–07; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–863]**

### Notice of Extension of the Preliminary Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**DATES:** *Effective Date:* January 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Erin Begnal or Michael Quigley; 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) 482–1442 and (202) 482–4047, respectively.

**Background**

The Department of Commerce (''Department'') received a timely request from Shanghai Bloom International Trading Co., Ltd. (''Shanghai Bloom''), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on honey from the People's Republic of China (''PRC''). On August 30, 2006, the Department found that the request for review with respect to Shanghai Bloom met all of the regulatory requirements set forth in 19 CFR 351.214(b) and initiated an antidumping duty new shipper review covering the period December 1, 2005, through June 30, 2006. *See Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review,* 71 FR 52764 (September 7, 2006). The preliminary results are currently due no later than February 26, 2007.

**Extension of Time Limits for Preliminary Results**

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(i)(1) require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated and final results of a review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the time period for completion of the preliminary results of a new shipper review to 300 days if it determines that the case is extraordinarily complicated. *See* 19 CFR 351.214(i)(2).

The Department has determined that the review is extraordinarily

complicated as the Department must gather additional publicly available information, issue additional supplemental questionnaires, and conduct verification of the responses. Based on the timing of the case and the additional information that must be gathered and verified, the preliminary results of this new shipper review cannot be completed within the statutory time limit of 180 days. Accordingly, the Department is extending the time limit for the completion of the preliminary results of the new shipper review of Shanghai Bloom to 300 days. The preliminary results will now be due no later than June 26, 2007, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2). The final results will, in turn, be due 90 days after the date of issuance of the preliminary results, unless extended.

This notice is published pursuant to sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act.

Dated: December 28, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E7–54 Filed 1–8–07; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–890]**

### Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review and Determination To Revoke Order in Part

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

**DATES:** *Effective Date:* January 9, 2007.

**SUMMARY:** On November 14, 2006, the Department of Commerce (''the Department'') published a notice of initiation and preliminary results of an antidumping duty (''AD'') changed circumstances review with intent to revoke, in part, the AD order on wooden bedroom furniture from the People's Republic of China (''PRC''). *See Wooden Bedroom Furniture from the People's Republic of China: Notice of Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Order in Part,* 71 FR 66309 (November 14, 2006) (''*Initiation and Preliminary Results*''). We are now revoking this order in part, with regard to the following product: Cheval style mirrored jewelry cabinets, as described in footnote 12 the ''Scope of the Order'' section of this notice, based on the fact that domestic parties have expressed no further interest in the relief provided by the order with respect to the imports of these jewelry cabinets, as so described.

In its September 20, 2006, submission, the American Furniture Manufacturers Committee for Legal Trade and its individual members (the ''AFMC'') stated that it no longer has any interest in seeking antidumping relief from imports of such cheval style mirrored jewelry cabinets with respect to the subject merchandise defined in the ''Scope of the Order'' section below. Interested parties are invited to comment on these preliminary results.

**FOR FURTHER INFORMATION CONTACT:** Eugene Degnan or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0414 and (202) 482–3434, respectively.

### Background

On September 20, 2006, the Department received a request on behalf of the petitioners, the AFMC, for revocation in part of the AD order on wooden bedroom furniture from the PRC pursuant to sections 751(b)(1) and 782(h) of the Tariff Act of 1930, as amended (''the Act''), with respect to cheval style mirrored jewelry cabinets. In its September 20, 2006, submission, AFMC stated that it no longer has any interest in antidumping relief from imports of such cheval style mirrored jewelry cabinets.

### Scope of Changed Circumstances Review

The merchandise covered by this changed circumstances review is cheval style mirrored jewelry cabinets from the PRC meeting the following description. An integrated piece consisting of a cheval mirror, *i.e.*, a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet lined with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. Effective upon publication of this final results of changed circumstances review in the **Federal Register**, the amended scope of the order will read as follows.

### Scope of the Amended Order

The product covered is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests [1], highboys [2], lowboys [3], chests of drawers [4], chests [5], door chests [6],

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[1] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[2] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[3] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[4] A chest of drawers is typically a case containing drawers for storing clothing.

[5] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[6] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

chiffoniers [7], hutches [8], and armoires [9]; (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate; [10] (9) jewelry armories; [11] (10) cheval mirrors [12] (11) certain metal parts [13] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set.

Imports of subject merchandise are classified under subheading 9403.50.9040 of the Harmonized Tariff Schedule of the United States (''HTSUS'') as ''wooden * * * beds'' and under subheading 9403.50.9080 of the HTSUS as ''other * * * wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9040 of the HTSUS as ''parts of wood'' and framed glass mirrors may also be entered under subheading 7009.92.5000 of the HTSUS as ''glass mirrors * * * framed.'' This order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

**Final Results of Review; Partial Revocation of Antidumping Duty Order**

The affirmative statement of no interest by petitioners concerning cheval style mirrored jewelry cabinets, as described herein, constitutes changed circumstances sufficient to warrant revocation of this order in part. No party commented on the *Initiation and Preliminary Results.* Additionally, no party contests that petitioners' statement of no interest represents the views of substantially all of the domestic industry. Therefore, the Department is partially revoking the order on wooden bedroom furniture with respect to cheval style mirrored jewelry cabinets from the PRC with regard to products which meet the specifications detailed above, in accordance with sections 751(b), (d) and 782(h) of the Act and 19 CFR 351.216(d) and 351.222(g). We will instruct the U.S. Customs and Border Protection to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of cheval style mirrored jewelry cabinets, meeting the specifications indicated above, and not subject to final results of an administrative review as of the date of publication in the **Federal Register** of the final results of this changed circumstances review in accordance with 19 CFR 351.222.

This notice serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. 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 sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751(b), (d) and 782(h) of the Act and 19 CFR 351.216(e) and 351.222(g).

Dated: December 27, 2006.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E7–100 Filed 1–8–07; 8:45 am]

BILLING CODE 3510–DS–P

[7] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[8] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[9] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[10] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. See Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

[11] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24″ in width, 18″ in depth, and 49″ in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. See Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Issues and Decision Memorandum Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China dated August 31, 2004. *See also Wooden Bedroom Furniture from the People's Republic of China: Notice of Final Results of Changed Circumstances Review and Revocation in Part,* (71 FR 38621) (July 7, 2006).

[12] Cheval mirrors, *i.e.*, any framed, tiltable mirror with a height in excess of 50″ that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.*, a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet lined with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth.

[13] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.*, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under HTSUS subheading 9403.90.7000.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Expected Non-Market Economy Wages: Request for Comments on 2006 Calculation

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Request for comment.

**SUMMARY:** The Department of Commerce (''Department'') has a longstanding practice of calculating expected non-market economy (''NME'') wages for use as the surrogate value for direct labor in

antidumping proceedings involving NME countries. These expected NME wages are calculated annually in accordance with § 351.408(c)(3) of the Department's regulations. This notice presents the Department's preliminary 2006 expected NME wages, which were calculated according to the Department's revised methodology described in the **Federal Register** notice *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, Oct. 19, 2006 (hereafter, the ''Antidumping Methodologies notice''), and provides the public with an opportunity to comment on potential clerical errors in the calculation.

**DATES:** Comments must be submitted no later than 10 days after publication of this notice.

**ADDRESSES:** Written comments (original and six copies) should be sent to David Spooner, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Shauna Lee-Alaia, Policy Analyst, Office of Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 482–2793.

**SUPPLEMENTARY INFORMATION:**

## Background

The Department's regulations generally describe the methodology by which the Department calculates expected NME wages:

> For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in non-market economy proceedings each year. The calculation will be based on current data, and will be made available to the public.19 CFR 351.408 (c)(3).

Briefly, the Department's expected NME wages are calculated each year in two steps. First, the relationship between hourly wage rates (obtained from the International Labour Organization's (''ILO'') *Yearbook of Labour Statistics*) and per-capita gross national income (''GNI'') (obtained from the World Bank) is estimated using ordinary least squares (OLS) regression analysis. Second, the GNI of each of the countries designated by the Department to be an NME are applied to the regression, which yields an expected hourly wage rate for each NME.

The Department published a notice in the **Federal Register** on October 19, 2006 which detailed its revised methodology for calculating expected NME wages in antidumping proceedings involving NME countries. *See* the Antidumping Methodologies notice. In that notice, the Department stated that its annual calculation of expected NME wage rates will be subject to public comment approximately one month prior to adoption. The Department noted further that comment will be requested only with regard to potential clerical errors in the Department's calculation.

Accordingly, this notice presents the Department's preliminary 2006 calculation of expected NME wages in Attachment 1, which were calculated according to the Department's revised methodology described in the Antidumping Methodologies notice. The Department is requesting public comment only on the potential clerical errors in the calculation. Comments with regard to the methodology were addressed in the Antidumping Methodologies notice and will not be considered at this time.

In order to facilitate a full opportunity for comment, and because the underlying data is voluminous, the preliminary results and underlying data for the preliminary 2006 expected NME wages calculation have been posted on the Import Administration Web site (*http://ia.ita.doc.gov*). This preliminary calculation will not be used for antidumping purposes until it has been finalized by the Department following the public comment period.

## Comment

Persons wishing to comment on potential clerical errors in the Department's preliminary 2006 calculation of expected NME wages presented in Attachment 1 should file one signed original and six copies of each set of comments by the date specified above. The Department will consider all comments regarding potential clerical errors received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them. All comments responding to this notice will be a matter of public record and will be available for inspection and copying at Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 a.m. and 5 p.m. on business days. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic form to accompany the required paper copies.

Comments filed in electronic form should be submitted either by e-mail to the Webmaster below, or on CD–ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment. Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration Web site at the following address: *http://ia.ita.doc.gov.*

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, e-mail address: *webmaster-support@ita.doc.gov.*

Dated: December 29, 2006.

**Steven J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

## Attachment 1

*2006 Calculation of Expected NME Wages*

Following the criteria and methodology described in the Antidumping Methodologies notice, and using the data available to the Department as of November 8, 2006, the Department has calculated preliminary 2006 expected NME wages.

2003 and 2004 data in Chapter 5B of the ILO International Labour Statistics were available for 79 entities: Albania, Armenia, Australia, Austria, Azerbaijan, Bahrain, Belgium, Botswana, Bulgaria, Canada, Chile, China, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, French Polynesia, Georgia, Germany, Gibraltar, Hong Kong, Hungary, Iceland, India, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Kazakhstan, Korea, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Macau, the former Yugoslav Republic of Macedonia, Malta, Mauritius, Mexico, Moldova, Mongolia, Myanmar, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Puerto Rico, Romania, San Marino, Serbia and Montenegro, Seychelles, Singapore, Slovakia, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Thailand,

Ukraine, United Kingdom, United States, West Bank and Gaza strip.

Within this data set, for 2003 and 2004, there were no ''earnings'' data for Italy, Myanmar, Peru and Thailand. Similarly, there were no ''men and women'' data for French Polynesia. 2003 and 2004 data representing all industries (''Total'') were available for the remaining 74 entities.

There were two entries for Poland which met all of the Department's criteria for choosing a single wage rate. These two entries were averaged to arrive at a single wage rate.

Of these 74 entities, a consumer price index was unavailable for the following 10: Armenia, Azerbaijan, China, Cuba, Gibraltar, Jersey, Puerto Rico, San Marino, Serbia and Montenegro, and Ukraine.

Of the remaining 64 entities, there was no exchange rate available for the Isle of Man, Macau, and West Bank and Gaza Strip.

Of the remaining 61 entities, the following are currently or were NMEs designated by the Department in 2003 or 2004: Georgia, Kyrgyzstan, and Moldova. Accordingly, the Department ran its preliminary 2006 expected NME wage regression on the following 58 countries: Albania, Australia, Austria, Bahrain, Belgium, Botswana, Bulgaria, Canada, Chile, Colombia, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, Germany, Hong Kong, Hungary, Iceland, India, Ireland, Israel, Japan, Kazakhstan, Korea, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Mauritius, Mexico, Mongolia, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Philippines, Poland, Portugal, Romania, Seychelles, Singapore, Slovakia, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, United Kingdom, and United States.

As noted in the ILO database, the wage rates for Korea and Mongolia are denominated in units of 1,000 of their respective national currency, and have been converted accordingly.

On July 1, 2005, Romania re-denominated its currency, with one old leu equal to 10,000 new leu. Romanian ILO data was adjusted accordingly.

Following the data compilation and regression methodology described in the Antidumping Methodologies notice, and using GNI and wage data for Base Year 2004, the regression results are: Wage = 0.091436 + 0.000494* GNI.

| Country | 2004 GNI (USD per annum) | Expected NME wage rate (USD per hour) |
|---|---|---|
| Armenia | 1,140 | 0.65 |
| Azerbaijan | 930 | 0.55 |
| Belarus | 2,150 | 1.15 |
| China | 1,500 | 0.83 |
| Georgia | 1,060 | 0.62 |
| Kyrgyz Republic | 400 | 0.29 |
| Moldova | 720 | 0.45 |
| Tajikistan | 280 | 0.23 |
| Uzbekistan | 450 | 0.31 |
| Vietnam | 540 | 0.36 |

The World Bank did not publish a GNI for Turkmenistan.

As stated above, the full preliminary results and underlying data for the 2006 expected NME wages calculation have been posted on the Import Administration Web site (*http://ia.ita.doc.gov*).

[FR Doc. E7–56 Filed 1–8–07; 8:45 am]

BILLING CODE 3510–DS–P

## COMMISSION OF FINE ARTS

### Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 18 January 2007, at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov*. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting.

Dated in Washington, DC, 28 December 2006.

**Thomas Luebke,**

*Secretary.*

[FR Doc. 07–23 Filed 1–8–07; 8:45 am]

BILLING CODE 6330–01–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Notice of Open Meeting

**AGENCY:** Office of the Assistant Secretary of Defense (Health Affairs); DoD.

**SUMMARY:** In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, announcement is made of the following meeting:

*Name of Committee:* DoD Task Force on Mental Health, a Subcommittee of the Defense Health Board.

*Dates:* January 22, 2007 (Morning—Open Session), January 23, 2007 (Afternoon—Open Session).

*Times:* 0800–1200 hours (22 January) 1500–1700 hours (23 January).

*Location:* Sheraton Tacoma Hotel, 731320 Broadway Plaza, Tacoma, WA.

*Agenda:* The purpose of the meeting is to obtain, review, and evaluate information related to the Mental Health Task Force's congressionally-directed task of assessing the efficacy of mental health services provided to members of the Armed Forces by the Department of Defense. The Task Force members will receive briefings on topics related to mental health concerns among military service members and mental health care delivery. The Task Force will hold a ''Town Hall Meeting'' session to hear concerns from the Fort Lewis, Tacoma, and Seattle metro areas Active Duty Military, National Guard and Reserve, and Veterans communities and conduct executive working sessions.

**FOR FURTHER INFORMATION CONTACT:** Colonel Roger Gibson, Executive

Secretary, Defense Health Board, Skyline One, 5205 Leesburg Pike, Suite 810, Falls Church, VA 22041, (703) 681–3279, ext. 123.

Section 552b(b) of Title 5, U.S.C., specifically subparagraph (1) thereof and Title 5, U.S.C., appendix 1, subsection 10(d). Open sessions of the meeting will be limited by space accommodations. Any interested person may attend, appear before or file statements with the Board at the time and in the manner permitted by the Board.

Dated: January 3, 2007.

**C.R. Choate,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 07–24 Filed 1–8–07; 8:45 am]

BILLING CODE 5001–06–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Privacy Act of 1974; Systems of Records

**AGENCY:** Defense Intelligence Agency, DoD.

**ACTION:** Notice to Delete Systems of Records.

**SUMMARY:** The Defense Intelligence Agency is deleting five systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on February 8, 2007 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Boulevard, Washington, DC 20340–5100.

**FOR FURTHER INFORMATION CONTACT:** Ms. Theresa Lowery at (202) 231–1193.

**SUPPLEMENTARY INFORMATION:** The Defense Intelligence Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific deletions are set forth below. The proposed deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 3, 2007.

**C.R. Choate,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**Deletion**
**LDIA 0005**

**SYSTEM NAME:**

Personnel Management Information System (February 22, 1993, 58 FR 10613).

*Reason:* The records contained in this system of records have been migrated into Defense Intelligence Agency's LDIA 05–0001, Human Resources Management System (HRMS).

**LDIA 0015**

**SYSTEM NAME:**

Biographic Sketch (February 22, 1993, 58 FR 10613).

*Reason:* Information no longer collected or maintained. Records have been destroyed.

**LDIA**

**SYSTEM NAME:**

Official Traveler Profile (February 22, 1993, 58 FR 10613).

*Reason:* Defense Intelligence Agency maintains these records under a Government-wide Privacy Act system of records notice, GSA/GOVT–4, Contracted Travel Services Program published in the Federal Register on December 20, 2004, at 69 FR 75980.

**LDIA 0590**

**SYSTEM NAME:**

Defense Intelligence Special Career Automated System (DISCAS) (February 22, 1993, 58 FR 10613).

*Reason:* The records are maintained in Defense Intelligence Agency's LDIA 05–0001, Human Resources Management System (HRMS) published in the Federal Register on November 25, 2005 at 70 FR 71099.

**LDIA 0813**

**SYSTEM NAME:**

Bibliographic Data Index (February 22, 1993, 58 FR 10613).

*Reason:* Information no longer collected or maintained. Records have been destroyed and the permanent records were retired to the Washington National Records Center.

[FR Doc. 07–25 Filed 1–8–07; 8:45 am]

BILLING CODE 5001–06–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary of Defense

**[DOD–2006–OS–0221]**

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary, OSD.

**ACTION:** Notice to amend systems of records.

**SUMMARY:** The Office of the Secretary of Defense is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** *Effective Date:* January 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ms. Juanita Irvin at (703) 696–4940.

**SUPPLEMENTARY INFORMATION:** The Notice was published on May 23, 2005, in the **Federal Register** (70 FR 29486). During the comment period, two public comments were received, which were virtually identical in format and content. The commenters assert that the collection and maintenance of data in the Joint Advertising, Market Research & Studies (JAMRS) Recruiting Database violates the Privacy Act of 1974. The commenters also remarked that the Department of Defense (''DoD'') should not be engaged in direct marketing activities; that the collection and use of Social Security Numbers (SSNs) is unauthorized and poses significant risks to an individual's privacy; that the transfer of information from the DoD to a private contractor is inappropriate and that adequate security for the database is lacking; and, that the Department does not provide a means by which an individual may elect to have his or her data deleted from the database. The JAMRS Database is maintained in a manner that is consistent with the Privacy Act and other statutes and regulations relating to the Department's recruiting authority. In its discretion, however, the Department has determined that the publication of a revised Systems Notice, providing further explanation and clarification of the manner in which the JAMRS Database is maintained, is appropriate at this time.

The Department received a comment asserting that the maintenance of the JAMRS Database violates the Privacy Act. Commenters assert that Congress, in enacting the Privacy Act, sought to restrict the amount of personal information that Federal agencies could collect and maintain on individuals; that direct marketing by the DoD does not constitute an authorized purpose or use of the information; and that agencies

should be transparent in their information practices.

The Department's use of the JAMRS Database is consistent with the Privacy Act and its underlying purposes. The Department only collects such information on individuals as is relevant and necessary to accomplish a Departmental purpose prescribed by statute or Executive Order of the President. Consistent with this mandate, and in recognition of the importance of attracting qualified individuals to serve in the nation's all-volunteer force, Congress has directed the armed services to ''conduct *intensive* recruiting campaigns to obtain enlistments'' in the military (10 U.S.C. 503(a)(1) (emphasis supplied)). To this end, the Secretary of Defense has been provided with a broad mandate to ''act on a continuing basis to enhance the effectiveness of recruitment programs of the Department of Defense (including programs conducted jointly and programs conducted by the separate armed forces) through an *aggressive* program of advertising and market research targeted at prospective recruits for the armed forces and those who may influence prospective recruits'' (10 U.S.C. 502(a)(2) (emphasis supplied)). In addition to these congressional directives to the Secretary of Defense to conduct intensive recruiting campaigns, Congress also has conferred broad grants of authority to recruit upon the Under Secretary of Defense for Personnel and Readiness and the Secretaries of the Army, Navy and Air Force. *See* 10 U.S.C. 136 (Under Secretary); 3013 (Secretary of the Army); 5013 (Secretary of the Navy); 8013 (Secretary of the Air Force).

The Department disagrees with the commenters' assertion that direct marketing is not an authorized agency purpose. Indeed, in acknowledgment of the critical role of recruitment efforts in the maintenance of the nation's all-volunteer military, Congress has appropriated funds dedicated for this purpose. In particular, Congress continues to provide for the appropriation of funds to carry out advertising and market research programs to enhance the military's recruiting efforts. This is neither a new effort nor a new system of records, but rather a continuation of an ongoing activity supporting the All-Volunteer Force. In the past, direct marketing data were compiled by each of the Services independently. In order to achieve significant costs savings, information is now purchased or obtained by the Department through a variety of sources (including but not limited to state motor vehicle departments, the Selective Service System registry, and commercially-purchased lists). It is then provided to and maintained by a contractor, and then, sent to the military Services for use incident to their respective recruiting programs. In effect, the success of the All-Volunteer Force is contingent on the Secretary's continuing ability to be able to contact young Americans for purposes of making them aware of their option to serve in the United States military and to perform a vital service on behalf of their nation. Although the Department did not initiate a new data collection effort, after an internal organizational realignment, the Department published the May 23, 2005 Systems Notice.

The commenters further remarked that data should be collected directly from the individual as much as possible, that access and correction rights should be provided, and that the adoption of the Blanket Routine Uses for this database is inappropriate. These comments reflect a lack of understanding of the requirements of the Privacy Act, as well as the practical realities of collecting and maintaining data for use in military recruiting. First, the Privacy Act requires that information be collected to the ''greatest extent practicable'' directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs (5 U.S.C. 552a(e)(2)). The only practical cost-effective means of identifying the entire targeted population for recruiting efforts, as contemplated by 10 U.S.C. 503(a), is to obtain the information from a variety of third-party sources as is now being done. Moreover, the collection does not adversely impact an individual, in that it will not result in the denial of any Federal benefits nor will it result in any other unfavorable action impacting the individual. Second, access and amendment procedures are currently set out in the notice as is required by the Privacy Act (5 U.S.C. 552a(e)(4)). These provisions—specifically the notification, access, and contesting sections—advise individuals how they can determine if the database contains information about themselves, how they may access such information, and how they may contest the accuracy of the information in the database. And third, the Blanket Routine Uses, which are permissive in nature, generally are incorporated in all DoD system notices for record systems covered by the Privacy Act, unless there is a statutory or regulatory basis for not doing so. Since the information in the JAMRS database is used within DoD for recruiting purposes only and is not disclosed to non-DoD agencies, the Department has revised the notice to make clear that the Blanket Routine Uses do not apply except for those specific uses relating to disclosures to the Department of Justice for litigation purposes and to the General Services Administration and the National Archives and Records Administration for records management purposes.

The commenters also remarked that the Department lacks authority for collecting Social Security Numbers (SSNs) and that their use for purposes of identifying individuals in the database is unnecessary. These contentions are mistaken. Executive Order 9397 permits the use of the SSN where Federal agencies require a system of numerical identification for individual persons incident to administering an agency activity. A unique identification system is essential in order to accomplish the limited purposes for which the number is used. The principal purpose for collecting the number is to identify individuals who are presently members of the Armed Forces. The SSN is matched against a DoD database containing the SSNs of new recruits. Where there is a match, the information in the JAMRS Database is not released to the Services for the recruitment mailings. Other unique identifiers, such as a residential address or home telephone numbers, may not always suffice, especially in a highly mobile society where individuals frequently move. SSNs are only collected from the Selective Service System (SSS) and are not collected from any other governmental or private database. The Department has revised the notice to make clear that SSNs are not collected from all data sources. Further, the SSNs are used solely for internal database purposes and are not shared with the military Services. The commenters also expressed the concern that the use of SSNs heightens the risk of identity theft. DoD acknowledges that identity theft is an important concern for the Department and that the compromise of the SSN would constitute a significant invasion of privacy. In order to minimize potential exposure, the Department scrambles—a form of encryption—the SSN upon receipt and maintains the SSN in a scrambled format during the time it is stored in the database. These actions, along with other security features for the database, constitute reasonable and appropriate safeguards to protect and preserve the integrity of the number.

The commenters observed that use of a private contractor to maintain the data is an ''aberration'' of normal practice, and also expressed concern with regard

to a perceived lack of security procedures by the contractor to prevent abuse. Contractors or subcontractors are used to perform many activities on behalf of the Department, principally because of the unique expertise they possess and because the activity can be accomplished in a more cost-effective manner. The JAMRS contract was awarded based on the unique ability of the contractor to maintain and store large amounts of data in a secure manner; the contract does not permit the contractor to use the information for any non-Department of Defense marketing efforts. The Department recognizes the importance of ensuring that all data it collects are safely compiled, handled, stored, and transferred. The subcontractor has established a highly secure and restrictive environment by putting in place appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of the database. Vulnerability and risk assessment reviews are conducted on a regular basis to ensure maximum safeguarding of the information.

The commenters also expressed concern about whether the company will be subject to the constraints imposed by the Privacy Act, or specifically whether the contractor is subject to 5 U.S.C. 552a(m). The contract includes the Privacy Act clause of the Federal Acquisition Regulation (FAR), specifically FAR 52.224–2, under which the contractor agrees to comply with the requirements of the Privacy Act and DoD rules and regulations issued under the Act. This contract provision also treats the contractor as an employee of DoD for purposes of the Privacy Act, and it is thus subject to possible criminal penalties if the Act is violated. The contract also was recently amended to incorporate the contract clause at FAR 52.239–1, Privacy and Security Safeguards, which includes a notification requirement if new or unanticipated threats or hazards are discovered, or if existing safeguards cease to function.

Finally, the commenters asserted that individuals should be able to opt-out from the database. The Department agrees that such an option should be available. The Department currently permits any individual who is 15½ years or older, or a parent or guardian acting on the behalf of any minor who is between 15½ and 18 years old, to have his or her name removed from the JAMRS list provided to the Services for recruiting purposes. Individuals may accomplish this by sending a written request to JAMRS, Attn: Opt-Out, 4040 N. Fairfax Drive, Suite 200, Arlington, VA 22203. In order to process such requests, the individual's name, address, city, State, zip, and date of birth must be provided. The ''Record Access Procedures'' section of the System Notice has been expanded to set forth the above-prescribed procedures.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 18, 2006.

**C.R. Choate,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

## DHRA 04

### SYSTEM NAME:

Joint Advertising and Market Research Recruiting Database (May 23, 2005, 70 FR 29486).

### CHANGES:

### SYSTEM NAME:

Delete entry and replace with ''Joint Advertising, Market Research & Studies Recruiting Database.''

### SYSTEM LOCATION:

Delete entry and replace with ''Equifax Database Services, Inc., 500 Edgewater Drive, Suite 525, Wakefield, MA 01880–3030.''

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Young adults aged 16 to 18; college students; Selective Service System registrants; individuals who have taken the Armed Services Vocational Aptitude Battery (ASVAB) test; individuals who have responded to various paid/non-paid advertising campaigns seeking enlistment information; current military personnel who are on Active Duty or in the Reserves and prior service individuals who still have remaining Military Service Obligation; individuals who are in the process of enlisting; and individuals who have asked to be removed from any future recruitment lists.''

### CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''All Records: Full name, gender, address, city, State, zip code, source code. For Young Adults aged 16 to 18: Date of birth, telephone number, high school name, graduation date, grade point average, education level, military interest, college intent, ethnicity, ASVAB test date, ASVAB Armed Forces Qualifying Test Category Score. For College Students: Telephone number, college name, college location, college type, college competitive ranking, class year, ethnicity, field of study. For Selective Service System: Date of birth, scrambled Social Security Number, Selective Service registration method. Individuals who have responded to various paid/non-paid advertising campaigns seeking enlistment information: Date of birth, telephone number, Service Code, last grade completed, e-mail address, contact immediately flag. For Military Personnel: Date of birth, scrambled Social Security Number, ethnicity, education level, application date, military service and occupation information. For Individuals who have asked to be removed from future recruitment list: Date of birth, reason code.''

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 503(a), Enlistments: Recruiting campaigns; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 3013 (Secretary of the Army); 10 U.S.C. 5013 (Secretary of the Navy); 10 U.S.C. 8013 (Secretary of the Air Force); and E.O.9397 (SSN).''

### PURPOSE(S):

Delete entry and replace with ''The purpose of the system of records maintained by the Joint Advertising, Market Research and Studies (JAMRS) is to compile, process and distribute files of individuals to the Services to assist them in their direct marketing recruiting efforts. The system also provides JAMRS with the ability to measure effectiveness of list purchases through ongoing analysis and to remove the names of individuals who are currently members of, or are enlisting in, the Armed Forces or who have asked that their names be removed from future recruitment lists.''

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses set forth at the beginning of OSD's compilation of systems of records notices do not apply to this system except:

To any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department, in pending or potential litigation to which the record is pertinent.

To the General Services Administration and the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.''

* * * * *

**RETRIEVABILITY:**

Delete entry and replace with ''Records may be retrieved by an individual's full name, address, and date of birth.''

**SAFEGUARDS:**

Delete entry and replace with ''Access to information in the database is highly restricted and limited to those that require the records in the performance of their official duties. The database utilizes a layered approach of overlapping controls, monitoring and authentication to ensure overall security of the data, network and system resources. Sophisticated physical security, perimeter security (firewall, intrusion prevention), access control, authentication, encryption, data transfer, and monitoring solutions prevent unauthorized access from internal and external sources.''

**RETENTION AND DISPOSAL:**

Delete entry and replace with ''Destroy three years from the date the information pertaining to the individual is first distributed to the Services or, where data are subsequently collected from a different data source, from the date that subsequent data are subsequently distributed to the Services. Records for individuals who have responded to various paid/nonpaid advertising campaigns seeking enlistment are kept, for analytical purposes, until they are no longer needed. Records for individuals who wish to be removed from future recruitment lists (opted-out) are retained for ten years.''

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with ''Program Manager, Joint Advertising, Market Research & Studies (JAMRS), 4040 N. Fairfax Drive, Suite #200, Arlington, VA 22203–1613.''

**NOTIFICATION PROCEDURE:**

Delete entry and replace with ''Individuals seeking to determine whether information about them is contained in this system should address written inquiries to the Joint Advertising, Market Research & Studies (JAMRS), Direct Marketing Program Officer, 4040 N. Fairfax Drive, Suite #200, Arlington, Virginia 22203–1613.

Requests should contain the full name, date of birth, and current address of the individual.''

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with ''Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Joint Advertising, Market Research & Studies (JAMRS), Direct Marketing Program Officer, 4040 N. Fairfax Drive, Suite #200, Arlington, Virginia 22203–1613.

Requests should contain the full name, date of birth, and current address of the individual.

**Note 1:** Individuals, who are 15½ years old or older, or parents or legal guardians acting on behalf of individuals who are between the ages of 15½ and 18 years old, seeking to have their name or the name of their child or ward, as well as other identifying data, removed from this system of records (or removed in the future when such information is obtained) should address written Opt-Out requests to the Joint Advertising, Marketing Research & Studies (JAMRS), ATTN: Opt-Out, 4040 N. Fairfax Drive, Suite #200, Arlington, Virginia 22203–1613. Such requests must contain the full name, date of birth, and current address of the individual.

**Note 2:** Opt-Out requests will be honored for ten years. However, because opt-out screening is based, in part, on the current address of the individual, any change in address will require the submission of a new opt-out request with the new address.''

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## DHRA 04

**SYSTEM NAME:**

Joint Advertising, Market Research & Studies Recruiting Database.

**SYSTEM LOCATION:**

Equifax Database Services, Inc., 500 Edgewater Drive, Suite 525, Wakefield, MA 01880–3030.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Young adults aged 16 to 18; college students; Selective Service System registrants; individuals who have taken the Armed Services Vocational Aptitude Battery (ASVAB) test; individuals who have responded to various paid/non-paid advertising campaigns seeking enlistment information; current military personnel who are on Active Duty or in the Reserves and prior service individuals who still have remaining Military Service Obligation; individuals who are in the process of enlisting; and individuals who have asked to be removed from any future recruitment lists.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

All Records: Full name, gender, address, city, State, zip code, source code. For Young Adults aged 16 to 18: Date of birth, telephone number, high school name, graduation date, grade point average, education level, military interest, college intent, ethnicity, ASVAB test date, ASVAB Armed Forces Qualifying Test Category Score. For College Students: Telephone number, college name, college location, college type, college competitive ranking, class year, ethnicity, field of study. For Selective Service System: Date of birth, scrambled Social Security Number, Selective Service registration method. Individuals who have responded to various paid/non-paid advertising campaigns seeking enlistment information: Date of birth, telephone number, Service Code, last grade completed, e-mail address, contact immediately flag. For Military Personnel: Date of birth, scrambled Social Security Number, ethnicity, education level, application date, military service and occupation information. For Individuals who have asked to be removed from future recruitment list: Date of birth, reason code.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 503(a), Enlistments: recruiting campaigns; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 3013 (Secretary of the Army); 10 U.S.C. 5013 (Secretary of the Navy); 10 U.S.C. 8013 (Secretary of the Air Force); and E.O. 9397 (SSN).

**PURPOSE(S):**

The purpose of the system of records maintained by the Joint Advertising, Market Research and Studies (JAMRS) is to compile, process and distribute files of individuals to the Services to assist them in their direct marketing recruiting efforts. The system also provides JAMRS with the ability to measure effectiveness of list purchases through ongoing analysis and to remove the names of individuals who are currently members of, or are enlisting in, the Armed Forces or who have asked that their names be removed from future recruitment lists.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: The DoD Blanket Routine Uses set forth at the beginning of OSD's compilation of systems of records notices do not apply to this system except:

To any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department, in pending or potential litigation to which the record is pertinent.

To the General Services Administration and the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on electronic storage media.

**RETRIEVABILITY:**

Records may be retrieved by an individual's full name, address, and date of birth.

**SAFEGUARDS:**

Access to information in the database is highly restricted and limited to those that require the records in the performance of their official duties. The database utilizes a layered approach of overlapping controls, monitoring and authentication to ensure overall security of the data, network and system resources. Sophisticated physical security, perimeter security (firewall, intrusion prevention), access control, authentication, encryption, data transfer, and monitoring solutions prevent unauthorized access from internal and external sources.

**RETENTION AND DISPOSAL:**

Destroy three years from the date the information pertaining to the individual is first distributed to the Services or, where data are subsequently collected from a different data source, from the date that subsequent data are subsequently distributed to the Services. Records for individuals who have responded to various paid/nonpaid advertising campaigns seeking enlistment are kept, for analytical purposes, until they are no longer needed. Records for individuals who wish to be removed from future recruitment lists (opted-out) are retained for ten years.

**SYSTEM MANAGER(S) AND ADDRESS:**

Program Manager, Joint Advertising, Market Research & Studies (JAMRS), 4040 N. Fairfax Drive, Suite #200, Arlington, VA 22203–1613.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about them is contained in this system should address written inquiries to the Joint Advertising, Market Research & Studies (JAMRS), Direct Marketing Program Officer, 4040 N. Fairfax Drive, Suite #200, Arlington, Virginia 22203–1613.

Requests should contain the full name, date of birth, and current address of the individual.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Joint Advertising, Market Research & Studies (JAMRS), Direct Marketing Program Officer, 4040 N. Fairfax Drive, Suite #200, Arlington, Virginia 22203–1613.

Requests should contain the full name, date of birth, and current address of the individual.

**Note 1:** Individuals, who are 15½ years old or older, or parents or legal guardians acting on behalf of individuals who are between the ages of 15½ and 18 years old, seeking to have their name or the name of their child or ward, as well as other identifying data, removed from this system of records (or removed in the future when such information is obtained) should address written Opt-Out requests to the Joint Advertising, Marketing Research & Studies (JAMRS), ATTN: Opt-Out, 4040 N. Fairfax Drive, Suite #200, Arlington, Virginia 22203–1613. Such requests must contain the full name, date of birth, and current address of the individual.

**Note 2:** Opt-Out requests will be honored for ten years. However, because opt-out screening is based, in part, on the current address of the individual, any change in address will require the submission of a new opt-out request with the new address.

**CONTESTING RECORD PROCEDURES:**

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Individuals; state Department of Motor Vehicle offices; commercial information brokers/vendors; Selective Service System; Defense Manpower Data Center (DMDC); United States Military Entrance Processing Command for individuals who have taken the ASVAB test; and the Military services and Congressional offices for individuals who have asked to be removed from any future recruitment lists.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E6–21942 Filed 1–8–07; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Department of the Army

**[USA–2007–0001]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of New System of Records.

**SUMMARY:** The Department of the Army proposes to add a system of records notice in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on February 8, 2007 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, ATTN: AHRC–PDD–FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Dickerson at (703) 428–6513.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 13, 2006 to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 3, 2007.

**C.R. Choate,**

*Alternate Federal Register Liaison Officer, Department of Defense.*

**A0025–1 CIO G6**

**SYSTEM NAME:**

Army Knowledge Online (AKO) Information System Records

**SYSTEM LOCATION:**

United States Army Program Executive Office, Enterprise Information Systems, 9350 Hall Road, Suite 141, Fort Belvoir, VA. 22060–5526.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Department of Defense military personnel (active component and reserve component), DoD civilian personnel, retired service members, and authorized guests (family members of DoD personnel, etc.) requiring or requesting access to AKO.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, Operator's/user's identification, Social Security Number, birth date; email address, organizational address, telephone and fax numbers; military rank/grade, military branch, military MOS, assigned password; and account types.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013, Secretary of the Army; Department of Defense Directive 8500.1, Information Assurance (IA); DoD Instruction 8500.2, Information Assurance Implementation; AR 25–1, Army Knowledge Management and Information Technology; Army Regulation 25–2, Information Assurance; and E.O. 9397 (SSN).

**PURPOSE(S):**

To register users in order to facilitate electronic communications among DoD personnel and other authorized guest users. This system serves as an Army controlled repository for information needed by DoD personnel necessary for performance of duties and other DoD-related functions. Access is controlled based on individual needs for specific types of information. Statistical data, with all personal identifiers removed, may be used by management for system efficiency, workload calculation, or reporting purposes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETIRING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:**

**STORAGE:**

Records are stored on electronic storage media.

**RETRIEVABILITY:**

Data is retrieved by individual's name.

**SAFEGUARDS:**

Computerized records maintained in a controlled area are accessible only to authorized personnel. Physical and electronic access is restricted to designated individuals having a need therefore in the performance of official duties. Buildings are equipped with alarms, cameras, and personnel on around the clock.

**RETENTION AND DISPOSAL:**

Disposition pending (until the National Archives and Records Administration has approved retention and disposition of these records, treat as permanent).

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief Information Officer, Department of the Army, 107 Army Pentagon, Washington, DC 20310–0107.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief Information Officer, Department of the Army, 107 Army Pentagon, Washington, DC 20310–0107.

For verification purposes, individual should provide full name, SSN, and signature.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Chief Information Officer, Department of the Army, 107 Army Pentagon, Washington, DC 20310–0107.

For verification purposes, individual should provide full name, SSN, and signature.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505 or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual, and Defense Manpower Data Center's Defense Enrollment Eligibility Reporting System.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E7–79 Filed 1–8–07; 8:45 am]

BILLING CODE 3710–08–P

## DEPARTMENT OF DEFENSE

### Department of the Army

### Mandatory Provision of Full Replacement Value Coverage by Department of Defense Personal Property Transportation Service Providers (TSPs)/Contractors

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice; request for comments.

**SUMMARY:** The original **Federal Register** notice for the subject action published in the **Federal Register** on Friday, December 15, 2006 (71 FR 75509). Notice remains in effect and is hereby supplemented to formally request all interested parties to submit comments on the proposal to Mr. Charles Helfrich, or Ms. Cathy Schoepfle SDPP–PA, at either *FRVComments@sddc.army.mil* or by courier to: Military Surface Deployment and Distribution Command, ATTN: SDPP–PA, Room 10N67, Hoffman Building II, 200 Stovall St., Alexandria, VA 22332–5000. Such comments must be received not later than 60 business days from the date this notice is published in the **Federal Register**.

### Regulatory Flexibility Act

This action is not considered rule making within the meaning of Regulatory Flexibility Act, 5 U.S.C. 601–612.

### Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3051 *et seq.*, does not apply because no information collection or record keeping requirements are imposed on contractors, offerors or members of the public.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 07–30 Filed 1–08–07; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### Notice of Availability of the Draft Environmental Impact Statement for the Dam Safety Assurance Evaluation Report, Dover Dam, City of Dover, Tuscarawas County, OH

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of availability.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (Corps), Huntington District has prepared an Environmental Impact Statement (EIS) to disclose potential impacts to the natural, physical, and human environment resulting from modifications to Dover Dam. This high hazard dam does not conform to current design standards related to stability and sliding during a probable maximum flood. Modifications are proposed so the Dam will meet these standards.

**DATES:** Written comments on the Draft Environmental Impact Statement will be accepted for 45 days following publication of the U.S. Environmental Protection Agency's Notice of Availability for this Draft Environmental Impact Statement (DEIS) in the **Federal Register** anticipated to occur on or before January 12, 2007.

**ADDRESSES:** Send all written comments and suggestions concerning this proposed project to Rodney G. Cremeans, Project Manager PM–PP–P, U.S. Army Corps of Engineers, Huntington District, 502 Eighth Street, Huntington, WV 25701–2070. E-mail: *Rodney.G.Cremeans@lrh01.usace.army.mil.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Rodney Cremeans, Telephone: (304) 399–5715.

**SUPPLEMENTARY INFORMATION:** Section 1203 of the Water Resources Development Act of 1986 (Pub. L. 99–662) provides for modification of completed Corps dams and related facilities for safety purposes due to new hydrologic or seismic data or changes in state-of-the-art design or construction criteria. The National Weather Service generalized estimates of Probably Maximum Precipitation (PMP) were used to develop flood scenarios and guide design criteria for structures such as Dover Dam. These rainfall estimates are considered extreme, with a very low probability of occurrence. However, the worst-case storms associated with the PMP events retain some probability of occurrence. The Corps has determined the dam cannot safely accommodate flooding from theoretical Probably Maximum Flood (PMF) events. The dam is also believed to be unstable against sliding under conditions below the PMF due to known faulting and uncertain foundation bedrock quality. The objectives of the project are to develop the most cost effective, environmentally sound plan to upgrade Dover Dam to meet current hydrologic design standards and to address stability issues associated with inadequate bedrock foundation. The objectives also include protecting project facilities including the adjacent park area and Ohio Route 800.

Three alternatives: (1) Raise Dam, (2) Dam Overtop and (3) No Federal Action are evaluated in detail in the EIS. The Raise Dam alternative would allow the dam to safely pass 100% of the PMF through raising the existing non-overflow sections with concrete parapet walls constructed on the existing dam. To address inadequate bedrock foundation and potential for sliding under PMF conditions, the Raise Dam alternative also includes installation of anchors in the spillway and stilling basin. The Dam Overtop alternative would modify the existing non-overflow section of the dam to withstand overtopping, and also includes installation of anchors in the spillway and stilling basin to address inadequate bedrock foundation. Under the No Federal Action alternative no modifications would be done. The Raise Dam alternative was chosen as the recommended plan because it more reliably meets project objectives, minimizes costs, and has the least adverse environmental effects.

The Corps invites full public participation to promote open communication and better decision-making. All persons and organizations that have an interest in the Dover Dam Project are urged to participate in this NEPA evaluation process. Assistance will be provided upon request to anyone having difficulty with learning how to participate.

A public meeting will be held on January 18th at 7 p.m. at the McDonald Marlite Conference Center in New Philadelphia, OH. The public hearing will be announced in advance through notices, media news releases, and/or mailings.

Copies of the Draft EIS may be reviewed at the following locations:

1. Dover Public Library, 525 N. Walnut Street, Dover, OH 44622.
2. U.S. Army Corps of Engineers Muskingum Area Office, 5336 State Route 800 NE, Dover, OH 44662–6910.
3. U.S. Army Corps of Engineers, Huntington District, Room 3100, 502 Eighth Street, Huntington, WV 25701.
4. *http://www.lrh.usace.army.mil/projects/review.*

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 07–29 Filed 1–8–07; 8:45 am]

**BILLING CODE 3710–GM–M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[USN–2007–0001]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Department of the Navy proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on February 8, 2007 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Doris Lama at (202) 685–325–6545.

**SUPPLEMENTARY INFORMATION:** The Department of the Navy's systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on December 13, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 3, 2007.

**C.R. Choate,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**N05580–1**

**SYSTEM NAME:**

Security Incident System (January 8, 2001, 66 FR 1328)

**CHANGES:**

**SYSTEM IDENTIFIER:**

Change ''N05580–1'' to ''NM05580–1''.

* * * * *

**SYSTEM LOCATION:**

Delete entry and replace with ''Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at *http://doni.daps.dla.mil/default.aspx.*

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.''

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with ''Incident/complaint reports; data sheets that contain information on victims and perpetrators; military magistrate's records; confinement records; traffic accident and violation records; traffic court file; citations to appear before U.S. Magistrate; witness statements; stolen property reports; military police investigator's report; military police motor vehicle accident and injury report; military police alert cards; military police property custody forms; tags, and disposition of evidence letters; military police field interview cards; military police desk blotter; use of force reports; traffic violation records; driving record reports; traffic court files; citations to appear before U.S. Magistrate; criminal investigation reports; civil court cases records; minor offense report; uniform violation report; narcotics reports; polygraph examinations; letters of warning/eviction from base housing; letters of warning/barring from federal reservation; Armed Forces police reports; suspect photographic files; child abuse files; juvenile case files; valuable property receipt; vehicle impound files and vehicle towing reports; suspension of driving privileges and revocation letters assignment to absentee/deserter escort duty; informant list; Master Crime index card; evidence record file; military police log/journal; breathalyzer report; criminal investigation file; and any other such report received by military police personnel in the official execution of their duties.''

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with ''10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).''

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**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Delete entry and replace with ''Paper records and electronic storage media.

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with ''Policy Official: Director, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, 716 Sicard Street SE, Washington Navy Yard, DC 20388–5380.

**RECORD HOLDER:**

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at *http://doni.daps.dla.mil/default.aspx.*''

**NOTIFICATION PROCEDURE:**

Delete first paragraph and replace with ''Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Organizational elements of the Department of the Navy.

Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at *http://doni.daps.dla.mil/default.aspx.*''

**RECORD ACCESS PROCEDURES:**

Delete first paragraph and replace with ''Individuals seeking access to information about themselves should address written inquiries to the Commanding Officer or head of the activity where assigned.

Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at *http://doni.daps.dla.mil/default.aspx.*

Individuals involved in base accidents, their insurance companies and/or their attorneys can seek a routine use disclosure of information for the purpose of adjudicating a claim, such as personal injury, traffic accident, or other damage to property. The release of personal information is limited to that required to adjudicate a claim. The request should be titled ''Routine Use Disclosure Request'' and include the name and social security number of the individual involved and the date of the incident.''

* * * * *

**RECORD SOURCE PROCEDURES:**

Change category title to ''Record source categories.''

* * * * *

**NM05580–1**

**SYSTEM NAME:**

Security Incident System

**SYSTEM LOCATION:**

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at *http://doni.daps.dla.mil/default.aspx.*

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals involved in or witnessing incidents requiring the attention of base, station, or activity security personnel.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Incident/complaint reports; data sheets that contain information on victims and perpetrators; military magistrate's records; confinement records; traffic accident and violation records; traffic court file; citations to appear before U.S. Magistrate; witness statements; stolen property reports; military police investigator's report; military police motor vehicle accident and injury report; military police alert cards; military police property custody forms; tags, and disposition of evidence letters; military police field interview cards; military police desk blotter; use of force reports; traffic violation records; driving record reports; traffic court files; citations to appear before U.S. Magistrate; criminal investigation reports; civil court cases records; minor offense report; uniform violation report; narcotics reports; polygraph examinations; letters of warning/eviction from base housing; letters of warning/barring from federal reservation; Armed Forces police reports; suspect photographic files; child abuse files; juvenile case files;

valuable property receipt; vehicle impound files and vehicle towing reports; suspension of driving privileges and revocation letters assignment to absentee/deserter escort duty; informant list; Master Crime index card; evidence record file; military police log/journal; breathalyzer report; criminal investigation file; and any other such report received by military police personnel in the official execution of their duties.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

**PURPOSE(S):**

To track and prosecute offenses, counsel victims, and other administrative actions; to support insurance claims and civil litigation; to revoke base, station, or activity driving privileges.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To individuals involved in base incidents, their insurance companies, and/or their attorneys for the purpose of adjudicating a claim, such as personal injury, traffic accident, or other damage to property. The release of personal information is limited to that required to adjudicate a claim.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records and electronic storage media.

**RETRIEVABILITY:**

Name, Social Security Number, case number, and organization.

**SAFEGUARDS:**

Access provided on a need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access is controlled by password or other user code system.

**RETENTION AND DISPOSAL:**

Maintained for two years and then destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Policy Official: Director, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, 716 Sicard Street, SE., Washington Navy Yard, DC 20388–5380.

**RECORD HOLDER:**

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at *http://doni.daps.dla.mil/default.aspx.*

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at *http://doni.daps.dla.mil/default.aspx.*

Written requests should contain full name, Social Security Number, and must be signed by the individual.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves should address written inquiries to the Commanding Officer or head of the activity where assigned. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is available at *http://doni.daps.dla.mil/default.aspx.*

Individuals involved in base accidents, their insurance companies and/or attorneys can seek a routine use disclosure of information for the purpose of adjudicating a claim, such as personal injury, traffic accident, or other damage to property. The release of personal information is limited to that required to adjudicate a claim. The request should be titled ''Routine Use Disclosure Request'' and include the name and social security number of the individual involved and the date of the incident.

Written requests should contain full name, Social Security Number, and must be signed by the individual.

**CONTESTING RECORD PROCEDURES:**

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Individual concerned, other records of the activity, investigators, witnesses, and correspondents.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been published in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

[FR Doc. E7–78 Filed 1–8–07; 8:45 am]

**BILLING CODE 5001–06–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 February 8, 2007.

**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: January 4, 2007.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

### Office of Elementary and Secondary Education

*Type of Review:* Reinstatement.

*Title:* Formula Grant EASIE (Electronic Application System for Indian Education).

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 1,185.

*Burden Hours:* 5,925.

*Abstract:* This package is for the reinstatement of the Indian Education Formula Grant Program to Local Educational Agencies application for funding. The application is used to determine applicant eligibility, amount of award, and appropriateness of project services for Indian students to be served. The single most important change to this instrument is that applicants will now submit their data electronically through EDFacts, which will result in more meaningful data and an easier, faster application process.

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 3223. 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. E7–76 Filed 1–8–07; 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 February 8, 2007.

**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: January 4, 2007.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* Extension.

*Title:* Applications for New Grants under the Rehabilitation Services Administration (RSA).

*Frequency:*

*Affected Public:* Not-for-profit institutions; Individuals or household; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 1,000.

*Burden Hours:* 40,000.

*Abstract:* Vocational rehabilitation ''Federal Assistance'' Discretionary Grant Application Forms and Instructions for Rehabilitation Programs on behalf of Individuals with Disabilities are required so that all applications are completed in accordance with specific and unique program requirements.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

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 3243. 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. E7–77 Filed 1–8–07; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

**[CFDA Number: 84.184H]**

### Office of Safe and Drug-Free Schools; Grant Competition To Prevent High-Risk Drinking or Violent Behavior Among College Students

**ACTION:** Correction; Notice correcting the Deadline dates.

**SUMMARY:** We correct the *Deadline dates* in the notice published on December 22, 2006 (71 FR 77004).

**SUPPLEMENTARY INFORMATION:** On December 22, 2006 we published a notice in the **Federal Register** inviting applications for the Grant Competition to Prevent High-Risk Drinking or Violent Behavior among College Students (71 FR 77004–77007). The Deadline dates in the notice were incorrect. The Deadline for Transmittal of Applications (as published on pages 77004 and 77005) is corrected to February 20, 2007, and the Deadline for Intergovernmental Review (as published on pages 77004 and 77005) is corrected to April 20, 2007.

**FOR FURTHER INFORMATION CONTACT:** Richard Lucey, Jr., U.S. Department of Education, 400 Maryland Avenue, SW., room 3E335, Washington, DC 20202–6450. Telephone: (202) 205–5471 or by e-mail: *richard.lucey@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in text or PDF at the following site: *http://www.ed.gov/programs/dvphighrisk/applicant.html.*

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Dated: January 4, 2007.

**Deborah A. Price,**

*Assistant Deputy Secretary for Safe and Drug-Free Schools.*

[FR Doc. E7–105 Filed 1–8–07; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### National Board for Education Sciences; Meeting

**AGENCY:** National Board for Education Sciences; ED.

**ACTION:** Notice of open meeting and a partially closed meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Board for Education Sciences. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portion of the meeting. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.,* interpreting services, assistive listening devices, materials in alternative format) should notify Mary Grace Lucier at 202/219–2253 (or *Mary.Grace.Lucier@ed.gov*) by January 12. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

*Dates:* January 23 and 24, 2007.

*Time:* January 23, 1:30 to 4:30 p.m.

January 24, 9–9:15 a.m., open; 9:15 to 10 a.m., closed; 10 a.m.–2 p.m., open.

*Location:* Washington Court Hotel, 525 New Jersey Ave., NW., Washington, DC 20001, (room to be announced).

**FOR FURTHER INFORMATION CONTACT:** Mary Grace Lucier, 202/219–2253.

**SUPPLEMENTARY INFORMATION:** The National Board for Education Sciences is authorized by Section 116 of the Education Sciences Reform Act of 2002. The Board advises the Director of the Institute of Education Sciences (IES) on the establishment of activities to be supported by the Institute, on the funding of applications for grants, contracts, and cooperative agreements for research after the completion of peer review, and reviews and evaluates the work of the Institute. On January 23 at 1:30 p.m., the Board will receive an update from the Director of IES on the work of the Institute and its short and long-term goals. At 3 p.m., Alex Nock, Director of the Commission on No Child Left Behind, will discuss the role of research and evaluation in the reauthorization of the No Child Left Behind Act and the Education Sciences Reform Act.

On January 24, after a review of the prior day's activities the meeting will be closed to the public from 9:15 a.m.–10 a.m. under exemptions (2) and (6) of the Section 552b(c) of Title 5 U.S.C. The Board will discuss internal personnel issues relating to filling the positions of chairperson and executive director. After a 15-minute break, the Board will resume in open session at 10:15 a.m. At that time, the contractor chosen to conduct an evaluation of IES will give a presentation. This portion of the meeting will last until 11:30 a.m. The Board will hear a presentation by Dr. Mark Schneider, Commissioner of the National Center for Education Statistics from 11:30 a.m. to 12:15 p.m., followed by the Board's annual ethics briefing. From 1 p.m. to 2 p.m. the Board will hear reports from its subcommittees and consider next steps for its work in FY 2007. The meeting will adjourn at 2 p.m. A final agenda will be available from Mary Grace Lucier on January 12, 2007.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b(c) will be available to the public. Records will be kept of all Board proceedings and will be available for public inspection at the office of the National Board for Education Sciences, Room 627H, 555 New Jersey Ave., NW., Washington, DC 20208.

Dated: January 3, 2007.

**Grover J. Whitehurst,**

*Director, Institute of Education Sciences.*

[FR Doc. 07–16 Filed 1–8–07; 8:45 am]

**BILLING CODE 4000–01–M**

## ELECTION ASSISTANCE COMMISSION

### Information Collection Activity; Study of Alternative Voting Methods

**AGENCY:** Election Assistance Commission (EAC).

**ACTION:** Notice; request for comments.

**SUMMARY:** The EAC, as part of its continuing effort to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on a proposed

information collection. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents. Comments submitted in response to this notice will be summarizeed and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**DATES:** Written comments must be submitted on or before March 9, 2007.

**ADDRESSES:** Submit comments and recommendations on the proposed information collection in writing to the U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005, ATTN: Ms. Laiza N. Otero (or via the Internet at *lotero@eac.gov).*

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the survey, please write to the above address or call Ms. Laiza N. Otero at (202) 566–3100. You may also view the proposed collection instrument by visiting our Web site at *http://www.eac.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Study of Alternative Voting Methods.

*OMB Number:* Pending.

*Type of Review:* Regular submission.

*Needs and Uses:* Section 241 of the Help America Vote Act (HAVA) requires the U.S. Election Assistance Commission (EAC) to periodically study election administration issues with the goal of promoting voting methods and improving election administration. Section 241(b)(10) instructs the EAC to study the feasibility and advisability of conducting elections for Federal office on different days, at different places, and during different hours. In addition, it recommends the study include a discussion of the advisability of establishing a uniform poll closing time and establishing:

(A) A legal public holiday under section 6103 of title 5 United States Code, as the date on which general elections for Federal office are held;

(B) The Tuesday after the 1st Monday in November, in every even numbered year, as a legal public holiday under such section;

(C) A date other than the Tuesday next after the 1st Monday in November, in every even numbered year as the date on which general elections for Federal office are held; and

(D) Any date described in subparagraph (C) as a legal public holiday under such section.

To provide information to the States and the Congress on the feasibility and advisability of using alternative days, times, and places to conduct Federal elections, the EAC seeks to survey voters to better understand their motivations and perceptions of impediments to voting. The survey will provide insights into the public's perceptions of particular aspects of the voting process.

*Affected Public:* Citizens.

*Number of Respondents:* 3,000.

*Responses per Respondent:* 1.

*Estimated Burden per Response:* .25 hours.

*Estimated Total Annual Burden Hours:* 750 hours.

*Frequency:* One time collection.

Information will be collected through a statistically valid survey of 3,000 registered voters to determine how they currently respond to alternative voting methods (if in a State that offers them) or would respond to alternative voting methods (if in a State that does not allow them). The survey will be representative of the 50 States, the District of Columbia, and U.S. territories. The topics that will be explored include, but are not limited to:

a. Voting by mail

b. Voting at a consolidated polling center

c. Voting online

d. Voting earlier/later on Election Day

e. Voting on weekend day

f. Voting on day other than first Tuesday in November

g. Making the day on which Federal elections are held a Federal holiday

h. No alternative voting method, prefer status quo

The survey will gather data regarding each respondent's background. Background information will include, but is not limited to, (1) Respondents' voter registration history, (2) respondents' voting history, and (3) standard demographic questions covering (age, ethnicity, education, employment status, and income bracket).

**Thomas R. Wilkey,**

*Executive Director, U.S. Election Assistance Commission.*

[FR Doc. 07–27 Filed 1–8–07; 8:45 am]

**BILLING CODE 6820–KF–M**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Savannah River Site

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Monday, January 22, 2007, 1 p.m.–5 p.m.; Tuesday, January 23, 2007, 8:30 a.m.–4 p.m.

**ADDRESSES:** Crowne Plaza, 130 Shipyard Dr., Hilton Head, SC 29928.

**FOR FURTHER INFORMATION CONTACT:** Gerri Flemming, Closure Project Office, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7886.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

*Monday, January 22, 2007*

1 p.m. Combined Committee Session
5 p.m. Adjourn

*Tuesday, January 23, 2007*

8:30 a.m. Approval of Minutes, Agency Updates
9:45 a.m. Public Comment Session
10 a.m. Chair and Facilitator Update
10:45 a.m. Strategic & Legacy Management Committee Report
11:45 a.m. Public Comment Session
12 p.m. Lunch Break
1 p.m. Nuclear Materials Committee Report
1:30 p.m. Waste Management Committee Report
2 p.m. Public Comment Session
2:15 p.m. Facility Disposition & Site Remediation Committee Report
3 p.m. Administrative Committee Report
4 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting Monday, January 22, 2007.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements

pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling her at (803) 952–7886.

Issued at Washington, DC, on January 4, 2007.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. E7–86 Filed 1–8–07; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Hanford

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register.**

**DATES:** Thursday, February 1, 2007, 9 a.m.–5 p.m.; Friday, February 2, 2007, 8:30 a.m.–4 p.m.

**ADDRESSES:** Red Lion Hanford House, 802 George Washington Way,Richland, Washington.

**FOR FURTHER INFORMATION CONTACT:** Erik Olds, Federal Coordinator, Department of Energy Richland Operations Office, 2440 Stevens Drive, P.O. Box 450, H6–60, Richland, WA 99352; Phone: (509) 376–8656; Fax: (509) 376–1214.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

- Columbia River Toxic Program
- Budgets and Contracts Committee advice on Hanford's Request for Proposals
- Public Involvement and Tank Waste Committees update from the workgroup covering the Tank Closure and Waste Management
- Hanford Advisory Board Charter Changes
- Change of Advisory Board Chair
- Advice from the Health, Safety and Environmental Protection Committee on worker compensation
- Advice from the Public Involvement Committee on the 2009 budget involvement process
- Agency Updates
- Committee Updates

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Erik Olds' office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Erik Olds' office at the address or telephone number listed above.

Issued at Washington, DC, on January 4, 2007.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. E7–87 Filed 1–8–07; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8267–1]**

### Coastal Elevations and Sea Level Rise Advisory Committee Meeting

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

**ACTION:** Notice of meeting.

**SUMMARY:** Under the Federal Advisory Committee Act (Pub. L. 92–463), EPA gives notice of a public meeting of the Coastal Elevations and Sea Level Rise Advisory Committee (CESLAC).

**DATE AND TIME:** The meeting will be held on Monday, January 29, 2007, from 1:15 p.m. to 5 p.m. Registration will begin at 12:30 p.m.

**ADDRESSES:** The meeting will be held at 1310 L St., NW., Washington, DC, Rooms 152 and 154.

**FOR FURTHER INFORMATION CONTACT:** Jack Fitzgerald, Designated Federal Officer, Climate Change Division, Mail Code 6207J, Office of Atmospheric Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; e-mail address: *Fitzgerald.jack@epa.gov*, telephone number (202) 343–9336, fax: (202) 343–2337.

**SUPPLEMENTARY INFORMATION:** The purpose of CESLAC is to provide advice on the conduct of a study titled *Coastal Elevations and Sensitivity to Sea Level Rise* to be conducted as part of the U.S. Climate Change Science Program (CCSP). This study will give particular attention to the coastal area of the U.S. between the states of New York and North Carolina. A copy of the Committee Charter is available at *http://www.fido.gov/facadatabase/*. This is the first meeting of CESLAC. The agenda will include information, presentations and discussions on the purpose of CESLAC, the purpose of the meeting, the future schedule, public participation, the study, EPA's information quality requirements and procedures. One hour will be allocated for statements by members of the public. Individuals who are interested in making statements should inform Jack Fitzgerald of their interest in advance of the meeting and provide a copy of their statements for the record. Individuals will be scheduled in the order that their statements of intent to present are received. A minimum of three minutes will be provided for each statement. The maximum amount of time will depend on the number of statements to be made. All statements, regardless of whether there is sufficient time to present them orally, will be included in the record

and considered by the committee. For information on access or services for individuals with disabilities, please contact Jack Fitzgerald at either the phone number or e-mail address provided under ''**FOR FURTHER INFORMATION CONTACT**.'' To request accommodation of a disability, please also contact Jack Fitzgerald, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

**List of Subjects**

Environmental protection.

Dated: January 3, 2007.

**Jack Fitzgerald,**

*Designated Federal Officer.*

[FR Doc. E7–90 Filed 1–8–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2004–0076; FRL–8267–2]**

### Extension of Period for Objection for the Notice of Data Availability for EGU $NO_X$ Annual and $NO_X$ Ozone Season Allocations for the Clean Air Interstate Rule Federal Implementation Plan Trading Programs

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

**ACTION:** Notice to extend period for objections.

**SUMMARY:** EPA is extending the period for submission of objections concerning the Notice of Data Availability (NODA) for EGU $NO_X$ Annual and $NO_X$ Ozone Season Allocations for the Clean Air Interstate Rule Federal Implementation Plan Trading Programs (CAIR FIP) published on August 4, 2006 for an additional 45 days with regard to cogeneration units combusting biomass (biomass cogeneration units). The period had previously been extended to October 5, 2006 for all objections, and further extended to January 3, 2007 for objections concerning biomass cogeneration units. This notice further extends the period for objections concerning biomass cogeneration units an additional 45 days from January 3 to February 20, 2007. Certain biomass cogeneration unit owners and operators requested the additional time to submit objections because of difficulties in collection of information relating to the application of efficiency standards for cogeneration units (as defined in the CAIR FIP) to biomass cogeneration units. For all other objections, the deadline was October 5, 2006.

**DATES:** The EPA is establishing a period ending on February 20, 2007 only for objections (including data) related to biomass cogeneration units. Objections must be postmarked by the last day of the period for objection and sent directly to the Docket Office listed in **ADDRESSES** (in duplicate form if possible).

**ADDRESSES:** Submit your objections, identified by Docket Number OAR–2004–0076 by one of the following methods:

A. *Federal Rulemaking Portal: http://www.regulations.gov.* The NODA is not a rulemaking, but you may use the Federal Rulemaking Portal to submit objections to the NODA. To submit objections, follow the on-line instructions for submitting comments.

B. *Mail:* Air Docket, ATTN: Docket Number OAR–2004–0076, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460

C. *E-mail: A-AND-R-Docket@epa.gov.*

D. *Hand Delivery:* EPA Docket Center, 1301 Constitution Avenue, NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**FOR FURTHER INFORMATION CONTACT:** General questions concerning today's action and technical questions concerning heat input or fuel data should be addressed to Brian Fisher, USEPA Headquarters, Ariel Rios Building, 1200 Pennsylvania Ave., Mail Code 6204 J, Washington, DC 20460. Telephone at (202) 343–9633, e-mail at *fisher.brian@epa.gov.* If mailing by courier, address package to Brian Fisher, 1310 L St., NW., RM #713G, Washington, DC 20005.

**SUPPLEMENTARY INFORMATION:**

*Docket:* All documents in the docket are listed in the *www.regulations.govindex.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**Extension of Period for Objections**

In the August 4, 2006 NODA (71 FR 44283), EPA provided notice that it had placed in the CAIR FIP docket allocation tables for EGU $NO_X$ annual and EGU $NO_X$ ozone season allocations for control periods 2009–2014. The allocation tables also included inventories of heat input and inventories of potentially exempt units. In addition, EPA also placed in the docket a Technical Support Document describing the allocation table data fields.

The EPA originally provided a 30-day period for the unit owners, unit operators, and the public to submit objections regarding individual units' treatment as potentially covered or not covered by CAIR and, for units treated as potential CAIR units, the data used in the allocation calculations and the allocations resulting from such calculations. In response to a request from the American Forest and Paper Association, EPA extended the period for all objections an additional 30 days to October 5, 2006.

In requesting an additional extension of the period, certain biomass cogeneration unit owners noted the unique nature of the fuels utilized by biomass cogeneration units and the difficulties encountered in collecting data necessary to apply the efficiency standard to this type of cogeneration unit. In light of these circumstances, the EPA extended the period an additional 90 days only for objections (including data) related to any biomass cogeneration units, and extends it another 45 days in this notice. For all other objections, the deadline was October 5, 2006.

EPA believes the addition of 45 days will provide the Agency more adequate time to receive and evaluate necessary data and, if appropriate, address the concerns raised about application of the efficiency standard to biomass cogeneration units.

Dated: January 3, 2007.

**Edward Callahan,**

*Acting Director, Office of Air and Radiation.*

[FR Doc. E7–91 Filed 1–8–07; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984.

Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

*Agreement No.:* 010051–038.

*Title:* Mediterranean Space Charter Agreement.

*Parties:* Hapag-Lloyd USA LLC; A.P. Moller-Maersk A/S; Mediterranean Shipping Company, S.A.; Hapag-Lloyd AG; and Zim Integrated Shipping Services, Ltd.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment updates CP Ships (USA) LLC's corporate name to Hapag-Lloyd USA LLC.

*Agreement No.:* 011733–018.

*Title:* Common Ocean Carrier Platform Agreement.

*Parties:* A.P. Moller-Maersk A/S; CMA CGM; Hamburg-Süd; Hapag-Lloyd AG; Mediterranean Shipping Company S.A.; and United Arab Shipping Company (S.A.G.) as shareholder parties, and Alianca Navegacao e Logistica Ltda.; Kawasaki Kisen Kaisha Ltd.; MISC Berhad; Mitsui O.S.K. lines Ltd.; Nippon Yusen Kaisha; Safmarine Container Lines N.V.; Senator Lines GmbH; and Tasman Orient Line C.V. as non-shareholder parties.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment deletes CP Ships Limited; CP Ships (USA) LLC; FESCO Ocean Management Ltd.; and P&O Nedlloyd Limited as parties to the agreement and changes Hapag-Lloyd's name.

*Agreement No.:* 201174.

*Title:* Port of Kalama/ConAgra Foods, Inc./Kalama Export Company LLC/ Kalama Grain Terminal, Inc. Agreement.

*Parties:* Port of Kalama; ConAgra Foods, Inc.; Kalama Export Company LLC; and Kalama Grain Terminal, Inc.

*Filing Party:* Dennis A. Ostgard, Esq.; Schwabe, Williamson & Wyatt; 1420 5th Avenue; Suite 3010; Seattle, WA 98101.

*Synopsis:* The agreement would provide for termination of the Port of Kalama's tariff applicable to terminal facilities owned and/or operated by the other parties and payment to the Port of Kalama in lieu of dockage to be calculated and determined from time to time.

Dated: January 4, 2007.

By Order of the Federal Maritime Commission.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. E7–103 Filed 1–8–07; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 24, 2007.

**A. Federal Reserve Bank of Kansas City** (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

*1. Kris Ann Carson*, Mulvane, Kansas; as co–trustee of the Frank L. Carson, III Trust No. 1, to retain voting shares of Mulvane Bankshares, Inc., and thereby indirectly retain voting shares of Mulvane State Bank, both in Mulvane, Kansas.

Board of Governors of the Federal Reserve System, January 4, 2007.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E7–83 Filed 1–8–07; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act Meeting Notice

**TIME AND DATE:** 9 a.m. (EST); January 16, 2007.

**PLACE:** 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

**STATUS:** Parts will be open to the public and parts closed to the public.

**MATTERS TO BE CONSIDERED:**

**Parts Open to the Public**

1. Approval of the minutes of the December 18, 2006 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Quarterly Reports.
   a. Investment Policy Review.
   b. Vendor Financial Reports.
4. Participant Survey Update.

**Parts Closed to the Public**

5. Personnel.
6. Security.

**CONTACT PERSON FOR MORE INFORMATION:** Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: January 5, 2006.

**Thomas K. Emswiler,**

*Secretary to the Board, Federal Retirement Thrift Investment Board.*

[FR Doc. 07–54 Filed 1–5–07; 3:10 pm]

BILLING CODE 6760–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Findings of Research Misconduct

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

*Jong Hyuk Park, Ph.D., University of Pittsburgh:* Based on accumulated evidence including the University of Pittsburgh (UP) investigation committee report and additional analysis and information obtained by the Office of Research Integrity (ORI) during its oversight review, the U.S. Public Health Service (PHS) found that Jong Hyuk Park, Ph.D., former postdoctoral fellow, Pittsburgh Development Center of the Magee-Womens Research Institute, UP, engaged in research misconduct in research funded by National Center for Research Resources (NCRR), National Institutes of Health (NIH), grant R24 RR13632 and National Institute of Child Health and Human Development (NICHD), NIH, grant P01 HD047675.

Specifically, Dr. Park:

(1) Intentionally and knowingly falsified various versions of two figures in a manuscript entitled ''Rhesus Embryonic Stem Cells Established by Nuclear Transfer: Tetraploid ESCs Differ from Fertilized Ones'' that was being prepared for submission to Nature;

(2) Repeatedly misrepresented to the UP investigative panel the accuracy of one of the figures;

(3) Presented the false figures as true to members of the laboratory; and

(4) Falsified the record of revisions of the figures by deleting all prior versions from the laboratory server.

ORI has implemented the following administrative actions for a period of three (3) years, beginning on November 29, 2006:

(1) Dr. Park is debarred from any contracting or subcontracting with any agency of the United States Government and from eligibility or involvement in nonprocurement programs of the United States Government as defined in the debarment regulations at 45 CFR Part 76; and

(2) Dr. Park is prohibited from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

**FOR FURTHER INFORMATION CONTACT:** Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

**Chris B. Pascal,**

*Director, Office of Research Integrity.*

[FR Doc. E7–42 Filed 1–8–07; 8:45 am]

**BILLING CODE 4150–31–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2006D–0347]**

### In Vitro Diagnostic Multivariate Index Assays; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a public meeting on In Vitro Diagnostic Multivariate Index Assays. The meeting is intended to provide a public forum during which FDA will hear presentations and comments from interested stakeholders regarding the draft guidance entitled ''Draft Guidance for Industry, Clinical Laboratories, and FDA Staff on In Vitro Diagnostic Multivariate Index Assays.'' This draft guidance is intended to provide clarification on FDA's approach to regulation of in vitro diagnostic multivariate index assays. FDA is seeking comments on this draft guidance.

**DATES:** The public meeting will be held on February 8, 2007, from 8 a.m. to 5 p.m. Online registration is available until 5 p.m. on February 5, 2007; however, if space permits onsite registration will be permitted on February 8, 2007 (see the **Registration** section of this notice for details).

**ADDRESSES:** The public meeting will be held at the Grand Ballroom of the Hilton Washington DC/Gaithersburg Hotel located at 620 Perry Pkwy., Gaithersburg, MD 20877. Additional information about and directions to the facility are available by calling the hotel at 1–301–977–8900 or on the Internet at: *http://www.hilton.com* (under Find a Hotel, type in Gaithersburg, MD under city and State). (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

The comment period on this draft guidance closes on March 5, 2007. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the draft guidance to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Sousan Altaie, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0450, ext. 106, e-mail: *Sousan.Altaie@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

FDA announced the availability of a draft guidance entitled ''Draft Guidance for Industry, Clinical Laboratories, and FDA Staff on In Vitro Diagnostic Multivariate Index Assays,'' on September 7, 2006 (71 FR 52800). This draft guidance addresses the definition and regulatory status of a class of in vitro diagnostic devices referred to as In Vitro Diagnostic Multivariate Index Assays (IVDMIAs). The draft guidance also addresses premarket and postmarket requirements with respect to IVDMIAs. An IVDMIA employs clinical data, which may be derived in part from one or more in vitro assays, and an algorithm to integrate the variables, and reports a result that cannot be interpreted by the well-trained health care practitioner using prior knowledge of medicine without information from the test developer regarding its clinical performance and effectiveness.

FDA is seeking comments on this draft guidance and has extended the comment period to March 5, 2007 (71 FR 68822). FDA is announcing in this notice a public meeting on this draft guidance.

#### II. Agenda

FDA will start the meeting with a brief presentation on the draft guidance entitled ''Draft Guidance for Industry, Clinical Laboratories, and FDA Staff on In Vitro Diagnostic Multivariate Index Assays.'' The purpose of this meeting is to obtain public input on this guidance. Hence, presentations by the public will make-up the remainder of the agenda. Interested persons who would like to make a presentation during the meeting will be given 10 minutes to do so if they submit their request (electronic or written) and a copy of the material to be presented by February 1, 2007, to the contact person, Sousan Altaie, at the address or the email above and to the docket for this draft guidance. Depending upon the number of presenters submitting requests to present, the allotted time may be expanded or shortened to provide appropriate representation by all interested parties. Presentations and comments are to be identified with the docket number found in brackets in the heading of this document.

This public meeting agenda will be available on the Internet on February 7, 2007, at *http://www.fda.gov/cdrh/oivd/meetings/020807agenda.html*.

#### III. Registration

Those interested in attending may register online at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfSUD/oivd_meeting.cfm*. There is no registration fee to attend the meeting. Please submit registration early in order to reserve a space, as space is limited. You may register online until February 5, 2007; however, onsite registration will be permitted if space remains. If you require special accommodations due to a disability, please contact the Hilton Washington DC/Gaithersburg Hotel directly at 1–301–977–8900, at least 7 days in advance.

Persons without Internet access may call Sousan Altaie at 240–276–0450 ext. 106, by February 5, 2007, to register for onsite meeting attendance.

#### IV. Request for Input and Materials

FDA is interested in receiving input from stakeholders on the draft guidance. Send suggestions or recommendations to the Division of Dockets Management (see **ADDRESSES**). FDA will place an additional copy of any material it

receives on the docket (Docket Number 2006D–0347). Suggestions, recommendations, and materials may be seen at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

**V. Transcripts**

Following the meeting, transcripts will be available for review at *http://www.fda.gov/cdrh/oivd/presentations.html#r*, and the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 3, 2007.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 07–93 Filed 1–8–07; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Medical Devices 101: An Educational Forum; Public Workshop

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

**ACTION:** Notice of public workshop.

**SUMMARY:** The Food and Drug Administration (FDA), Office of Regulatory Affairs (ORA), Southwest Regional Office (SWRO), in cosponsorship with the FDA Medical Device Industry Coalition (FMDIC) and the Risk Management Small Business Development Center (RMSBDC), is announcing a public workshop entitled ''Medical Devices 101: An Educational Forum.'' This public workshop is intended to provide an overview on FDA's medical device requirements to entrepreneurs, startup companies, and small businesses.

*Date and Time*: The public workshop will be held on February 9, 2007, from 8 a.m. to 5 p.m.

*Location*: The public workshop will be held at the Hoblitzelle Auditorium at the Bill Priest Campus of El Centro College, 1402 Corinth St. in Dallas, TX.

*Contact Person*: David Arvelo, Food and Drug Administration, 4040 North Central Expressway, suite 900, Dallas, TX 75204, 214–253–4952, FAX: 214–253–4970, e-mail: *oraswrsbr@fda.hhs.gov*.

*Registration*: Registration by January 26, 2007, is strongly encouraged. The RMSBDC has a $75 early registration fee to cover the cost of facilities, materials, and refreshments. Please submit your registration as soon as possible. Registration at the site may be possible on a space available basis on the day of the public workshop beginning at 8 a.m. The cost of registration after January 26, 2007, is $99 payable to RMSBDC. If you need special accommodations due to a disability, please contact David Arvelo (see *Contact Person*) at least 7 days in advance.

*Registration Form Instructions*: To register, please complete the RMSBDC registration form and submit along with payment to RMSBDC, Attn: Saira Roberts, 1402 Corinth St., Dallas, TX 75215. You may fax the completed registration form to RMSBDC at 214–860–5867. To obtain a copy of the registration form, please call RMSBDC at 214–860–5887 or 214–860–5849. The registration form is also available online at *http://www.ntsbdc.org/*.

*Transcripts*: Transcripts of the public workshop will not be available due to the format of this workshop. Course handouts may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page.

**SUPPLEMENTARY INFORMATION:** The workshop is being held in response to the interest in the topics discussed from small medical device entrepreneurs and startup manufacturers in the Dallas District area. FDA presents this workshop in cosponsorship with FMDIC and RMSBDC to help achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which include working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. This is also consistent with the purposes of FDA's Regional Small Business Program, which are in part to respond to industry inquiries, develop educational materials, sponsor workshops and conferences to provide firms, particularly small businesses, with firsthand working knowledge of FDA's requirements and compliance policies. This workshop is also consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), as an outreach activity by Government agencies to small businesses.

The goal of the workshop is to present information that will enable manufacturers and regulated industry to better comply with the Medical Device QSR. The following topics will be broadly covered at the workshop: (1) Medical device classification, (2) establishment registration, (3) device listing, (4) premarket notification, (5) premarket approval, (6) Quality System Regulation, (7) labeling, and (8) postmarket surveillance.

Dated: January 3, 2007.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 07–92 Filed 1–8–07; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

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

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of Committee*: Vaccines and Related Biological Products Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on January 25, 2007, from 8 a.m. to 5 p.m.

*Location*: Doubletree Hotel, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person*: Christine Walsh or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512391. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: In Session I, the committee will hear presentations and make recommendations on the safety and immunogenicity of PENTACEL (Diphtheria and Tetanus Toxoids and Acellular Pertussis Adsorbed, Inactivated Poliovirus and Haemophilus b Conjugate (Tetanus Toxoid Conjugate) Vaccine Combined (DTaP-IPV/Hib)), manufactured by Sanofi Pasteur, Ltd. In Session II, the committee will hear an overview of the research programs in the Office of Vaccines Research and Review, Center for Biologics Evaluation and Research (CBER). In the closed session, the committee will discuss the

report of the Office of Vaccines Research and Review Office Site Visit of May 19, 2006.

FDA intends to make background material available to the public no later than 1 business day before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. Click on the year 2007 and scroll down to the appropriate advisory committee link.

*Procedure*: On January 25, 2007, from 8 a.m. to 4:25 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before January 19, 2007. Oral presentations from the public will be scheduled between approximately 11:15 a.m. to 11:45 a.m. and 3:55 p.m. to 4:25 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 11, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 12, 2007.

*Closed Committee Deliberations*: On January 25, 2007, from 4:25 p.m. to 5 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss the report of the May 19, 2006, review of internal research programs in the Office of Vaccines Research and Review, Division of Viral Products and Division of Bacterial, Parasitic, and Allergenic Products, CBER.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Christine Walsh or Denise Royster at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 3, 2007.

**Randall W. Lutter,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. 07–28 Filed 1–4–07; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: The Health Education Assistance Loan (HEAL) Program Regulations (OMB No. 0915–0108): Extension**

The Health Education Assistance Loan (HEAL) Program has regulations that contain notification, reporting and recordkeeping requirements to insure that the lenders, holders and schools participating in the HEAL program follow sound management procedures in the administration of federally-insured student loans. While the regulatory requirements are approved under the OMB number referenced above, much of the burden associated with the regulations is cleared under the OMB numbers for the HEAL forms and electronic submissions used to report required information. The table listed at the end of this notice contains the estimate of burden for the remaining regulations.

The estimates of burden are as follows:

| Number of respondents | Number of transactions | Total transactions | Hours per response (minutes) | Total burden hours |
|---|---|---|---|---|
| **Reporting Requirements** | | | | |
| 17 Holders | 5 | 78 | 12 | 17 |
| 190 Schools | .4 | 76 | 10 | 13 |
| Total Reporting | | | | 30 |
| **Notification Requirements** | | | | |
| 7,930 Borrowers | 1 | 7,930 | 10 | 1,322 |
| 17 Holders | 7,910 | 134,470 | 10 | 22,412 |
| 190 Schools | .89 | 170 | 14 | 40 |
| Total Notification | | | | 23,774 |

| Number of respondents | Number of transactions | Total transactions | Hours per response (minutes) | Total burden hours |
|---|---|---|---|---|
| **Recordkeeping Requirements** | | | | |
| 17 Holders | 3,568 | 60,656 | 14 | 14,153 |
| 190 Schools | 257 | 48,830 | 15 | 12,208 |
| Total Recordkeeping | | | | 26,361 |
| Total | | | | 50,165 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Karen Matsuoka, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 28, 2006.

**Caroline Lewis,**

*Acting Associate Administrator for Administration and Financial Management.*

[FR Doc. E7–94 Filed 1–8–07; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

*Name:* National Advisory Council on Migrant Health.

*Dates and Times:* February 5, 2007, 8:30 a.m. to 5 p.m.;February 6, 2007, 8:30 a.m. to 5 p.m.

*Place:* 5600 Fishers Lane, Potomac Room, 3rd Floor, Rockville, Maryland 20857, Telephone: (301) 594–0367, Fax: (301) 443–0248.

*Status:* The meeting will be open to the public.

*Purpose:* The purpose of the meeting is to discuss services and issues related to the health of migrant and seasonal farmworkers and their families to be able to formulate recommendations to the Secretary of Health and Human Services.

*Agenda:* The agenda includes an overview of the Council's general business activities. The Council will also hear presentations from experts on farmworker issues, including the status of farmworkers health at the local and national level.

Agenda items are subject to change as priorities indicate.

**FOR FURTHER INFORMATION CONTACT:** Anyone requiring information regarding the Council should contact Gladys Cate, Office of Minority and Special Populations, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 594–0367.

Dated: December 28, 2006.

**Caroline Lewis,**

*Acting Associate Administrator for Administration and Financial Management.*

[FR Doc. E7–95 Filed 1–8–07; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2006–26741]**

### Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers 1625–0007, 1625–0049, 1625–0064 and 1625–0074

**AGENCY:** Coast Guard, DHS.

**ACTION:** Request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) to the Office of Management and Budget (OMB) to request an extension of their approval of the following collections of information: (1) 1625–0007, Characteristics of Liquid Chemicals Proposed for Bulk Water Movement; (2) 1625–0049, Waterfront Facilities Handling Liquefied Natural Gas (LNG) and Liquefied Hazardous Gas (LHG); (3) 1625–0064, Plan Approval and Records for Subdivision and Stability Regulations—Title 46 CFR Subchapter S; and (4) 1625–0074, Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels. Before submitting these ICRs to OMB, the Coast Guard is inviting comments on them as described below.

**DATES:** Comments must reach the Coast Guard on or before March 12, 2007.

**ADDRESSES:** To make sure that your comments and related material do not enter the docket [USCG–2006–26741] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery 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. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 10–1236 (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents; or telephone Ms. Renee V. Wright, Program Manager,

Docket Operations, 202–493–0402, for questions on the docket.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov;* they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

*Submitting comments:* If you submit a comment, please include your name and address, identify the docket number [USCG–2006–26741], indicate the specific section of the document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

*Viewing comments and documents:* To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in 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.

*Privacy Act:* Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

**Information Collection Request**

1. *Title:* Characteristics of Liquid Chemicals Proposed for Bulk Water Movement.

*OMB Control Number:* 1625–0007.

*Summary:* The Coast Guard requires manufacturers of new chemicals to submit data on new materials. From the data, the Coast Guard determines the appropriate precautions to take.

*Need:* Title 46 CFR parts 30 to 40, 151, 153, and 154 govern the transportation of hazardous materials. The chemical industry constantly produces new materials that must be moved by water. Each of these new materials has unique characteristics that require special attention to their mode of shipment.

*Respondents:* Manufacturers of chemicals.

*Frequency:* On occasion.

*Burden Estimate:* The estimated burden has decreased from 108 hours to 78 hours a year.

2. *Title:* Waterfront Facilities Handling Liquefied Natural Gas (LNG) and Liquefied Hazardous Gas (LHG).

*OMB Control Number:* 1625–0049.

*Summary:* Liquefied Natural Gas (LNG) and other Liquefied Hazardous Gases (LHG) present a risk to the public when handled at waterfront facilities. These rules should either prevent accidental releases at waterfront facilities or mitigate their results. They are necessary to promote and verify compliance with safety standards.

*Need:* Title 33 CFR Part 127 prescribe safety standards for the design, construction, equipment, operations, maintenance, personnel training, and fire protection at waterfront facilities handling LNG or LHG.

*Respondents:* Owners and operators of waterfront facilities that transfer LNG or LHG.

*Frequency:* On occasion.

*Burden Estimate:* The estimated burden has decreased from 3,540 hours to 2,838 hours a year.

3. *Title:* Plan Approval and Records for Subdivision and Stability Regulations—Title 46 CFR Subchapter S.

*OMB Control Number:* 1625–0064.

*Summary:* This collection of information requires owners, operators, or masters of certain inspected vessels to obtain and/or post various documents as part of the Coast Guard commercial vessel safety program.

*Need:* Title 46 U.S.C. 3306 authorizes the Coast Guard to prescribe rules for the safety of certain vessels. Title 46 CFR Subchapter S, parts 170 through 174, contain the rules regarding subdivision and stability.

*Respondents:* Owners, operators, or masters of vessels.

*Frequency:* On occasion.

*Burden Estimate:* The estimated burden has decreased from is 6,474 hours to 4,539 hours a year.

4. *Title:* Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels.

*OMB Control Number:* 1625–0074.

*Summary:* This collection requires the submission of identifying information such as a vessel's name and identification number, and of the owner's choice whether or not to pay fees for future years. A written request to the Coast Guard is necessary.

*Need:* Section 10401 of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508], which amended 46 U.S.C. 2110, requires the Coast Guard to collect user fees from inspected vessels. To properly collect and manage these fees, the Coast Guard must have current information on identification. This collection helps to ensure we get that information and manage it efficiently.

*Respondents:* Owners of vessels.

*Frequency:* Annually.

*Burden Estimate:* The estimated burden has increased from 3,167 hours to 4,268 hours a year.

Dated: January 3, 2007.

**R.T. Hewitt,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.*

[FR Doc. E7–57 Filed 1–8–07; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–3269–EM]**

### Illinois; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of Illinois (FEMA–3269–EM), dated December 29, 2006, and related determinations.

**DATES:** *Effective Date:* December 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated

December 29, 2006, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Illinois resulting from the record snow during the period of November 30 to December 1, 2006, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures, including snow removal, under the Public Assistance program to save lives and to protect property and public health and safety. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. This emergency assistance will be provided for any continuous 48-hour period during or approximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs in the designated areas. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, Department of Homeland Security, under Executive Order 12148, as amended, Michael H. Smith, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared emergency:

Adams, Boone, Brown, Bureau, DeKalb, Fulton, Hancock, Henry, Kendall, Knox, LaSalle, Lee, Marshall, Mason, McDonough, McHenry, Menard, Ogle, Peoria, Pike, Putnam, Scott, Stark, Stephenson, Tazewell, and Winnebago Counties for emergency protective measures (Category B) under the Public Assistance program for any continuous 48-hour period during or approximate to the incident period.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**R. David Paulison,**

*Under Secretary for Federal Emergency Management and Director of FEMA.*

[FR Doc. E7–117 Filed 1–8–07; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1672–DR]**

### Oregon; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential Declaration of a major disaster for the State of Oregon (FEMA–1672–DR), dated December 29, 2006, and related determinations.

**DATES:** *Effective Date:* December 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated December 29, 2006, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oregon resulting from severe storms, flooding, landslides, and mudslides during the period of November 5–8, 2006, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Oregon.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, under Executive Order 12148, as amended, Glen R. Sachtleben, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oregon to have been affected adversely by this declared major disaster: Clatsop, Hood River, Lincoln, and Tillamook Counties for Public Assistance.

All counties within the State of Oregon are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**R. David Paulison,**

*Under Secretary for Federal Emergency Management, and Director of FEMA.*

[FR Doc. E7–116 Filed 1–8–07; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Medicine Lake National Wildlife Refuge Complex, Medicine Lake, MT

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent; request for comments.

**SUMMARY:** This notice advises that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and associated environmental documents for the Medicine Lake National Wildlife Refuge (NWR) Complex in Northeast Montana, which includes Medicine Lake NWR, Lamesteer NWR, and the Northeast Montana Wetland Management District.

The Service is furnishing this notice in compliance with Service CCP policy to advise other agencies and the public of its intentions, and to obtain suggestions and information on the scope of issues to be considered in the planning process.

**DATES:** Written comments must be received by February 8, 2007.

**ADDRESSES:** Comments or requests for more information regarding the Medicine Lake NWR Complex should be sent to Laurie Shannon, Planning Team Leader, Division of Refuge Planning, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

**FOR FURTHER INFORMATION CONTACT:** Laurie Shannon, 303–236–4317, or John Esperance, Chief, Branch of Comprehensive Conservation Planning, 303–236–4369.

**SUPPLEMENTARY INFORMATION:** The Service has initiated the CCP for the Medicine Lake NWR Complex with headquarters in Medicine Lake, Montana.

The Medicine Lake NWR Complex is located within the highly productive prairie pothole region of the Northern Great Plains, along the western edge of the Missouri Coteau, in northeastern Montana. It is composed of three individual units: Medicine Lake NWR, Lamesteer NWR, and the Northeast Montana Wetland Management District. Together these units are dispersed across four counties and require management of more than 73,532 acres of Service-owned lands, wetland and/or grassland easements, or leases on privately owned land. Medicine Lake NWR encompasses 31,534 acres including 11,360 acres of designated wilderness and was established in 1935 as ''* * * a refuge and breeding ground for migratory birds and other wildlife'' (Executive Order 7148, dated August 29, 1935). The Wetland Management District was established in 1968 and consists of Waterfowl Production Areas and wetland and grassland easements. The purpose of these acquired Waterfowl Production Areas and easements is to function as ''waterfowl production areas subject to * * * all of the provisions of the Migratory Bird Conservation Stamp Act * * * except the inviolate sanctuary provisions'' (16 U.S.C. 718). Lamesteer NWR, established in 1942 as an easement refuge, was described as ''800 acres in Wibaux County, Montana, * * * as refuge and breeding ground for migratory birds and other wildlife'' (Executive Order 9166, dated May 19, 1942).

The Medicine Lake NWR Complex is home to more than 270 species of birds, 38 species of mammals, and 17 species of reptiles and amphibians. Each unit of the National Wildlife Refuge System, including the Medicine Lake NWR Complex, has specific purposes for which it was established and for which legislation was enacted. Those purposes are used to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission, and to guide which public uses will occur on these refuges. The planning process is a way for the Service and the public to evaluate management goals and objectives for the best possible conservation efforts of this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the refuges' establishing purposes and the mission of the National Wildlife Refuge System.

The Service will conduct a comprehensive conservation planning process that will provide opportunity for Tribal, State, and local governments; agencies; organizations; and the public to participate in issue scoping and public comment. The Service is requesting input for issues, concerns, ideas, and suggestions for the future management of the Medicine Lake NWR Complex. Anyone interested in providing input is invited to respond to the following three questions.

(1) What do you value most about the Medicine Lake NWR Complex?

(2) What problems or issues do you want to see addressed in the CCP?

(3) What changes, if any, would you like to see in the management of the Medicine Lake NWR Complex?

The Service has provided the above questions for your optional use; you are not required to provide information to the Service. The planning team developed these questions to facilitate finding out more information about individual issues and ideas concerning these three units of the National Wildlife Refuge System. Comments received by the planning team will be used as part of the planning process; individual comments will not be referenced in our reports or responded to directly.

An opportunity will be given to the public to provide input at the open house to scope issues and concerns (schedules can be obtained from the planning team leader at the above address). Comments may also be submitted anytime during the planning process by writing to the above address. All information provided voluntarily by mail, phone, or at public meetings becomes part of the official public record (*i.e.*, names, addresses, letters of comment, input recorded during meetings). If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide informational copies.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and Service policies and procedures for compliance with those regulations. All comments received from individuals on Service Environmental Assessments and Environmental Impact Statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, NEPA (40 CFR 1506.6(f)), and other Departmental and Service policies and procedures. When requested, the Service generally will provide comment letters with the names and addresses of the individuals who wrote the comments. However, the telephone number of the commenting individual will not be provided in response to such requests to the extent permissible by law.

Dated: November 17, 2006.

**James J. Slack,**

*Deputy Regional Director, Region 6, Denver, Colorado.*

[FR Doc. E7–72 Filed 1–8–07; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ–931–1430–ET; AZA 33447]**

### Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The United States Forest Service has filed an application requesting the Secretary of the Interior to withdraw 62.08 acres of National Forest System land from mining to protect the Red Rock Ranger District Administrative Site, Coconino National Forest. This notice segregates the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses which may by law be authorized on these National Forest System lands.

**DATES:** Comments and requests for a public meeting must be received on or before April 9, 2007.

**ADDRESSES:** Comments and meeting requests should be sent to the Bureau of Land Management, Attn: Lands Program Lead, Resources Division, One North Central Avenue, Suite 800, Phoenix, Arizona 85004 and to the Forest Supervisor, Coconino National Forest, 1824 S. Thompson Street, Flagstaff, Arizona 86001.

**FOR FURTHER INFORMATION CONTACT:** Pete Mourtsen, Coconino National Forest, at the above address or at (928) 527–3414.

**SUPPLEMENTARY INFORMATION:** The United States Forest Service has filed an application with the Bureau of Land Management, pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, to withdraw the following-described National Forest System land within the Coconino National Forest for a period of 20 years from location and entry under the United States mining laws, subject to valid existing rights:

**Gila and Salt River Meridian**

T. 16 N., R. 5 E.,
Sec. 25: S½SE¼NE¼ and
T. 16 N., R. 6 E.,
Sec. 30, lot 2.

The area described contains 62.08 acres in Yavapai County, Arizona.

The purpose of the proposed withdrawal is to protect the significant Federal investment in administrative facilities to be built at the Forest Service Red Rock Ranger District Administrative Site (Administrative Site) within the Coconino National Forest.

The use of a right-of-way, an interagency agreement, or a cooperative agreement would not adequately constrain nondiscretionary mining locations and related uses and therefore would not provide adequate protection of the Federal investment in the Administrative Site.

There are no suitable alternative sites that can be considered because the land proposed for withdrawal contains the Administrative Site.

No additional water rights will be needed to fulfill the purpose of the requested withdrawal.

Records relating to the application may be examined by interested parties at the address of the Bureau of Land Management office stated above.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to both the Bureau of Land Management, Attn: Lands Program Lead, Resources Division, and the Forest Supervisor, Coconino National Forest, at the addresses stated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request, by the date specified above, to both the Bureau of Land Management, Attn: Lands Program Lead, Resources Division, and the Forest Supervisor, Coconino National Forest, at the addresses stated above. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** and in at least one newspaper having a general circulation in the vicinity of the lands involved at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Comments, including names and street addresses of respondents, will be available for public review at the Coconino National Forest (address above), during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

On January 9, 2007 the above-described land will be segregated from location and entry under the United States mining laws. The segregative effect of the publication of this notice shall terminate upon denial or cancellation of the subject application, approval of the application, or January 8, 2009, whichever occurs first.

(Authority: 43 CFR 2310.3–1(b)).

Dated: November 6, 2006.

**Michael A. Taylor,**

*Deputy State Director, Resources.*

[FR Doc. E7–82 Filed 1–8–07; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before December 23, 2006. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax: 202–371–6447. Written or faxed comments should be submitted by January 24, 2007.

**John W. Roberts,**

*Acting Chief, National Register/National Historic Landmarks Program.*

**ARIZONA**

**Maricopa County**

Pioneer Military and Memorial Park, 13th to 15th Aves., Jefferson to Harrison Aves., Phoenix, 06001317

**ARKANSAS**

**Baxter County**

Horace Mann School Historic District, (New Deal Recovery Efforts in Arkansas MPS), City Hall Circle, Norfolk, 06001311

**Greene County**

Linwood Mausoleum, Jct. of W. Kingshighway and Linwood Dr., Paragould, 06001314

**Independence County**

School Additon Historic District, 560–770 Water, 210–293 N. 7th, 709–897 Rock, 215–280 N. 8th, Batesville, 06001315

**Miller County**

Mullins Court, 605 Hickory St., Texarkana, 06001313

**Mississippi County**

Widner-Magers Farm Historic District, (Cotton and Rice Farm History and Architecture in the Arkansas Delta MPS), 3398 AR N St. 181, Dell, 06001325

**Van Buren County**

Joclin-Bradley-Bowling House, 160 AR 95 W, Clinton, 06001316

**White County**

Fredonia Cemetery Historic Section, (White County MPS), Roughly 0.5 mi. down Fredonia Rd., past the jct of Fredonia and

Honeysuckle Rds., Stevens Creek, 06001312

**FLORIDA**

**Columbia County**

Sikes House, 288 Ellis St., Fort White, 06001318

**Sarasota County**

Nolen, John, Plan of the City of Venice, Laguna Dr., Home Park Rd., The Corso on South, The Esplanade on West, Venice, 06001319

**GUAM**

**Guam County**

Guam Congress Building, Chalan Santo Papa, Hagatna, 06001320

**IOWA**

**Benton County**

Youngville Cafe, 2409 73rd St., Watkins, 06001321

**MICHIGAN**

**Delta County**

Nahma and Northern Railway Locomotive #5, Main St. at River St., Nahma Township, 06001327

**Emmet County**

Saint Ignatius Church and Cemetery, 101 N. Lamkin Rd., Readmond Township, 06001328

**Kent County**

Whitney Tavern Stand, 5283 Whitneyville Ave., Cascade Township, 06001326

**Lenawee County**

Horton, George B. and Amanda Bradish, Farmstead, 4650 W. Horton Rd., Fairfield Township, 06001333

**Macomb County**

Packard Proving Grounds Gateway Complex, 49965 Van Dyke Ave., Shelby Township, 06001322

**Oakland County**

Detroit Finnish Co-operative Summer Camp, 2524 Loon Lake Rd., Wixom, 06001331

**Pleasant Ridge East Historic District,**

Bounded generally by Woodward, 10 Mile Rd., Conrail and east city limits and south city limits, Pleasant Ridge, 06001329

**Wayne County**

Eastern Market Historic District (Boundary Increase), Roughly bounded by Gratio Ave., Ropelle St., Wilkins St. Grand Trunk RR, and Division St., Detroit, 06001330

West Side Dom Polski, 3426 Junction Ave., Detroit, 06001332

**MISSISSIPPI**

**Hinds County**

Southern Christian Institute, 18449 Old U.S. 80 W, Edwards, 06001323

**Lincoln County**

Handy, Capt. Jack C., House, 205 Natchez Ave., Brookhaven, 06001324

**MISSOURI**

**Boone County**

Columbia Cemetery, 30 East Broadway, Columbia, 06001335

**Jackson County**

A.B.C. Storage and Van Company Building, 1015 E. 8th St., Kansas City, 06001334

**PENNSYLVANIA**

**Chester County**

Oxford Historic District, Roughly bounded by Church Rd. Chase St., Hodgson St., Oxford-Borough, 06001336

**TENNESSEE**

**McMinn County**

Clear Springs Cumberland Presbyterian Church, Clear Springs Rd., Calhoun, 06001337

[FR Doc. E7–121 Filed 1–8–07; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF LABOR

### Office of the Secretary

### Strengthening Labor Law Compliance in the Agricultural Sector in Central America and the Dominican Republic

**AGENCY:** Bureau of International Labor Affairs, Department of Labor.

*Announcement Type:* New. Notice of Availability of Funds and Solicitation for Cooperative Agreement Applications.

*Funding Opportunity Number:* SGA XX–XX.

*Catalog of Federal Domestic Assistance (CFDA) Number:* Not applicable.

*Key Dates:* The closing date for receipt of applications is February 23, 2007. Applications must be received by 4:45 p.m. (Eastern Time) at the address below.

**ADDRESSES:** Application forms will not be mailed. They are published as part of this **Federal Register** notice and in the **Federal Register**, which may be obtained from your nearest U.S. Government office or public library or online at *http://www.archives.gov/federal_register/index.html*. Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416,Attention: Lisa Harvey, Reference: SGA XX–XX, Washington, DC 20210.

**EXECUTIVE SUMMARY:** This notice contains all of the necessary information and forms needed to apply for grant funding. The U.S. Department of Labor, Bureau of International Labor Affairs, announces the availability of funds to be granted by cooperative agreement to one or more qualifying organizations. The Department will award up to U.S. $2.5 million through one or more grants to an organization or organizations to improve labor law compliance in the agricultural sector in Central America (Nicaragua and either Honduras or Guatemala) and the Dominican Republic, with particular emphasis on safety and health standards. Partnerships and Associations between more than one organization are also eligible and encouraged, in particular with qualified, regionally-based organizations in order to build local capacity. In such a case, a lead organization must be identified. The award of any subaward will be subject to the Department's policies and procedures.

**1. Funding Opportunity Description**

The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be awarded by Cooperative Agreement (hereinafter referred to as ''grant'' or ''Cooperative Agreement'') to one or more qualifying organizations for the purpose of improving labor law compliance in the agricultural sector in Central America (Nicaragua and either Honduras or Guatemala) and the Dominican Republic, with particular emphasis on safety and health standards. ILAB is authorized to award and administer this program by the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2006, Pub. L. 109–102, 119 Stat. 2172 (2005) and U.S.C. 2392(a). Cooperative Agreements awarded under this initiative will be managed by ILAB's Office of Trade and Labor Affairs. The duration of the projects funded by this solicitation is four years. The start date of program activities will be negotiated upon award of the Cooperative Agreement.

**Statement of Work**

USDOL is seeking qualified organizations that will implement a project, in cooperation with USDOL, to improve labor law compliance in the agricultural sector in the Dominican Republic, Nicaragua and either Honduras or Guatemala, with particular emphasis on safety and health standards. Specific project objectives are identified in this section. Applicants should submit proposals that are regional in scope and demonstrate the organization's capabilities to implement a project in accordance with the Statement of Work and the selection criteria. USDOL encourages applicants to be creative in proposing innovative and cost-effective interventions that will produce a demonstrable and sustainable impact.

**Note:** Selection of an organization as a grantee does not constitute approval of the

grant application as submitted. Before the actual grant is awarded, USDOL may enter into negotiations about such items as program components, funding levels, and administrative systems in place to support grant implementation. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application.

*A. Background and Problem Statement*

The Central American Free Trade Agreement (CAFTA–DR) between the United States and five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) and the Dominican Republic obligates each country to effectively enforce its labor laws. The countries also reaffirm their obligations as members of the International Labor Organization (ILO) and their commitments under the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up* (1998).

In the Department of State's FY2006 budget, Congress provided funding for labor and environmental capacity building activities in support of CAFTA–DR. A portion of these funds were transferred to USDOL to administer projects related to labor capacity building in CAFTA–DR countries. This project provides assistance to improve the effective enforcement of labor laws in the agricultural sector by training workers and employers about national labor laws and improving the ability of workers to exercise their rights. This strategy addresses concerns identified in the April 2005 ''White Paper'' of the Working Group of the Vice Ministers Responsible for Trade and Labor in the countries of Central America and the Dominican Republic.

Numerous initiatives are currently underway in these countries to support efforts by the Ministries of Labor to improve labor law compliance and provide information and assistance to workers and employers regarding the effective compliance with national and international labor laws and standards. Most of these efforts have focused on the more populated urban areas. However, nearly half the population in Central America lives in rural areas and relies on agriculture for its livelihood. Agricultural activities include the production of exports such as sugar, bananas, coffee, and tobacco. There is a great need to expand public awareness campaigns and outreach efforts on labor rights to include the difficult to reach agricultural sectors.

Given the geographic isolation of the agricultural workers, many workers are unaware of their labor rights and/or are unable to exercise those rights. Ministries of Labor face significant financial and personnel constraints impacting their ability to reach many of these workers.. Examples of common labor violations include failure to provide proper wages, poor occupational safety and health standards, illegal use of child labor, denial of freedom of association, and discrimination. Poor occupational safety and health conditions are particularly common and result in significant lost wages and productivity for the employer and workers. Many workers and employers lack training in how to minimize the risk of injury for the workers while implementing better production techniques.

Given the limited number of labor inspectors and the wide geographic expanse of the agricultural sector, there is a need to reach out to local organizations that can provide direct assistance and training to workers on understanding and exercising their labor rights. These organizations can support the Ministries of Labor by ensuring that workers and employers receive accurate information and training on workers' and employers' labor rights and obligations, and how workers can effectively exercise their rights. If and when it becomes necessary to file a complaint with the Ministry of Labor, the organizations can help the workers appropriately document the alleged labor violations and provide innovative links to the Ministry of Labor's enforcement mechanisms.

This project builds on the significant work already being undertaken on raising workers' awareness about their rights and ability to exercise their rights. Given the multiple labor compliance projects in Central American and the Dominican Republic that are underway or soon to be launched, close coordination among donors, implementing organizations, and government and non-government stakeholders will be critical to ensure that there is no duplication of efforts and that resources are being utilized as effectively as possible.

*B. Target Population*

The Grantee(s) must target workers and employers in targeted agricultural communities (including indigenous populations where relevant), local community-based organizations, and other local stakeholders. Grantee and/or subawardees are expected to consult with the Ministries of Labor as much as possible to share information on a regular basis, receive legal information from the Ministries, and review priority issues for the workers.

*C. Objectives*

The Grantee(s) must implement, in cooperation with USDOL, a project whose overarching objective is to improve labor law compliance in targeted areas in the agricultural sector in the Dominican Republic, Nicaragua and either Honduras or Guatemala. Intermediate objectives include:

i. Increased awareness among workers and employers in targeted agricultural communities about national labor laws, with particular emphasis on safety and health regulations.

ii. Increased ability of workers in targeted agricultural communities to exercise their labor rights.

*D. Relationship to USDOL Program Strategy*

By helping to improve labor law compliance in the agricultural sector in the Dominican Republic, Nicaragua and either Honduras or Guatemala, the proposed project supports achievement of USDOL's Government Performance and Results Act (GPRA) goal (2k), ''promote internationally recognized workers rights and labor standards, including those related to the elimination of exploitive child labor, in the global community.''

Activities with regard to the elimination of child labor are being funded separately through USDOL's Office of Child Labor, Forced Labor, and Trafficking. Grantees are not expected to develop strategies specific to child labor; however, they are expected to coordinate with USDOL's child labor projects, where applicable.

*E. Type of Work To Be Performed/ Activities*

Applicants are responsible for developing a strategy for successfully achieving the above-stated objectives and addressing the problem(s) identified in the Background and Problem Statement (Section I.A), developing and implementing the major tasks and activities to be accomplished as part of that strategy, tracking and reporting on progress in achieving the stated objectives, and providing any necessary services. The project strategy(s) must consider the diverse needs and environment of each country.

In developing the strategy, applicants should take into consideration the following issues:

- The level of technical assistance that Central American Ministries of Labor have received in the past five (5) years and continue to receive from bilateral donors and international

organizations and the need to ensure that any effort builds on and complements previous and current work without duplication;

• The need to ensure that the project strategy is consistent with any national strategy to increase labor law compliance;

• The need to sustain project improvements, including retaining the new knowledge and practices of institutions and individuals trained by the project;

• The need to engage key stakeholders of the project, including Ministries of Labor, employer associations, trade unions, and local community organizations in the design and implementation of the project strategy.

In order to ensure achievement of these project objectives and respect the most effective use of the Labor Ministries' time, the Grantee(s) must first coordinate with the U.S. Government (USG) and other projects in the region to avoid any duplication of efforts and ensure input from Labor Ministries on project designs. In addition, the Grantee(s) must meet with key local stakeholders to further develop the project strategy and Work plan. This strategy must be implemented with local stakeholder guidance.

The project is required to utilize existing training and public awareness materials produced by other USG-funded projects, particularly the USDOL funded ''Cumple y Gana'' project. USDOL will consider the production of new materials if the Grantee(s) can demonstrate that the existing materials are not sufficient or appropriate for the activity being carried out.

*An outline of illustrative activities under each objective could include the following:*

*Intermediate Objective 1*: Increased awareness among workers and employers in targeted agricultural communities about national labor laws, with particular emphasis on safety and health regulations.

• Coordinate with the USG and other projects in the region to avoid any duplication of efforts.

• Ensure input from Labor Ministries on project designs.

• Meet with relevant stakeholders in target communities and further define the project strategy and Work plan.

• Develop relationships with key agricultural producers, agricultural communities and other local organizations.

• Conduct a baseline survey of workers in target communities to measure their understanding of their rights.

• Develop and implement outreach strategies to effectively reach workers and employers and to address the most prevalent labor law compliance concerns.

• Develop the capacity of local organizations to train workers in target communities on labor laws, including a particular emphasis on occupational safety and health practices.

• Explore/develop innovative links for workers and local communities to the Ministry of Labor's enforcement mechanisms.

• If developing new outreach or training materials, coordinate with Ministries of Labor to ensure that the materials accurately reflect the labor laws.

• Implement training programs for workers that address the worker's most prevalent labor rights concerns, including a particular emphasis on occupational safety and health practices.

• Develop a network of organizations to further develop and implement outreach strategies in additional communities.

*Intermediate Objective 2:* Increased ability of workers in targeted agricultural communities to exercise their labor rights.

• Develop and/or strengthen coordination mechanisms between the Ministries of Labor and other relevant government entities and local community organizations providing services to workers.

• Train local community organizations to assist workers in exercising their rights, including helping the workers appropriately document and process alleged labor violations.

• Support the outreach efforts of the Ministries of Labors' mobile inspection units and/or regional offices (where applicable) by promoting Ministry of Labor services and helping workers to access them.

*F. Expected Outcomes/Project Outputs*

• Improved awareness among workers and employers about labor laws in targeted agricultural areas.

• Workers in targeted agricultural areas better understand, and are able to exercise their labor rights.

• Improved compliance with labor laws in targeted agricultural communities.

• Improved occupational safety and health conditions in targeted agricultural communities.

• Local organizations in targeted areas are able to assist workers in exercising their labor rights.

• Strengthened coordination mechanisms between local organizations in the agricultural sector and Ministries of Labor and other relevant government entities.

*G. Conditions Precedent*

Applicants are requested to indicate in their technical proposal the proposed organizations with which they will work to implement their strategy and the merits of these organizations, and to describe their relationship with the different stakeholders. Award agreements entered into after the Cooperative Agreement is signed, and not proposed in the application, must be awarded through a formal competitive bidding process, unless prior written approval is obtained from USDOL.

**II. Award Information**

*Type of Assistance Instrument:* Cooperative Agreement. USDOL's involvement in project implementation and oversight is outlined in Section VI.3. The duration of the project(s) funded by this solicitation is up to four (4) years. The start date of program activities will be negotiated upon awarding of the Cooperative Agreement, but will be no later than September 30, 2007.

Up to U.S. $2.5 million will be awarded under this solicitation. USDOL may award more than one Cooperative Agreement to one, several, or a partnership or Association (see Section III) of more than one organization(s) that may apply to implement the program. A Grantee must obtain prior USDOL approval for any subawardee not proposed in the application. *See* Section IV.E.3 for further information on subawards.

**III. Eligibility Information**

*A. Eligible Applicants*

Any commercial, international, educational, or non-profit organization(s), including any faith-based, community-based, or public international organization(s) with experience in effectively implementing projects in the relevant technical field(s) and working with foreign national government ministries, regional and local government entities, employers and employer organizations, workers and labor organizations, and non-governmental and community-based organizations is eligible for this grant(s). Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of Cooperative Agreement recipients. Applications from foreign government and quasi-government agencies will not

be considered. An applicant must demonstrate a country presence, independently or through a relationship with another organization(s) with country presence, which gives it the ability to initiate program activities upon award of the Cooperative Agreement. *See* Section V (Institutional Qualifications/Past Performance).

If it is deemed the most effective and efficient strategy for achieving the goals outlined in the Scope of Work, USDOL may award one or more Cooperative Agreements to a partnership of more than one organization. If two or more applicants, who do not constitute a single legal entity (hereinafter referred to as ''Associations''), join in applying for an award, each member of the Association (hereinafter referred to as an ''Associate'') must be individually eligible for award. All references to ''the applicant'' refer to Associations as well as individual applicants. All Associates must sign, and agree to be bound jointly and severally by, the awarded Cooperative Agreement, and all must designate one Associate as the ''Lead.'' Any such Association must submit to USDOL, as an attachment to the application, an Association agreement, reflecting an appropriate joint venture, partnership, or other contractual agreement and outlining the deliverables, activities, and corresponding timeline for which each Associate will be responsible. Copies of such agreements will not count toward the page limit.

If any entity identified in the application as an Associate does not sign the Cooperative Agreement, the Lead must provide, within 60 days of award, either a written subaward agreement with such entity, acceptable to USDOL, or an explanation as to why that entity will not be participating in the Cooperative Agreement. USDOL reserves the right to re-evaluate the award of the Cooperative Agreement in light of any such change in an entity's status, and may terminate the award if USDOL deems appropriate.

For the purposes of this proposal and the Cooperative Agreement award, the Lead will be: (1) The primary point of contact with USDOL to receive and respond to all inquiries, communications and orders under the project; (2) the only entity with authority to withdraw or draw down funds through the HHS system; (3) responsible for submitting to USDOL all deliverables, including all technical and financial reports related to the project, regardless of which Associate performed the work; (4) the sole entity to request or agree to a revision or amendment of the award or the project document; and (5) responsible for working with USDOL to close out the project. Note, however, that each Associate is ultimately responsible for overall project performance, regardless of any assignment of specific tasks, but Associates may agree, among themselves only, to apportion the liability for such performance. Each Associate must comply with all applicable federal regulations, and is individually subject to audit.

In accordance with 29 CFR Part 98, entities that are debarred or suspended from receiving federal contracts or grants shall be excluded from Federal financial assistance and are ineligible to receive funding under this solicitation.

*B. Cost Sharing or Matching Funds*

This solicitation does not require applicants to share costs or provide matching funds. However, the leveraging of resources and in-kind contributions is strongly encouraged and is a rating factor worth up to five (5) additional points. *See* Section V (Leveraging of Grant Funds).

*C. Dun and Bradstreet Number*

The organizational unit section of Block 8 of the SF–424 must contain the Dun and Bradstreet Number (DUNS) of the applicant. Beginning October 1, 2003, all applicants for Federal grant funding opportunities are required to include a DUNS number with their application. See OMB Notice of Final Policy Issuance, 68 **Federal Register** 38402 (June 27, 2003). Applicants' DUNS number is to be entered into Block 8 of SF–424. The DUNS number is a nine-digit identification number that uniquely identifies business entities. There is no charge for obtaining a DUNS number. To obtain a DUNS number call 1–866–705–5711 or access the following Web site: *http://www.dunandbradstreet.com/*

Requests for exemption from the DUNS number requirement must be made to the Office of Management and Budget. If no DUNS number is provided without such an exemption then the grant application will be considered non-responsive.

After receiving a DUNS number, all grant applications must also register as a vendor with the Central Contractor Registration (CCR) through the following Web site: *http://www.ccr.gov* or by phone at 1–888–227–2423. CCR registration should become active within 24 hours of completion. If grant applicants have questions regarding registration, please contact the CCR Assistance Center at 1–888–227–2423. After registration, grant applicants will receive a confirmation number. The Grantee listed as the Point of Contact will receive a Trader Partnership Identification Number (TPIN) via mail. The TPIN is, and should remain, a confidential password.

## IV. Application and Submission Information

*A. Application Package*

This solicitation contains all of the necessary information and forms needed to apply for Cooperative Agreement funding. This solicitation is published as part of this **Federal Register** notice. Additional copies of the **Federal Register** may be obtained from your nearest U.S. Government office or public library or online at *http://www.archives.gov/federal_register/index.html*.

*B. Content and Form of Application Submission*

Applicants must submit one (1) blue ink-signed original, complete application in English plus two (2) copies of the application to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210, no later than 4:45 p.m. Eastern Time on the established due date. To aid with review of applications, applicants may elect to submit three (3) additional paper copies of the application (five total). Applicants who do not provide additional copies will not be penalized.

The application must consist of two (2) separate parts. Part I of the application must contain the Standard Form (SF) 424, ''Application for Federal Assistance'' and sections A–F of the Budget Information Form SF 424A (see Appendix A). These forms are also available at *http://www.whitehouse.gov/omb/grants*. Part II must contain a technical proposal that demonstrates capabilities in accordance with the statement of work (Section I) and the selection criteria (Section V). The application should include the name, address, telephone and fax numbers, and e-mail address (if applicable) of a key contact person at the applicant's organization in case questions should arise.

To be considered *responsive* to this solicitation, the application must consist of the above-mentioned separate sections with Part II not to exceed 45 single-sided (8½″ x 11″ or A4), double-spaced, 12-point font, typed pages. Major sections and sub-sections of the application should be divided and clearly identified (e.g., with tab dividers), and all pages must be numbered. Applicants are required to

propose that a project address the project objectives identified in the Statement of Work in Section I. Any applications that do not conform to these standards may be deemed non-responsive to this solicitation and may not be evaluated. The application must include a table of contents and an abstract summarizing the application in not more than two (2) pages. Standard forms, attachments, résumés, exhibits, letters of support, and the abstract are not counted towards the page limit. *If an applicant exceeds the stated page limit, the review panel has the discretion to deduct 10 points.*

Upon completion of negotiations, the individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant.

*C. Submission Dates, Times, and Address*

The grant application package must be received at the designated place by February 23, 2007, or it will not be considered. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted; the applicant, however, bears the responsibility for timely submission. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing, delivery, and hand-delivery conditions set forth in this notice will be granted.

Any application received at the Office of Procurement Services after 4:45 pm Eastern Time on February 23, 2007 will not be considered unless it is received before the award is made and:

- It was sent by registered or certified mail no later than the fifth calendar day before the closing date; or
- It was sent by U.S. Postal Service Express Mail/Next Day Service from the post office to the addressee no later than 5 p.m. at the place of mailing two (2) working days (excluding weekends and Federal holidays), prior to the closing date; or
- It is determined by the USG that the late receipt was due solely to mishandling by the USG after receipt at the U.S. Department of Labor at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail/Next Day Service from the post office to the addressee is the date entered by the Post Office receiving clerk on the ''Express Mail/Next Day Service—Post Office to Addressee'' label and the postmark on the envelope or wrapper on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the USDOL is the date/time stamp of the Procurement Service Center on the application wrapper or other documentary evidence or receipt maintained by that office.

All applicants are advised that U.S. mail delivery in the Washington DC area has been slow and erratic due to concerns involving anthrax contamination. Applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application with your delivery service from Lisa Harvey (*see* Section VII for contact information).

Applicants may also apply online at www.grants.gov. Applicants submitting proposals online are requested to refrain from mailing a hard copy application as well. It is strongly recommended that applicants using www.grants.gov immediately initiate and complete the ''Get Started'' registration steps at *http://www.grants.gov/GetStarted*. These steps may take multiple days to complete, and this time should be factored into plans for electronic submission in order to avoid facing unexpected delays that could result in the rejection of an application. If submitting electronically through www.grants.gov, the applicants must save application document as a .doc, .pdf, .txt or .xls file.

Any application received on grants.gov after the deadline will be considered as non-responsive and will not be evaluated.

*D. Intergovernmental Review*

This funding opportunity is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

*E. Funding Restrictions, Unallowable Activities, and Specific Prohibitions*

In addition to those specified under OMB Circular A–122, the following *costs* and *activities* are also unallowable or contain specific restrictions:

1. Pre-award Costs

Pre-award costs are not reimbursable.

2. Alternative Income-Generating Activities

USDOL funds awarded under all USDOL Cooperative Agreements may not be used to provide micro-credits, revolving funds, or loan guarantees. Permissible costs related to alternative income-generating activities for workers may include, but are not limited to, vocational or skills training, incidental tools and equipment, guides, manuals, and market feasibility studies. USDOL reserves the right to negotiate the exact nature, form, or scope of alternative income-generating activities and to approve or disapprove these activities at any time after award of the Cooperative Agreement.

3. Subawards to Organizations, Groups, and/or Persons

Grantees may procure sub-contracts or sub-grants with other organizations to fulfill the purpose and activities of the Cooperative Agreement award. Subawards may be included as a budget line item. Subawards must be awarded in accordance with 29 CFR 95.40–48 and are subject to audit, in accordance with the requirements of 29 CFR 95.26(d). Subawards awarded after the Cooperative Agreement is signed, and not proposed in the application, must be awarded through a formal competitive bidding process, unless prior written approval is obtained from USDOL. In addition, all subawards are subject to the restrictions and prohibitions related to prostitution, inherently religious activities, and terrorism as outlined in this section (6–8). Detailed information on subawards should be provided during the project document review process. Copies of all subawards above $100,000 must be provided to USDOL prior to implementation of the contract.

4. Lobbying or Fund-raising the U.S. Government With Federal Funds

Under the Cooperative Agreements, no activity, including awareness raising and advocacy activities may include fund-raising, or lobbying of all

Government entities (*see* OMB Circular A–122). Cooperative Agreement Applicants classified under the internal revenue code as A 501(c)(4) entity (*see* 26 U.S.C. 501(c)(4)), may not engage in lobbying activities. According to the Lobbying Disclosure Act of 1995, as codified at 2 U.S.C. 1611, an organization, as described in Section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities directed toward the USG will not be eligible for the receipt of Federal funds constituting an award, grant, Cooperative Agreement, or loan.

5. Funds To Host Country Governments

USDOL funds awarded under this solicitation are not intended to duplicate or substitute for host-country government efforts or resources. Therefore, in general, Grantees may not provide any of the funds obligated under the Cooperative Agreement to foreign government entities, ministries, officials, or political parties. However, subcontracts with foreign government agencies may be awarded to provide direct services or undertake project activities subject to applicable laws and only after a competitive procurement process has been conducted and no other entity in the country is able to provide these services. Grantees must receive *prior* USDOL approval before subcontracting to foreign government agencies for the provision of direct educational services.

6. Prostitution

The USG is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. U.S. non-governmental organizations, and their subawardees, cannot use USG funds to lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work. Foreign non-governmental organizations, and their subawardees, that receive USG funds cannot lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work; this includes organizations receiving both general and trafficking-related grants. It is the responsibility of the Grantee(s) to ensure its subawardees meet these criteria.

7. Inherently Religious Activities

The USG is generally prohibited from providing direct financial assistance for inherently religious activities. Federal funds provided under a USDOL-awarded Cooperative Agreement may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious activities. Neutral, non-religious criteria that neither favor nor disfavor religion must be employed by the Grantee in the selection of subawardees. This provision must be included in all subawards issued under the Cooperative Agreement.

8. Terrorism

Applicants are reminded that U.S. Executive Orders and U.S. law prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of Grantees to ensure compliance with these Executive Orders and laws. This provision must be included in all subawards issued under the Cooperative Agreement.

## V. Application Review Information

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable, including the technical proposal, cost proposal, recent audits, partnership agreements where applicable, the Curricula Vitae of key personnel, and personnel agreements. A Technical Panel will objectively rate each complete application against the criteria described in this announcement. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select one or more Grantees on the basis of the initial proposal submission, or the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of proposals, the evaluation process described above will be repeated to consider such revisions. The Grant Officer will make a final selection determination based on what is most advantageous to the USG, considering factors such as panel findings based on the criteria listed below and the best value to the government, cost, and other factors. The Grant Officer's determination for award under this SGA is final.

### *A. The Review Process*

The criteria below will serve as the basis upon which submitted applications will be evaluated. Technical aspects of the application will constitute 100 points of the total evaluation. Up to five (5) additional points will be given for leveraging non-Federal resources.

In order to assist USDOL in assessing the efficient and effective allocation of project funding, the applicants must submit a project budget that clearly details the costs for performing all of the requirements presented in this solicitation, including producing all deliverables, reporting on implementation and progress, and monitoring progress. The budget does not count against the page limit. Applicants are reminded to budget for compliance with the administrative requirements set forth (copies of all regulations referenced in this solicitation are available at no cost, on-line, at *http://www.dol.gov*). This includes the costs of performing activities such as travel to Washington, DC to meet with USDOL/ILAB, financial audit, project closeout, project evaluation, document preparation (*e.g.*, progress reports, project document), and ensuring compliance with procurement and property standards. The Project Budget must identify administrative costs separately from programmatic costs. In addition to the costs identified previously, administrative costs include indirect costs from the costs pool and the cost of activities, materials (*e.g.*, project car), and personnel (*e.g.*, administrative assistants, office drivers) that support the management and administration of the project, but do not provide direct services to project beneficiaries. *See* Annex I for a sample budget.

Technical Approach—65 points

The extent to which the application sets forth a clear and supportable course of action to improve labor law compliance in Central America, in particular those laws that address the issues raised in the Statement of Work by strengthening the capacity of local organizations to improve labor law compliance in the agricultural sector through A) Increased awareness among workers and employers in targeted agricultural communities about national labor laws, with particular emphasis on safety and health regulations; and B) Increased ability of workers in targeted agricultural communities to exercise their labor rights.

In developing the strategy, applicants are expected to take into consideration the following issues:

- The level of technical assistance that Central American Ministries of Labor have received in the past five (5) years and continue to receive from bilateral donors and international organizations;
- The need to ensure that the project strategy is consistent with any national strategy to increase labor law compliance.
- The need to sustain project improvements, including retaining the

new knowledge and practices of project-trained local staff.

• The need to engage local stakeholders in the design and implementation of the project strategy.

• The need for information exchange with the Ministries of Labor.

Points

Applicants will be evaluated on the clear identification and description of the specific strategy(s) the applicant proposes to use, and the effectiveness and attainability of project objectives by the end of the grant period. Proposals should include Work plans that are practical, manageable, and can achieve project results. Applicants must include an implementation plan that lists a schedule of activities and list of deliverables that would be completed by the Grantee each quarter. The strategy must include a sustainability plan outlining clearly how the project activities will be sustained when the project has been completed. (15 points)

Demonstrated familiarity with the major issues related to the components being addressed (*e.g.*, labor laws, providing assistance to workers, with particular emphasis on the agricultural sector, conducting training, building networks, outreach and informational campaigns), key problems and/or needs in the relevant country/area, the specific problem(s) and/or need(s) that will be addressed by this project(s), and relevant constraints. Applicants will be evaluated on the thorough and accurate assessment of the implementing environment and the problems that exist and clear identification of the specific problem(s) the applicant proposes to address. (10 points)

Applicants must provide a monitoring and evaluation plan for measuring project performance that includes challenging but realistic targets and measurable, verifiable project indicators that measure achievement of project objectives and performance in project implementation. The plan should show how the information and data will be collected and what systems will be put in place for self-assessment, monitoring, and continuous improvement. (5 points)

Applicants must provide a description of the proposed approach to expending funds in the most cost-effective method possible in order to achieve the project objectives. Applicants must submit an Outputs-based Budget, a sample of which is provided in Annex 1. Applicants must refer to the submitted budget in explaining how the budgeted funds will be utilized cost-effectively. In order to assist USDOL in assessing the efficient and effective allocation of project funding, the applicant must submit, at minimum, supporting budget information indicating how the applicant arrived at estimating the costs of the following items/activities: salaries and benefits for all key personnel; 2–3 key activities proposed by the applicant under its project design; and meeting all USDOL close-out requirements. Applicants will be evaluated based on the clear identification of all project costs and efficient and effective allocation of funding. The project budget should clearly demonstrate that the total amount and distribution of funds is sufficient to cover the cost of all major project activities identified by the applicant in its proposal, management of the project, monitoring and evaluation, and project close-out and that the distribution of funds maximizes the provision of equipment and/or services to project beneficiaries. Higher ratings may be given to applicants with low administrative costs and with a budget breakdown that provides a larger amount of resources to project activities. The Grant Officer reserves the right to negotiate administrative cost levels prior to award. Indirect cost charges should be based on allowable, allocable, and reasonable costs based on the applicable cost principles included in the OMB Circular A–122 and Indirect Charges Instructions included in Annex 2. This section will be evaluated in accordance with applicable Federal laws and regulations. Applicants should submit output-based budgets. A sample of an output-based budget format is included in Annex 1. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars) and with ILAB budget requirements contained in the application instructions in Section VI of this solicitation. Applicants must also be required to include an indirect cost certification, the SF 424, SF 424A, and the Equal Employment Opportunity survey. (15 points)

Applicants will be evaluated on their use of existing expertise from the recipient country in order to reduce costs and further develop local capacity. The proposal should identify specific organizations to carry out the work in each country. Local organizations will be rated on their technical ability to effectively carry out the proposed work, their experience working with the project beneficiaries and stakeholders in target communities, and ability to implement activities in a timely fashion. (15 points)

Applicants will be evaluated on their proposed submission of a schedule of quarterly deliverables that will serve to determine the level of performance of the awardee. The identification of deliverables that are presented in the proposal should be objective, verifiable, and demonstrate progress in achieving project objectives. (5 points)

• Institutional Qualifications/Past Performance—20 points

Applicants will be evaluated on the prior experience of all organizations included in their proposal, including prime and sub-awardees, in designing and implementing activities in developing countries, especially in Central America, related to labor law compliance, occupational safety and health, work in the agricultural sector, strategic planning, outreach and education, and capacity building. Applicants must include information as an attachment (that will not count towards the page limit) regarding previous grants, contracts, or grants, including: (a) The organization for which the work was done; (b) a contact person in that organization with his/her current phone number; (c) the dollar value of the grant or contract for the project(s); (d) the time frame and professional effort, either directly by key personnel, by consultants, or under contractual arrangements involved in the project(s); (e) a brief summary of the work performed; and (f) a brief summary of accomplishments. Applicants must also address their organization's country presence; ability to work directly with government and Non Governmental Organizations (NGOs), including local and community-based organizations. Applicants may submit supporting documentation with their application demonstrating country presence and/or outreach to host government ministries and non-governmental organizations in the country. Said documentation will not count against the page limit. (10 points)

Applicants will be evaluated on their demonstration of strong financial management and internal control systems. If the applicant is a U.S.-based NGO already subject to the single audit requirements, the applicant's most recent single audit, as submitted to the Federal Audit Clearinghouse, must accompany the application as an attachment. In addition, applications must show that they have complied with report submission timeframes established in OMB Circular A–133. If an Applicant is not in compliance with the requirements for completing their single audit, the application will be considered nonresponsive and will be rejected. If the applicant is a for-profit or foreign-based organization, a copy of its most current independent financial

audit must accompany the application as an attachment. Applicants must also submit a copy of the most recent single audit report for all proposed U.S.-based, non-profit partners, Associates and subawardees that are subject to the Single Audit Act. If the proposed Associate(s) or partner(s) is a for-profit or foreign-based organization, a copy of its most current independent financial audit should accompany the application as an attachment. If the audit submitted by the applicant reflects any adverse opinions, the application will not be further considered by the technical review panel and will be rejected. USDOL reserves the right to ask further questions on any audit report submitted as part of an application. USDOL also reserves the right to place special conditions on Grantees if concerns are raised in their audit reports. In order to expedite the screening of applications and to ensure that the appropriate audits are attached to the proposals, the applicant must provide a cover sheet to the audit attachments listing all proposed partners and subawardees. These attachments will not count toward the application page limit. (10 points)

• Experience of Personnel/Management Plan—15 points

Applicants will be evaluated on their inclusion of key personnel with prior experience directly related to the proposed work, including technical and language qualifications, professional competence, relevant academic background, and demonstrated experience. Applicants must submit a résumé for each key personnel proposed, which includes the individual's current employment status and previous work experience, including position title, duties performed, salary history, dates in position, employing organizations, and educational background. Duties must be clearly defined in terms of role performed (*i.e.*, manager, team leader, consultant). Résumé must be included as attachments, which do not count against the page limitation. Management and professional technical staff members comprising the applicant's proposed team must be individuals who have prior experience with organizations working in similar efforts, and who are fully qualified to perform the work specified in the Scope of Work. (10 points)

Successful performance of the proposed work depends heavily on the management of the project. Accordingly, in its evaluation of each application, USDOL will place emphasis on the applicant's management approach involved in accomplishing the assigned tasks. This section of the application must include sufficient information to judge management and staffing plans. Where subawards or outside assistance are proposed, organizational lines of authority and responsibility should be clearly delineated to ensure responsiveness to the needs of USDOL. (5 points)

• Leveraging of Grant Funding—5 points

USDOL will award up to five (5) additional rating points to applications that include non-Federal resources that significantly expand the size and scope of project-related activities. These programs must not be financed by the project, but can complement and enhance project objectives. To be eligible for the additional points, the applicant must list the resource(s), the nature, and possible activities anticipated and any partnerships, linkages, or coordination of activities, cooperative funding, etc., including the specific value of such contributions.

• Suggested Outline for Technical Proposal

This outline is provided as a guideline. Organizations may elect a format of their choosing, subject to the requirements of this announcement.

i. Executive Summary
ii. Program Description
iii. Goal and Objectives
iv. Background
v. Technical Approach and Implementation Timetable (Proposed Intervention)
vi. Monitoring and Evaluation Plan
vii. Experience of Personnel
viii. Identification of Deliverables and Quarterly Schedule of their submission to determine contractor performance
ix. Staffing Pattern and Project Management Organizational Chart
x. Leveraging of non-Federal Resources
xi. Budget
xii. *Attachments:*
- Summaries of other relevant organizational experiences
- Résumés of key personnel and signed letters of commitment to the project
- Audit reports

Successful proposals submitted in response to this solicitation will be incorporated into the text of the grant with the selected applicant(s).

**Measuring the Performance of the Grantee**

The performance of the Grantee will be assessed based on the timely completion of one or more deliverables that will be due to USDOL at the end of each quarter of the Grant (as described in Section VI.3). These deliverables should reflect the outcomes of the project that are expected to help achieve the project's objective(s).

Applicants are requested to include in their proposal a project implementation plan and approach to monitor the performance of the project throughout the period of the grant. The implementation plan is to consist of a quarterly schedule of activities and list of deliverables that would be completed by the Grantee each quarter. The defined list and schedule of deliverables is viewed by USDOL as a key component of the technical proposal.

Applicants are requested to include in their proposal a process for project evaluation, using an independent evaluation method, strategy and costs for mid-term and final evaluations.

## VI. Award Administration Information

### *1. Award Notices*

The Grant Officer will notify applicants of designation results as follows:

*Designation Letter:* The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The designation letter will be accompanied by a Cooperative Agreement and ILAB's Management Procedures and Guidelines (MPG).

*Non-Designation Letter:* Any organization not designated will be notified formally of the non-designation and given the basic reasons for the determination. Notification of designation by a person or entity other than the Grant Officer is not valid.

### *2. Administrative and National Policy Requirements*

A. General

Grantees are subject to applicable U.S. Federal laws (including provisions of appropriations law) and regulations, Executive Orders, applicable OMB Circulars, and USDOL policies. If during project implementation a Grantee is found in violation of USG laws and regulations, the terms of the Cooperative Agreement awarded under this solicitation may be modified by USDOL, costs may be disallowed and recovered, the Cooperative Agreement may be terminated, and USDOL may take other action permitted by law. Determinations of allowable costs will be made in accordance with the applicable U.S. Federal cost principles.

B. Audits

After award, Grantees must also submit an annual independent audit regardless of grant amount.

i. For U.S. based non-profit organizations expending $500,000 or more in a year in Federal awards: a ''single'' or ''program specific'' audit conducted under the provisions of OMB Circular A–133 is required.

ii. For all other organizations (including foreign-based and private for-profit grantees): an audit conducted in accordance with the U.S. Government Accountability Office's (GAO) ''*Government Auditing Standards*'' is required. The audit must address the following:

(a) Compliance with the Department's regulations and the provisions of the Cooperative Agreement; and

(b) Reliability of the organization's financial and performance reports.

Costs for audits or attestation engagements should be included in direct or indirect costs, whichever is appropriate.

**Please Note:** USDOL generally allows the costs to be allocated based on the following (applicable to U.S. based agencies only): (1) A–133 ''single audit'' costs as part of the indirect cost rate/pool for organizations with *more than* one Federal source of funding. Organizations with only one Federal source could charge the A–133 single audit cost as direct costs; (2) A–133 ''*compliance supplement*'' costs—as direct costs for Federal sources only through a cost allocation methodology approved by the Federal cognizant agency; or (3) A–133 *program specific* audits as direct costs. Any deviations from the above must be explained and justified in the application.

C. Administrative Standards and Provisions

The Cooperative Agreements awarded under this solicitation are subject to the following administrative standards and provisions, and any other applicable standards that come into effect during the term of the Cooperative Agreement, if applicable to a particular Grantee:

i. 29 CFR Part 2 Subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.

ii. 29 CFR Part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.

iii. 29 CFR Part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

iv. 29 CFR Part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor.

v. 29 CFR Part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor.

vi. 29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

vii. 29 CFR Part 93—New Restrictions on Lobbying.

viii. 29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

ix. 29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

x. 29 CFR Part 98—Federal Standards for Government-wide Debarment and Suspension(Nonprocurement).

xi. 29 CFR Part 99—Federal Standards for Audits of States, Local Governments, and NonProfit Organizations.

xii. CFR 29 Part 94—Govermnentwide Requirements for Drug Free Workplace.

Copies of all regulations referenced in this solicitation are available at no cost, on-line, at *http://www.dol.gov.*

D. Key Personnel

As noted in Section V, the applicant must list all key personnel candidates. After the Cooperative Agreement has been awarded and throughout the life of the project, the Grantee agrees to inform the Grant Officer's Technical Representative (GOTR) whenever it appears impossible for key personnel to continue work on the project as planned. The Grantee must nominate, through the submission of a formal project revision, new personnel; however, the Grantee must obtain approval from the Grant Officer before all changes to key personnel are formalized. If the Grant Officer is unable to approve the key personnel change, she or he reserves the right to terminate the Cooperative Agreement or disallow costs.

E. Encumbrance of Grant Funds

Grant funds may not be encumbered/obligated by the Grantee(s) before or after the period of performance. Encumbrances/obligations outstanding as of the end of the grant period may be liquidated (paid out) after the end of the grant period. Such encumbrances/obligations may involve only commitments for which a need existed during the grant period and that are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the Grantee's purchasing procedures and incurred within the grant period. All encumbrances/ obligations incurred during the grant period must be liquidated within 90 days after the end of the grant period, if practicable.

F. Acknowledgement on Printed Materials

In all circumstances, the following shall be displayed on printed materials: *Preparation of this item was funded by the United States Department of Labor under Grant No. [insert the appropriate grant number].* In addition, the Grantee is required to include a disclaimer in publications and materials that have been directly funded by USDOL as follows: *This ( * * * ) does not necessarily reflect the views or policies of the United States Department of Labor, nor does the mention of trade names, commercial products, or organizations imply endorsement by the United States Government.* This acknowledgement and disclaimer must be included in documents (reports and other materials) produced, edited and published for distribution beyond the Grantee and USDOL (i.e., to other donors, organizations, or the general public). When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all Grantees receiving Federal funds must clearly state:

- The percentage of the total costs of the program or project, which will be financed with Federal money;
- The dollar amount of Federal funds for the project or program; and
- The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

G. Use of the USDOL Logo

In consultation with ILAB, the Grantee(s) will acknowledge USDOL's role in one of the following ways:

- The USDOL logo may be applied to USDOL-funded material prepared for public distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of public interest. The Grantee(s) must consult with USDOL on whether the logo may be used on any such items prior to final

draft or final preparation for distribution. In no event shall the USDOL logo be placed on any item until USDOL has given the Grantee written permission to use the logo on the item.

• All documents should include the following notice: ''This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.''

H. Privacy and Freedom of Information

Any information submitted in response to this solicitation will be subject to the provisions of the Privacy Act and the Freedom of Information Act, as appropriate.

**I. Site Visits**

USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of the Grantee or a subawardee(s) under this grant, the Grantee must provide and must require its subawardee(s) to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations will be performed so as not to unduly delay the work.

*3. Reporting and Deliverables*

Guidance on USDOL procedures and management requirements will be provided to Grantees in the Management Procedures Guidelines (MPGs) and within the Cooperative Agreement. Unless otherwise indicated, a Grantee must submit copies of all required reports and deliverables to USDOL by the specified due dates. Exact timeframes for the completion of deliverables will be addressed in the Cooperative Agreement and the MPGs. Specific deliverables are outlined below.

A. Required Deliverables

Following the award of the grant, the Grantee(s) must collaborate with USDOL/ILAB to:

• Develop a Project Document (including a project budget) that will set the technical parameters and provide guidance to the project. It must include all information and be prepared according to the standardized format outlined by USDOL. While the applicant's original proposal will serve as the basis of the Project Document, in every case USDOL has found it advantageous to visit the field and reach consensus on the project strategy with host country counterparts in order to further inform the project design. USDOL must receive a draft of the Project Document 45 days after the Grantee(s) has returned from travel to the relevant area(s). The Project Document must be finalized no later than 30 days after receipt of USDOL comments on the draft.

• Establish a Work plan identifying major project activities, deadlines for their completion, and person(s) responsible for completing these activities (within 60 days after the Project Document is finalized).

• Set project indicators, including indicators that support ILAB's GPRA goal: ''Improve living standards and conditions of work for workers in developing and transition countries.'' (within 90 days of finalizing the Project Document).

• Create a Performance Monitoring Plan (PMP) to establish the data needed to measure achievement of project indicators and the methods for collection and reporting. It should include all information and be prepared according to the standardized format outlined by USDOL (within 90 days of finalizing the Project Document).

B. Required Reporting

• The Grantee(s) must submit financial reports on a quarterly basis. The first reporting period ends on the last day of the fiscal quarter (December 31, March 31, June 30, or September 30) during which the grant was signed. The Grantee(s) must use Standard Form (SF) 269A, *Financial Status Report*, to report the status of the funds, at the project level, during the grant period. A final SF269A must be submitted no later than 90 days following completion of the grant period. If the Grantee(s) uses the U.S. Department of Health and Human Services Payment Management System (HHS PMS), they shall also send USDOL copies of the PSC 272 that they submit to HHS, on the same schedule. Otherwise, the Grantee(s) must submit Standard Form (SF) 272, *Federal Cash Transactions Report*, on the same schedule as the SF269A. Financial reports are due within 30 days of the end of the reporting period (i.e., by April 30, July 30, October 30, and January 30).

*Technical Reporting Requirements*

• After signing the agreement, the Grantee(s) must submit progress reports to USDOL/ILAB at the end of each fiscal quarter. The first reporting period ends on the last day of the fiscal quarter (December 31, March 31, June 30, or September 30) during which the Grant was signed. Between reporting dates, the Grantee(s) must also immediately inform USDOL/ILAB of significant developments and/or problems affecting the organization's ability to accomplish work. The Grantee(s) must submit two types of progress reports according to the standardized format used by USDOL/ILAB.

**VII: Agency Contacts**

All inquiries regarding this solicitation should be directed to: Ms. Lisa Harvey, U.S. Department of Labor, Procurement Services Center, 200 Constitution Ave, NW., Room N–5416, Washington DC 20210; telephone (202) 693–4570 (this is not a toll-free number) or e-mail: harvey.lisa@dol.gov. Successful proposals submitted in response to this SGA will be incorporated into the text of the grant with the selected applicant(s).

**Lisa Harvey,**

*Grant Officer.*

**BILLING CODE 4510–28–P**

## ANNEX 1: Output based budget

SAMPLE BUDGET (This is only a sample and does not reflect the outputs in the solicitation.

| I. DIRECT LABOR | NOTES | UNIT COSTS | YR 1 UNITS | FED $ | YR 2 UNITS | FED $ |
|---|---|---|---|---|---|---|
| A.. Int'l Field Staff Salaries and Benefits | | | | | | |
| Project Director | | | | | | |
| Fringe Benefit | | | | | | |
| Allowances a | | | | | | |
| b | | | | | | |
| c etc | | | | | | |
| B. Home Office Salary and Fringe Benefits | | | | | | |
| Project Coordinator and Salary and FB | | | | | | |
| oversight Team | | | | | | |
| Fringe Benefits | | | | | | |

| | | |
|---|---|---|
| C. Local Technical Staff<br>Project director<br>Mediation<br>Specialist<br>M and E Specialist<br>Security<br>Fringe Benefits<br>D. Allowance for local Staff<br>E. Short Term Consultants<br>1. Local<br>**TOTAL SALARIES** | | |
| | | |
| **II. EQUIPMENT**<br>A. Laptops<br>**B. Desktop Computer**<br>C.<br>Printer<br>**D. Photocopier**<br>K. Office Furniture<br>**TOTAL**<br>**EQUIPMENT** | | |
| | | |
| **III. OFFICE EXPENSES**<br>A. Translation<br>B. Internet<br>C. Computer maintenance<br>D. Rent<br>C#.<br>Communication<br>F. Office Utilities<br>G. Supplies<br>H. Copying<br>K Wire Transfers | | |
| **TOTAL OFFICE EXPENSES** | | |
| | | |
| **IV. GENERAL TRAVEL AND PER DIEM**<br>A. Airfares<br>B. Ground Travel<br>C. Per Diem<br>D. Misc<br>**TOTAL GENERAL TRAVEL** | | |
| **OUTPUT**<br>**BUDGETS** | | |
| **V. OUTPUT 1 MOL ADR Centers**<br>A. refurbish centers<br>IT equipment<br>furniture<br>B. Training | | |

| | | |
|---|---|---|
| Salaries<br>Mediation trainer Salary<br>Assistant Salary<br>C. Training for mediators<br>training materials<br>venue rental<br>D. Per Diem Travel<br>M & E visit<br>Trainer travel<br>regional mediators travel<br>**TOTAL OUTPUT 1** | | |
| | | |
| **VI. OUTPUT 2: ENTERPRISE ADR TRAINING**<br>A. Salaries<br>Labor relations expert<br>Trainer<br>B.Travel per diem<br>1. travel to workplaces<br>2. trip to headquarters<br>C. Trainings<br>venue rental<br>material production<br>**TOTAL OUTPUT 2** | | |
| **VII. OUTPUT 3: UNION TRAINING**<br>A. Salaries<br>Trainer<br>B.Travel per diem<br>1. participant travel<br>2. trainer travel<br>C. Trainings<br>venue rental<br>material production | | |
| **VIII. OUTPUT 4: PUBLIC AWARENESS**<br>A. Awareness material development (for trainers, staff)<br>B. National Conferences<br>1.<br>launch<br>2. sustainability<br><br>C. Development of information tool kits<br>D. Quarterly Awareness Workshop for National Leaders<br>1. venue rental<br>2. training material<br><br>D. Travel and per diem<br>A. Trainings<br>B.<br>launch | | |

| | | |
|---|---|---|
| C. sustainability | | |
| E. Sub contractors | | |
| 1. event organizer | | |
| **TOTAL OUTPUT 4** | | |

**ANNEX 2:**

## INDIRECT CHARGES

**This clause is applicable to all entities (non-profit, for-profit organizations, and State and local organizations, etc.) receiving Federal** cost reimbursable **grants or contracts.**

**Indirect cost charges should be based on allowable, allocable, and reasonable costs based on the applicable cost principles[1]. It is important to highlight the submission requirements of indirect cost proposals. As an example, OMB Circular A-122, Attachment A, Section E. 2. Negotiation and Approval of Indirect Rates, states:**

[1] OMB Circular A-122 for non-profit organizations or OMB Circular A-87 for State and local organizations available at: http://www.whitehouse.gov/omb/circulars/index.html; Federal Acquisition Regulations, Part 31.2 for for-profit organizations available at http://www.arnet.gov/far/.

- *A non-profit organization which has not previously established an indirect cost rate with a Federal agency **shall** submit its initial indirect cost proposal immediately after the organization is advised that an award will be made and, in no event, later than three months after the effective date of the award.*

- *Organizations that have previously established indirect cost rates **must** submit a new indirect cost proposal to the cognizant agency[2] within six months after the close of each fiscal year.*

Negotiated Indirect Cost Rate Agreements (NICRAs) are used to support indirect cost claims. These documents should be current at the time of the award (See statement on "Adequate NICRAs" further below). The final rates in the NICRAs are used for "close-out" purposes.

**Regarding allocable costs, attachment A of the Circular, also states:**

- *Any cost allocable to a particular award or other cost objective under these principles **may not be shifted** to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.*

- - - - -

**In light of the above requirements, mark the appropriate clause below (A, B, or C) for the organization and fill in the blanks, as appropriate:**

_____ A. A current approved cost allocation plan (CAP) or NICRA has been provided and approved - *Copy Attached).*

**Note**: Future NICRAs, showing provisional/final rates for each applicable fiscal year, must be submitted to the GO and GOTR for the entire grant period.

_____ B. No CAP or NICRA has been approved by the Federal Cognizant Agency.

**Note**: A "Temporary Billing Rate", not exceeding 90 days, may be negotiated by the Grant/Contract Officer. Future billings of indirect costs, however, should be based on approved NICRAs.

Within this 90-day period, the organization must submit an acceptable indirect cost proposal or CAP to their Federal cognizant agency to obtain a provisional indirect rate or an approved CAP. ***Failure of the organization to submit an***

[2] Federal agency providing the preponderance of direct Federal funds.

***indirect cost proposal or CAP within this 90 day period means that it shall not receive further (if applicable) reimbursement for indirect costs.***

The 90 days are provided to:

1. allow the entity to bill indirect costs during this time (subject to future adjustments),
2. provide the entity enough time to prepare the initial provisional indirect cost rate proposal to be submitted to the Federal cognizant agency.

In light of the above, a temporary billing rate of (N/A or %) _____% has been approved by_____ (grant/contracting officer at the Departmental agency; example: ETA, OASAM, etc.) for the first ***90 days*** of the grant/contract period. This rate is based on the fact that the organization has not established a NICRA or approved CAP.

DOL – Federal Cognizant Agency

If DOL is the Federal cognizant agency, please contact Victor M. Lopez, Chief, Division of Cost Determination (DCD) at 202-693-4106. DCD's main phone number is 202-693-4100. For more information, visit DCD's website available at: http://www.dol.gov/oasam/programs/boc/costdeterminationguide/main.htm.

_____ C. No indirect costs are claimed in the proposed budget.

**Notes:** As stated previously,

| |
|---|
| - *Any cost allocable to a particular award or other cost objective under these principles **may not be shifted** to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.* |

**In light of the above statement, a "Certificate of Direct Costs" must be completed in support of future claims of direct costs (see attached).**

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**Adequate NICRAs**

Some federal agencies issue indirect cost rate agreements that are effective "***until amended.***" These rate agreements will not be accepted by the grant officer if the last negotiated fiscal year shown in the agreement is more than one year past the date of the DOL award.

For example, a provisional rate approved for FYE 12/31/03 "until amended" will not be accepted for any DOL award issued after 12/31/04. This statement is based on the federal cost principles (see footnote 1 above) that require organizations to submit a final indirect cost proposal to the Federal cognizant agency no later than six months after the entity's fiscal year ends.

Following the example above, by 6/30/04 the organization should have submitted a new indirect rate proposal to its federal cognizant agency for review and negotiation.

**CERTIFICATE OF DIRECT COSTS**

The following must be filled in for organizations that are not proposing any indirect costs.

This is to certify that:

1. All costs budgeted and to be claimed under this proposal supporting the period_____ , through _____ are allowable in accordance with the requirements of grants/contracts to which they apply and with the Federal cost principles; i.e., (please check those applicable cost principles):

   _____ OMB Circular A-87, Cost Principles for State, Local and Federally recognized Indian Tribal Governments.
   _____ OMB Circular A-122, Cost Principles for Non-Profit Organizations
   _____ Federal Acquisition Regulation (FAR), Subpart 31.2, Cost Principles for Commercial Organizations.

2. Claimed costs do not include any costs which are unallowable under applicable Federal cost principles. For example:

   advertising, contributions and donations, bad debts, entertainment costs, fines and

   penalties, general government expenses, and defense of fraud proceedings;

3. The requirements standards on lobbying costs for non-profit (A-122) and commercial (FAR) organizations have been complied with and,

4. All costs included in the proposal are properly allocable to U.S. Department of Labor grants/contracts on the basis of a beneficial or casual relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable Federal cost principles.

Subject to the provisions of the Program Fraud Civil Remedies Act of 1986, (31 USC 3801 et seq.), and the Department of Labor's implementing regulations, (29 CFR Part 22), the False Claims Act (18 USC 287 and 31 USC 3729); and the False Statements Act (18 USC 1001), I declare to the best of my knowledge the foregoing is true and correct.

Grantee/Contractor: _____

Signature: _____

Name of Authorized Official: _____

Title: _____

Date: _____

ANNEX 1.

OUTPUT BASED BUDGET

SAMPLE BUDGET (This is only a sample and does not reflect the outputs included in the SGAs.

| | | | yr 1 | | yr 2 | | yr 3 | | yr 4 | | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | unit | | fed | | fed | | fed | | fed | |
| **I. DIRECT LABOR** | notes | costs | unit | $ | unit | $ | unit | $ | unit | $ | |
| A.. Int'l Field Staff Salaries/Fringe Benefits | | | | | | | | | | | |
| Project Director | | | | | | | | | | | |
| Fringe Benefit | | | | | | | | | | | |
| Allowances | a | | | | | | | | | | |
| | b | | | | | | | | | | |
| | c etc | | | | | | | | | | |
| B. Home Office Salary/Benefits | | | | | | | | | | | |
| Project Coordinator and Salary and FB | | | | | | | | | | | |
| oversight Team | | | | | | | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| Fringe Benefits | | | | | |
| C. Local Technical Staff<br>Project director<br>Mediation Specialist<br>M and E Specialist<br>Security<br>Fringe Benefits<br>D. Allowance for local Staff<br>E. Short Term Consultants<br>1. Local<br>**TOTAL SALARIES** | | | | | |
| | | | | | |
| **II. EQUIPMENT**<br>A. Laptops<br>**B. Desktop Computer**<br>C.<br>Printer<br>**D. Photocopier**<br>K. Office Furniture<br>**TOTAL**<br>**EQUIPMENT** | | | | | |
| | | | | | |
| **III. OFFICE EXPENSES**<br>A. Translation<br>B. Internet<br>C. Computer maintenance<br>D. Rent<br>C#. Communication<br>F. Office Utilities<br>G. Supplies<br>H. Copying<br>K Wire Transfers | | | | | |
| **TOTAL OFFICE EXPENSES** | | | | | |
| | | | | | |
| **IV. GENERAL TRAVEL AND PER DIEM**<br>A. Airfares<br>B. Ground Travel<br>C. Per Diem<br>D. Misc<br>**TOTAL GENERAL TRAVEL** | | | | | |
| **OUTPUT BUDGETS** | | | | | |
| **V. OUTPUT 1 MOL ADR Centers**<br>A. refurbish centers<br>IT equipment<br>furniture<br>B. Training Salaries | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| Mediation trainer Salary<br>Assistant Salary<br>C. Training for mediators<br>training materials<br>venue rental<br>D. Per Diem Travel<br>M & E visit<br>Trainer travel<br>regional mediators travel<br>**TOTAL OUTPUT 1** | | | | | |
| | | | | | |
| **VI. OUTPUT 2: ENTERPRISE ADR TRAINING**<br>A. Salaries<br>Labor relations expert<br>Trainer<br>B.Travel per diem<br>1. travel to workplaces<br>2. trip to headquarters<br>C. Trainings<br>venue rental<br>material production<br>**TOTAL OUTPUT 2** | | | | | |
| **VII. OUTPUT 3: UNION TRAINING**<br>A. Salaries<br>Trainer<br>B.Travel per diem<br>1. participant travel<br>2. trainer travel<br>C. Trainings<br>venue rental<br>material production | | | | | |
| **VIII. OUTPUT 4: PUBLIC AWARENESS**<br>A. Awareness material development (f)<br>B. National Conferences<br>1. launch<br>2. sustainability<br><br>C. Development of information tool kits<br>D. Quarterly Awareness Workshop for National Leaders<br>1. venue rental<br>2. training material<br><br>D. Travel and per diem<br>A. Trainings<br>B. launch<br>C. sustainability<br><br>E. Sub contractors | | | | | |
| 1. event organizer<br>**TOTAL OUTPUT 4** | | | | | |

[FR Doc. E6–22456 Filed 1–8–07; 8:45 am]
BILLING CODE 4510–28–C

## DEPARTMENT OF LABOR

### Office of the Secretary

### Strengthening Labor Systems in Central America; Establishing Worker Rights Centers

**AGENCY:** Bureau of International Labor Affairs, Department of Labor.

Announcement Type: New. Notice of Availability of Funds and Solicitation for Cooperative Agreement Applications.
Funding Opportunity Number: SGA XX–XX.
Catalog of Federal Domestic Assistance (CFDA) Number: Not applicable.
Key Dates: The closing date for receipt of applications is February 23, 2007. Applications must be received by 4:45 p.m. (Eastern Time) at the address below.

**ADDRESSES:** Application forms will not be mailed. They are published as part of this **Federal Register** notice and in the **Federal Register**, which may be obtained from your nearest U.S. Government office or public library or online at *http://www.archives.gov/federal_register/index.html*. Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Reference: SGA XX–XX, Washington, DC 20210.

**EXECUTIVE SUMMARY:** This notice contains all of the necessary information and forms needed to apply for grant funding. The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be granted by cooperative agreement to one or more qualifying organizations. USDOL will award up to U.S. $4.5 million through one or more grants to an organization or organizations to improve labor law compliance in the Central American region (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic by strengthening the capacity of local organizations to provide advice to workers about the scope and applicability of relevant labor laws, and when necessary, provide legal services explaining the procedural and documentation requirements to exercise those rights. Proposals must be regional in scope and respond to the entire Statement of Work as contained in Section III, but applicants will not be penalized for lacking previous experience with regional projects. For example, organizations with experience in only one country will be judged based on the success they achieved in that country and their proposal for how they plan to work successfully throughout the rest of the targeted region. Partnerships and Associations between more than one organization are also eligible and encouraged, in particular with qualified, regionally-based organizations in order to build local capacity, although in such a case a lead organization must be identified. The award of any subaward will be subject to USDOL policies and approval (see Section IV).

### I. Funding Opportunity Description

The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be awarded by Cooperative Agreement (hereinafter referred to as ''grant'' or ''Cooperative Agreement'') to one or more qualifying organizations to improve labor law compliance in the Central American region (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic by strengthening the capacity of local organizations to provide advice to workers about the scope and applicability of relevant labor laws, and when necessary, provide legal services explaining the procedural and documentation requirements to exercise those rights. ILAB is authorized to award and administer this program by the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2006, Pub. L. 109–102, 119 Stat. 2172 (2005). Cooperative Agreements awarded under this initiative will be managed by ILAB's Office of Trade and Labor Affairs. The duration of the projects funded by this solicitation is four years. The start date of program activities will be negotiated upon award of the Cooperative Agreement.

### Statement of Work

USDOL is seeking qualified organizations that will implement, in partnership with USDOL, a regional project in Central America (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic to improve labor law compliance in these countries by strengthening the capacity of local organizations to provide advice to workers about the scope and applicability of relevant labor laws, and when necessary, provide legal services explaining the procedural and documentation requirements to exercise those rights.

Applicants should submit proposals that are regional in scope and demonstrate the organization's capabilities to implement a project in accordance with the Statement of Work and the selection criteria. Proposals must provide for activities in all countries, and begin the first year at a minimum in El Salvador and Nicaragua. Applicants will not be penalized for lacking previous experience working on regional projects. For example, organizations with experience in only one country will be judged based on the success they achieved in that country and their proposal for working successfully throughout the rest of the targeted region. USDOL encourages applicants to be creative in proposing innovative and cost-effective interventions that will produce a demonstrable and sustainable impact.

Funds will be provided by grant to qualifying organizations. The grant will be actively managed by USDOL/ILAB to assure achievement of the stated project objectives. The award of any sub-contract will be subject to USDOL policies and approval (see Section IV).

**Note:** Selection of an organization as a grantee does not constitute approval of the grant application as submitted. Before the actual grant is awarded, USDOL may enter into negotiations about such items as program components, funding levels, and administrative systems in place to support grant implementation. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application.

#### *A. Background and Problem Statement*

The Central American Free Trade Agreement (CAFTA–DR) between the United States and five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) and the Dominican Republic obligates each country to effectively enforce its labor laws. The countries also reaffirm their obligations as members of the International Labor Organization (ILO) and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998).

In the Department of State's FY 2006 budget, Congress provided funding for labor and environmental capacity building activities in support of CAFTA–DR. A portion of these funds were transferred to the Department of Labor to administer projects related to labor capacity building in CAFTA–DR countries.

This project provides assistance to improve the effective enforcement of national labor laws by strengthening the capacity of local organizations to provide advice to workers about the scope and applicability of relevant labor laws, and when necessary, provide legal

services explaining the procedural and documentation requirements to exercise those rights. The project will work with local organizations to provide assistance to workers with these claims. These organizations will, as much as possible, consult with the Ministries of Labor to ensure correct understanding of the application of the laws, promote information sharing, and build a strategic partnership.

This strategy addresses the concerns that are identified in the April 2005 ''White Paper'' of the Working Group of the Vice Ministers Responsible for Trade and Labor in the countries of Central America and the Dominican Republic. The White Paper—titled The Labor Dimension in Central America and the Dominican Republic—Building on Progress: Strengthening Compliance and Enhancing Capacity—contains recommendations to strengthen labor law compliance and improve the capacity of labor-related institutions in key areas.

The White Paper provided a regional recommendation to ''enhance or establish offices where necessary of special advocates for worker rights who can further assist workers and employers on effective compliance with labor laws.'' It also highlighted the budgetary constraints faced by all of the Labor Ministries. This effort will help alleviate the burden on the Ministries by building sustainable alliances with key partners, freeing Ministry resources for more efficient use. The White Paper also highlighted the need for increasing public awareness about legal rights and responsibilities, and how to assert those rights. Current efforts are directed at general awareness raising; this project will provide specific guidance to workers on exercising those rights.

Central American workers surveyed in December 2004 by the Costa Rican firm Demoscopia S.A., as part of the U.S. DOL funded Cumple y Gana project, demonstrated that although some workers are aware of some of their rights generally, they may not understand their precise application. In Nicaragua, people may know about the right to form a union, however, 68.6% thought that all workers in a workplace had to agree before one could be formed. In El Salvador, workers may have been familiar with some of their rights, but 75.4% believed only a written contract guarantees those rights. Further, while 97.7% of those surveyed in Guatemala correctly understood that a pregnant woman has the right to a paid leave before giving birth, a full 86.2.% believed a woman could not be fired during her pregnancy. These types of misperceptions of rights lead to un-actionable claims being presented to the Ministry of Labor or create unrealistic expectations about the role of government.

Additionally, workers often do not understand the procedural and documentation requirements associated with filing a complaint and consequently do not adequately prepare required information prior to accessing the services of the Ministry of Labor. For example, Relacentro, a project funded by the U.S. DOL and implemented by the ILO, conducted diagnostics of the mediation and conciliation process in various Central American countries. In one country, workers who arrived at a certain office of the Ministry of Labor were required to bring a photocopy of their ID card, the ID itself was not sufficient. If they did not have a copy, the Ministry at the time of the diagnostic did not have a copier available to copy it for them. In addition, if workers were fired in written form, they needed to bring the written termination with them. If they were fired verbally, they needed to have a Labor Inspector visit the workplace to verify the termination.

Workers who do not fully understand the requirements and processes are unable to properly exercise their rights and this results in an ineffective use of limited Ministry of Labor resources. This project builds on the significant work being done to raise workers' awareness about their rights, and takes it to the next level by assisting workers to exercise those rights effectively.

*B. Target Population*

- Workers with questions or concerns about their labor rights.
- Target organizations in urban centers that can build and sustain their capacity to assist workers who have questions or concerns about their labor rights.

Labor Ministries will benefit due to the decrease in time spent with workers who have insufficient documentation/information for a claim or a claim that is not within the purview of the Ministry of Labor.

Grantee(s) and/or subawardees are expected to work with the Labor Ministries as much as possible to share information on a regular basis, receive legal information from the Ministries, and share data on workers' main concerns. The project hopes to promote a productive strategic alliance between the local organizations and the Labor Ministries, each entity helping the other to better fulfill its role.

*C. Objectives*

The Grantee(s) must implement, in partnership with USDOL, a project whose overarching objective is to improve labor law compliance in Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua) and the Dominican Republic by strengthening the capacity of local organizations to provide advice to workers about the scope and applicability of relevant labor laws, and when necessary, provide legal services explaining the procedural and documentation requirements to exercise those rights.

*D. Relationship to USDOL Program Strategy*

By helping to improve labor law compliance in Central America and the Dominican Republic, the proposed project supports achievement of USDOL's Government Performance and Results Act (GPRA) goal (2k), ''promote internationally recognized workers rights and labor standards, including those related to the elimination of exploitive child labor, in the global community.'' Activities with regard to the elimination of child labor are being funded separately through USDOL's Office of Child Labor, Forced Labor, and Trafficking. Grantees are not expected to develop strategies specific to child labor; however, they are expected to coordinate with USDOL's child labor projects, where applicable.

*E. Type of Work To Be Performed/Activities*

Applicants are responsible for developing a strategy for successfully achieving the above-stated objectives and addressing the problem(s) identified in the Background and Problem Statement (Section I.A.), developing and implementing the major tasks and activities to be accomplished as part of that strategy, tracking and reporting on progress in achieving the stated objectives, and providing any necessary services. The project strategy(s) must consider the diverse needs and environment of each country.

In order to ensure achievement of the project objectives and respect the most efficient use of the Labor Ministries' time, the Grantee(s) will first coordinate with the USG and other projects beginning in the region to avoid any duplication of efforts and ensure input from Labor Ministries on project designs. In addition, the project must meet with key local stakeholders to further develop the project strategy and Work plan. This strategy must be

implemented with local stakeholder guidance.

The project is required to utilize existing training and public awareness materials produced by other USG funded projects, such as Cumple y Gana. USDOL will consider the production of new materials if the Grantee(s) can demonstrate that the existing materials are not sufficient or appropriate for the activity being carried out.

*An outline of illustrative activities includes:*

i. Year One

- Hire staff and establish office capacity to implement and oversee the project in each country.
- Meet with relevant stakeholders in target communities and further define the project strategy and Work plan.
- Develop curriculum to train organizations on the scope and applicability of labor laws and regulations, legal requirements to substantiate claims, how to best provide service to workers, etc.
- While developing curriculum, coordinate with the Ministry of Labor to ensure materials accurately reflect laws and regulations. If possible, form a working group or otherwise institute regular meetings with local organization and appropriate Ministry of Labor staff.
- Design outreach campaign to make workers aware of organization's informational and legal services.
- Develop data tracking device for use by local organizations to track services provided, concerns raised, etc.
- Train local organization staff on labor laws and services to be provided to workers.

ii. Year Two

- Train local organization staff on laws and services.
- Implement outreach campaign to make workers aware of organization's services.
- Provide advice on labor issues and where relevant, legal services to workers.
- Collect information regarding types of complaints, most common errors/problems with complaints.

iii. Year Three

- Provide advice on labor issues and where relevant, legal services to workers.
- Collect information regarding types of complaints, most common errors/problems with complaints.
- Design outreach campaign, based on first 18 months of receiving workers' concerns, to inform workers regarding their most common concerns and correct the most common errors and/or misperceptions regarding their labor rights and how they are enforced.
- Begin awareness campaign to target these issues/errors.
- Replicate training on how to prepare claims and advise workers from a second round of local organizations.

iv. Year Four

- Conduct outreach campaign to inform workers about most common errors/problems in order to avoid errors, clarify misperceptions.
- Monitor impact of outreach campaign on the changes in workers' most common concerns, errors and misperceptions regarding their labor rights.
- Second round organizations provide services.
- Develop best practices and share on national and regional level.

As much as possible, throughout the life of the project, the Grantee will share information with the Ministry of Labor and ensure accurate message delivery. In addition, wherever possible, the Grantee will share information with the Ministries of Labor about the USDOL Partnerships for Compliance Assistance Program (PCAP), through which partner organizations agree to develop and disseminate USDOL information about compliance and resources, as well as provide informational seminars and workshops on compliance. The nonprofit, third-party membership organizations that participate in PCAP help USDOL educate business owners and workers about available compliance assistance tools and resources.

*F. Expected Outcomes/Project Outputs*

- Workers better able to exercise their rights.
- Less time lost with workers arriving unprepared at Ministries of Labor with insufficient documentation or justification for their claims.
- Local capacity and partner relationships developed with Ministry of Labor to facilitate access to Labor Ministry enforcement processes.
- Backlog diminished for intake personnel at Ministries of Labor

*G. Conditions Precedent*

Applicants are requested to indicate in their technical proposal the proposed organizations with which they will work to implement their strategy, and to describe the merits of these organizations, and their relationship with the different stakeholders. Subaward agreements entered into after the Cooperative Agreement is signed, and not proposed in the application, must be awarded through a formal competitive bidding process, unless prior written approval is obtained from USDOL.

**II. Award Information**

Type of Assistance instrument: Cooperative Agreement. USDOL's involvement in project implementation and oversight is outlined in Section VI.3. The duration of the project(s) funded by this solicitation is up to four (4) years. The start date of program activities will be negotiated upon awarding of the Cooperative Agreement, but will be no later than September 30, 2007.

Up to U.S. $4.5 million will be awarded under this solicitation. USDOL may award more than one Cooperative Agreement to one, several, or a partnership or Association (see Section III) of more than one organization(s) that may apply to implement the program. A Grantee must obtain prior USDOL approval for any subawardee not proposed in the application. See Section IV (E) (3) for further information on subawards.

**III. Eligibility Information**

*A. Eligible Applicants*

Any commercial, international, educational, or non-profit organization(s), including any faith-based, community-based, or public international organization(s) with experience effectively implementing projects in the relevant technical field(s) and working with foreign national government ministries, regional and local government entities, employers and employer organizations, workers and labor organizations, and non-governmental and community-based organizations is eligible for this grant(s). Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of Cooperative Agreement recipients. Applications from foreign government and quasi-government agencies will not be considered. An applicant must demonstrate a country presence, independently or through a relationship with another organization(s) with country presence, which gives it the ability to initiate program activities upon award of the Cooperative Agreement. See Section V (Institutional Qualifications/Past Performance).

If it is deemed the most effective and efficient strategy for achieving the goals outlined in the Scope of Work, USDOL may award one or more Cooperative Agreements to a partnership of more than one organizations. If two or more applicants, who do not constitute a single legal entity (hereinafter referred

to as ''Associations''), join in applying for an award, each member of the Association (hereinafter referred to as an ''Associate'') must be individually eligible for an award. All references to ''the Applicant'' refer to Associations as well as individual applicants. All Associates must sign, and agree to be bound jointly and severally by, the awarded Cooperative Agreement, and all must designate one Associate as the ''Lead.'' Any such Association must submit to USDOL, as an attachment to the application, an Association agreement, reflecting an appropriate joint venture, partnership, or other contractual agreement and outlining the deliverables, activities, and corresponding timeline for which each Associate will be responsible. Copies of such agreements will not count toward the page limit.

If any entity identified in the application as an Associate does not sign the Cooperative Agreement, the Lead must provide, within 60 days of award, either a written subaward agreement with such entity, acceptable to USDOL, or an explanation as to why that entity will not be participating in the Cooperative Agreement. USDOL reserves the right to re-evaluate the award of the Cooperative Agreement in light of any such change in an entity's status, and may terminate the award if USDOL deems appropriate.

For the purposes of this proposal and the Cooperative Agreement award, the Lead will be: (1) the primary point of contact with USDOL to receive and respond to all inquiries, communications and orders under the project; (2) the only entity with authority to withdraw or draw down funds through the HHS system; (3) responsible for submitting to USDOL all deliverables, including all technical and financial reports related to the project, regardless of which Associate performed the work; (4) the sole entity to request or agree to a revision or amendment of the award or the project document; and (5) responsible for working with USDOL to close out the project. Note, however, that each Associate is ultimately responsible for overall project performance, regardless of any assignment of specific tasks, but Associates may agree, among themselves only, to apportion the liability for such performance. Each Associate must comply with all applicable federal regulations, and is individually subject to audit.

In accordance with 29 CFR Part 98, entities that are debarred or suspended from receiving Federal contracts or grants shall be excluded from Federal financial assistance and are ineligible to receive funding under this solicitation.

*B. Cost Sharing or Matching Funds*

This solicitation does not require applicants to share costs or provide matching funds. However, the leveraging of resources and in-kind contributions is strongly encouraged and is a rating factor worth up to five (5) additional points see Section V (Leveraging of Grants Funds).

*C. Dun and Bradstreet Number*

The organizational unit section of Block 8 of the SF–424 must contain the Dun and Bradstreet Number (DUNS) of the applicant. Beginning October 1, 2003, all applicants for Federal grant funding opportunities are required to include a DUNS number with their application. See OMB Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). Applicants' DUNS number is to be entered into Block 8 of SF–424. The DUNS number is a nine-digit identification number that uniquely identifies business entities. There is no charge for obtaining a DUNS number. To obtain a DUNS number call 1–866–705–5711 or access the following Web site:*http://www.dunandbradstreet.com/*.

Requests for exemption from the DUNS number requirement must be made to the Office of Management and Budget. If no DUNS number is provided without such an exemption then the grant application will be considered non-responsive.

After receiving a DUNS number, all grant applications must also register as a vendor with the Central Contractor Registration (CCR) through the following Web site: *http:www.ccr.gov* or by phone at 1–888–227–2423. CCR registration should become active within 24 hours of completion. If grant applicants have questions regarding registration, please contact the CCR Assistance Center at 1–888–227–2423. After registration, grant applicants will receive a confirmation number. The Grantee listed as the Point of Contact will receive a Trader Partnership Identification Number (TPIN) via mail. The TPIN is, and should remain, a confidential password.

## IV. Application and Submission Information

*A. Application Package*

This solicitation contains all of the necessary information and forms needed to apply for Cooperative Agreement funding. This solicitation is published as part of this **Federal Register** notice. Additional copies of the **Federal Register** may be obtained from your nearest U.S. Government office or public library or online at *http://www.archives.gov/federal_register/index.html.*

*B. Content and Form of Application Submission*

Applicants must submit one (1) blue ink-signed original, complete application in English plus two (2) copies of the application to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210, no later than 4:45 p.m. Eastern Time on the established due date. To aid with review of applications, applicants may elect to submit three (3) additional paper copies of the application (five total). Applicants who do not provide additional copies will not be penalized.

The application must consist of two (2) separate parts. Part I of the application must contain the Standard Form (SF) 424, ''Application for Federal Assistance'' and sections A–F of the Budget Information Form SF 424A (see Appendix A). These forms are also available at *http://www.whitehouse.gov/omb/grants*. Part II must contain a technical proposal that demonstrates capabilities in accordance with the Statement of Work (Section III) and the selection criteria (Section V). The application should include the name, address, telephone and fax numbers, and e-mail address (if applicable) of a key contact person at the applicant's organization in case questions should arise.

To be considered responsive to this solicitation, the application must consist of the above-mentioned separate sections, with Part II not to exceed 45 single-sided (8½″ × 11″ or A4), double-spaced, 12-point font, typed pages. Major sections and sub-sections of the application should be divided and clearly identified (*e.g.*, with tab dividers), and all pages must be numbered. Applicants are required to propose that a project address the project objectives identified in the Statement of Work in Section I. Any applications that do not conform to these standards may be deemed non-responsive to this solicitation and may not be evaluated. The application must include a table of contents and an abstract summarizing the application in not more than two (2) pages. Standard forms, attachments, résumés, exhibits, letters of support, and the abstract are not counted towards the page limit. If an applicant exceeds the stated page limit, the review panel has the discretion to deduct 10 points.

Upon completion of negotiations, the individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant.

*C. Submission Dates, Times, and Address*

The grant application package must be received at the designated place 45 days after publication, or it will not be considered. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted; the applicant, however, bears the responsibility for timely submission. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing, delivery, and hand-delivery conditions set forth in this notice will be granted.

Any application received at the Office of Procurement Services after 4:45 pm Eastern Time after 45 days of publication will not be considered unless it is received before the award is made and:

- It was sent by registered or certified mail no later than the fifth calendar day before the closing date; or
- It was sent by U.S. Postal Service Express Mail/Next Day Service from the post office to the addressee no later than 5 p.m. at the place of mailing two (2) working days (excluding weekends and Federal holidays), prior to the closing date; or
- It is determined by the USG that the late receipt was due solely to mishandling by the USG after receipt at the USDOL at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail/Next Day Service from the post office to the addressee is the date entered by the Post Office receiving clerk on the ''Express Mail/ Next Day Service—Post Office to Addressee'' label and the postmark on the envelope or wrapper on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the USDOL is the date/time stamp of the Procurement Service Center on the application wrapper or other documentary evidence or receipt maintained by that office.

All applicants are advised that U.S. mail delivery in the Washington DC area has been slow and erratic due to concerns involving anthrax contamination. Applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application with your delivery service from Lisa Harvey (see Section VII for contact information).

Applicants may also apply online at *www.grants.gov*. Applicants submitting proposals online are requested to refrain from mailing a hard copy application as well. It is strongly recommended that applicants using *www.grants.gov* immediately initiate and complete the ''Get Started'' registration steps at *http://www.grants.gov/GetStarted*. These steps may take multiple days to complete, and this time should be factored into plans for electronic submission in order to avoid facing unexpected delays that could result in the rejection of an application. If submitting electronically through *www.grants.gov*, applicants must save the application document as a .doc, .pdf, .txt or .xls file.

Any application received on grants.gov after the deadline will be considered as non-responsive and will not be evaluated.

*D. Intergovernmental Review*

This funding opportunity is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs''

*E. Funding Restrictions, Unallowable Activities, and Specific Prohibitions*

In addition to those specified under OMB Circular A–122, the following costs and activities are also unallowable or contain specific restrictions:

1. Pre-Award Costs

Pre-award costs are not reimbursable.

2. Alternative Income-Generating Activities

USDOL funds awarded under all USDOL Cooperative Agreements may not be used to provide micro-credits, revolving funds, or loan guarantees. Permissible costs related to alternative income-generating activities for workers may include, but are not limited to, vocational or skills training, incidental tools and equipment, guides, manuals, and market feasibility studies. USDOL reserves the right to negotiate the exact nature, form, or scope of alternative income-generating activities and to approve or disapprove these activities at any time after award of the Cooperative Agreement.

3. Subawards to Organizations, Groups, and/or Persons

Grantees may procure sub-contracts or sub-grants with other organizations to fulfill the purpose and activities of the Cooperative Agreement award. Subawards may be included as a budget line item. Subawards must be awarded in accordance with 29 CFR 95.40–48 and are subject to audit, in accordance with the requirements of 29 CFR 95.26(d). Subawards awarded after the Cooperative Agreement is signed, and not proposed in the application, must be awarded through a formal competitive bidding process, unless prior written approval is obtained from USDOL. In addition, all subawards are subject to the restrictions and prohibitions related to prostitution, inherently religious activities, and terrorism as outlined in this section (6–8). Detailed information on subawards should be provided during the project document review process. Copies of all subawards above $100,000 must be provided to USDOL prior to implementation of the contract.

4. Lobbying or Fund-Raising the U.S. Government With Federal Funds

Under the Cooperative Agreements, no activity, including awareness raising and advocacy activities, may include fund-raising, or lobbying of any government entities (see OMB Circular A–122). Cooperative Agreement Applicants Classified Under The Internal Revenue Code as A 501(c)(4) ENTITY (see 26 U.S.C. 501(c)(4)), may not engage in lobbying activities. According to the Lobbying Disclosure Act of 1995, as codified at 2 U.S.C. 1611, an organization, as described in Section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities directed toward the USG will not be eligible for the receipt of Federal funds constituting an award, grant, Cooperative Agreement, or loan.

5. Funds To Host Country Governments

USDOL funds awarded under this solicitation are not intended to duplicate or substitute for host-country government efforts or resources. Therefore, in general, Grantees may not provide any of the funds obligated under the Cooperative Agreement to foreign government entities, ministries, officials, or political parties. However, subcontracts with foreign government agencies may be awarded to provide direct services or undertake project activities subject to applicable laws and only after a competitive procurement process has been conducted and no other entity in the country is able to provide these services. Grantees must receive prior USDOL approval before subcontracting to foreign government agencies for the provision of direct educational services.

6. Prostitution

The USG is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. U.S. non-governmental organizations, and their subawardees, cannot use USG funds to lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work. Foreign non-governmental organizations, and their subawardees, that receive USG funds cannot lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work; this includes organizations receiving both general and trafficking-related grants. It is the responsibility of the Grantee(s) to ensure its subawardees meet these criteria.

7. Inherently Religious Activities

The USG is generally prohibited from providing direct financial assistance for inherently religious activities. Federal funds provided under a USDOL-awarded Cooperative Agreement may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious activities. Neutral, non-religious criteria that neither favor nor disfavor religion must be employed by the Grantee in the selection of subawardees. This provision must be included in all subawards issued under the Cooperative Agreement.

8. Terrorism

Applicants are reminded that U.S. Executive Orders and U.S. law prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of Grantees to ensure compliance with these Executive Orders and laws. This provision must be included in all subawards issued under the Cooperative Agreement.

## V. Application Review Information

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable, including the technical proposal, cost proposal, recent audits, partnership agreements where applicable, the Curricula Vitae of key personnel, and personnel agreements. A Technical Panel will objectively rate each complete application against the criteria described in this announcement. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select one or more Grantees on the basis of the initial proposal submission, or the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of proposals, the evaluation process described above will be repeated to consider such revisions. The Grant Officer will make a final selection determination based on what is most advantageous to the USG, considering factors such as panel findings based on the criteria listed below and the best value to the government, cost, and other factors. The Grant Officer's determination for award under this solicitation is final.

### *A. The Review Process*

The criteria below will serve as the basis upon which submitted applications will be evaluated. Technical aspects of the application will constitute 100 points of the total evaluation. Up to five (5) additional points will be given for leveraging non-Federal resources.

In order to assist USDOL in assessing the efficient and effective allocation of project funding, the Applicant must submit a project budget that clearly details the costs for performing all of the requirements presented in this solicitation, including producing all deliverables, reporting on implementation and progress, and monitoring progress. A sample budget is included with the ProDoc in Section II. The budget does not count against the page limit. Applicants are reminded to budget for compliance with the administrative requirements set forth (copies of all regulations referenced in this solicitation are available at no cost, on-line, at *http://www.dol.gov*). This includes the costs of performing activities such as travel to Washington, DC to meet with USDOL/ILAB, financial audit, project closeout, project evaluation, document preparation (e.g., progress reports, project document), and ensuring compliance with procurement and property standards. The Project Budget must identify administrative costs separately from programmatic costs. In addition to the costs identified previously, administrative costs include indirect costs from the costs pool and the cost of activities, materials (e.g., project car), and personnel (e.g., administrative assistants, office drivers) that support the management and administration of the project but do not provide direct services to project beneficiaries.

- Technical Approach—65 points

The extent to which the application sets forth a clear and supportable course of action to improve labor law compliance in Central America (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic by strengthening the capacity of local organizations to provide advice to workers about the scope and applicability of relevant labor laws, and when necessary, provide legal services explaining the procedural and documentation requirements to exercise those rights.

In developing the strategy, applicants are expected to take into consideration the following issues:

- The level of technical assistance that Central American Ministries of Labor have received in the past five (5) years and continue to receive from bilateral donors and international organizations;
- The need to ensure that the project strategy is consistent with any national strategy to increase labor law compliance.
- The need to sustain project improvements, including retaining the new knowledge and practices of project-trained local staff.
- The need to engage local stakeholders in the design and implementation of the project strategy.
- The need for ongoing information exchange with the Ministries of Labor.

Points

Applicants will be evaluated on the clear identification and description of the specific strategy(s) the applicant proposes to use and the effectiveness and attainability of project objectives by the end of the grant period. Proposals should include work plans that are practical, manageable, and can achieve project results. Applicants must include an implementation plan that lists a schedule of activities and list of

deliverables that would be completed by the Grantee each quarter. The strategy must include a sustainability plan outlining clearly how the project activities will be sustained when the project has been completed. (15 points)

Applicants must demonstrate familiarity with the major issues related to the components being addressed (e.g., labor laws, providing assistance to workers, conducting training, building networks, outreach and informational campaigns), key problems and/or needs in the relevant country/area, the specific problem(s) and/or need(s) that will be addressed by this project(s), and relevant constraints. Applicants will be evaluated on the thorough and accurate assessment of the implementing environment and the problems that exist and clear identification of the specific problem(s) the applicant proposes to address. (10 points)

Applicants must provide a monitoring and evaluation plan for measuring project performance that includes challenging but realistic targets and measurable, verifiable project indicators that measure achievement of project objectives and performance in project implementation. The plan should show how the information and data will be collected and what systems will be put in place for self-assessment, monitoring, and continuous improvement. (5 points)

Applicants must provide a description of the proposed approach to expending funds in the most cost-effective method possible in order to achieve the project objectives. Applicants must submit an Outputs-based Budget, a sample of which is provided in Annex 1. Applicants must refer to the submitted budget in explaining how the budgeted funds will be utilized cost-effectively. In order to assist USDOL in assessing the efficient and effective allocation of project funding, the applicant must submit, at minimum, supporting budget information indicating how the applicant arrived at estimating the costs of the following items/activities: salaries and benefits for all key personnel; 2–3 key activities proposed by the applicant under its project design; and meeting all USDOL close-out requirements. Applicants will be evaluated based on the clear identification of all project costs and efficient and effective allocation of funding. The project budget should clearly demonstrate that the total amount and distribution of funds is sufficient to cover the cost of all major project activities identified by the Applicant in its proposal, management of the project, monitoring and evaluation, and project close-out and that the distribution of funds maximizes the provision of goods and/or services to project beneficiaries. Higher ratings may be given to applicants with low administrative costs and with a budget breakdown that provides a larger amount of resources to project activities. The Grant Officer reserves the right to negotiate administrative cost levels prior to award. Indirect cost charges should be based on allowable, allocable, and reasonable costs based on the applicable cost principles included in the OMB Circular A–122 and Indirect Charges Instructions included in Annex 2. This section will be evaluated in accordance with applicable Federal laws and regulations. Applicants should submit output-based budgets. A sample of an output-based budget format is included in Annex 1. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars) and with ILAB budget requirements contained in the application instructions in Section VI of this solicitation. Applicants must also be required to include an indirect cost certification, the SF 424, SF 424A, and the Equal Employment Opportunity survey. (15 points)

Applicants must demonstrate the use of existing expertise from the recipient country in order to reduce costs and further develop local capacity. The proposal should identify organizations to carry out the work in each country. Local organizations will be rated on:

- Experience providing training and/or services to workers.
- Experience working with Labor Ministries, unions, and employer associations.
- Experience working on labor issues of the country.
- Ability to implement activities in a timely fashion.

Applicants are requested to provide in their technical proposal proposed organizations and the merits of those organizations, experience in the areas outlined above, and their relationship with the different stakeholders. (15 points)

Applicants are requested to submit a schedule of quarterly deliverables that will serve to determine the level of performance of the contractor. The identification of deliverables that are presented in the proposal should be objective, verifiable, and demonstrate progress in achieving project objectives. (5 points)

- Institutional Qualifications/Past Performance—20 points

Applicants will be evaluated on their prior experience of all organizations, including both prime and sub-awardees, in designing and implementing activities in developing countries, especially in Central America, related to labor law compliance.

Applicants must include information as an attachment (that will not count towards the page limit) regarding previous grants or contracts including: (a) the organization for which the work was done; (b) a contact person in that organization with his/her current phone number; (c) the dollar value of the grant or contract for the project(s); (d) the time frame and professional effort, either directly by key personnel, by consultants, or under contractual arrangements involved in the project(s); (e) a brief summary of the work performed; and (f) a brief summary of accomplishments. (10 points)

Applicants will be evaluated on their demonstration of strong financial management and internal control systems. If the applicant is a U.S.-based, non-profit organization already subject to the single audit requirements, the applicant's most recent single audit, as submitted to the Federal Audit Clearinghouse, must accompany the application as an attachment. In addition, applications must show that they have complied with report submission timeframes established in OMB Circular A–133. If an applicant is not in compliance with the requirements for completing their single audit, the application will be considered nonresponsive and will be rejected. If the applicant is a for-profit or foreign-based organization, a copy of its most current independent financial audit must accompany the application as an attachment. Applicants must also submit a copy of the most recent single audit report for all proposed U.S.-based, non-profit partners, Associates and sub-awardees that are subject to the Single Audit Act. If the proposed Associate(s) or partner(s) is a for-profit or foreign-based organization, a copy of its most current independent financial audit should accompany the application as an attachment. If the audit submitted by the applicant reflects any adverse opinions, the application will not be further considered by the technical review panel and will be rejected. USDOL reserves the right to ask further questions on any audit report submitted as part of an application. USDOL also reserves the right to place special conditions on Grantees if concerns are raised in their audit reports. In order to expedite the screening of applications and to ensure that the appropriate audits are attached to the proposals, the applicant must provide a cover sheet to the audit attachments listing all proposed partners and sub-awardees. These attachments will not count

toward the application page limit. (10 points)

• Experience of Personnel/Management Plan—15 points

Applicants will be evaluated on their inclusion of key personnel with prior experience directly related to the proposed work, including technical and language qualifications, professional competence, relevant academic background, and demonstrated experience. Applicants must submit a résumé for each key personnel proposed, which includes the individual's current employment status and previous work experience, including position title, duties performed, salary history, dates in position, employing organizations, and educational background. Duties must be clearly defined in terms of role performed (i.e., manager, team leader, consultant). Résumés must be included as attachments, which do not count against the page limitation. Management and professional technical staff members comprising the applicant's proposed team must be individuals who have prior experience with organizations working in similar efforts, and who are fully qualified to perform the work specified in the Scope of Work. (10 points)

Successful performance of the proposed work depends heavily on the management of the project. Accordingly, in its evaluation of each application, USDOL will place emphasis on the applicant's management approach involved in accomplishing the assigned tasks. This section of the application must include sufficient information to judge management and staffing plans. Where subawards, or outside assistance are proposed, organizational lines of authority and responsibility should be clearly delineated to ensure responsiveness to the needs of USDOL. (5 points)

• Leveraging of Grant Funding—5 points

USDOL will award up to five (5) additional rating points to applications that include non-Federal resources that significantly expand the size and scope of project-related activities. These programs must not be financed by the project, but can complement and enhance project objectives. To be eligible for the additional points, the applicant must list the resource(s), the nature, and possible activities anticipated and any partnerships, linkages, or coordination of activities, cooperative funding, etc., including the specific value of such contributions.

• Suggested Outline for Technical Proposal

This outline is provided as a guideline. Organizations may elect a format of their choosing, subject to the requirements of this announcement.

i. Executive Summary
ii. Program Description
iii. Goal and Objectives
iv. Background
v. Technical Approach and Implementation Timetable (Proposed Intervention)
vi. Monitoring and Evaluation Plan
vii. Experience of Personnel
viii. Identification of Deliverables and Quarterly Schedule of their submission to determine contractor performance
ix. Staffing Pattern and Project Management Organizational Chart
x. Leveraging of non-Federal Resources
xi. Budget
xii. Attachments:
- Summaries of other relevant organizational experiences
- Résumés of key personnel and signed letters of commitment to the project
- Audit reports

Successful proposals submitted in response to this solicitation will be incorporated into the text of the grant with the selected applicant(s).

## VI. Award Administration Information

### *1. Award Notices*

The Grant Officer will notify applicants of designation results as follows:

Designation Letter: The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The designation letter will be accompanied by a Cooperative Agreement and ILAB's Management Procedures and Guidelines (MPG).

Non-Designation Letter: Any organization not designated will be notified formally of the non-designation and given the basic reasons for the determination. Notification of designation by a person or entity other than the Grant Officer is not valid.

### *2. Administrative and National Policy Requirements*

A. General

Grantees are subject to applicable U.S. Federal laws (including provisions of appropriations law) and regulations, Executive Orders, applicable OMB Circulars, and USDOL policies. If during project implementation a Grantee is found in violation of USG laws and regulations, the terms of the Cooperative Agreement awarded under this solicitation may be modified by USDOL, costs may be disallowed and recovered, the Cooperative Agreement may be terminated, and USDOL may take other action permitted by law. Determinations of allowable costs will be made in accordance with the applicable U.S. Federal cost principles.

B. Audits

After award, Grantees must also submit an annual independent audit regardless of grant amount.

i. For U.S. based non-profit organizations expending $500,000 or more in a year in Federal awards: a ''single'' or ''program specific'' audit conducted under the provisions of OMB Circular A–133 is required.

ii. For all other organizations (including foreign-based and private for-profit grantees): an audit conducted in accordance with the U.S. Government Accountability Office's (GAO) ''Government Auditing Standards'' is required. The audit must address the following:

(a) Compliance with the Department's regulations and the provisions of the Cooperative Agreement; and

(b) Reliability of the organization's financial and performance reports.

Costs for audits or attestation engagements should be included in direct or indirect costs, whichever is appropriate.

**Please Note:** USDOL generally allows the costs to be allocated based on the following (applicable to U.S. based agencies only): (1) A–133 ''single audit'' costs as part of the indirect cost rate/pool for organizations with *more than* one Federal source of funding. Organizations with only one Federal source could charge the A–133 single audit cost as direct costs; (2) A–133 ''*compliance supplement*'' costs—as direct costs for Federal sources only through a cost allocation methodology approved by the Federal cognizant agency; or (3) A–133 *program specific* audits as direct costs. Any deviations from the above must be explained and justified in the application.

C. Administrative Standards and Provisions

The Cooperative Agreements awarded under this solicitation are subject to the following administrative standards and provisions, and any other applicable standards that come into effect during the term of the Cooperative Agreement, if applicable to a particular Grantee:

i. 29 CFR Part 2 Subpart D—Equal Treatment in Department of Labor Programs for religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.

ii. 29 CFR Part 31—Nondiscrimination in Federally Assisted Programs of the Department of

Labor— Effectuation of Title VI of the Civil Rights Act of 1964.

iii. 29 CFR Part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

iv. 29 CFR Part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor.

v. 29 CFR Part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor.

vi. 29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

vii. 29 CFR Part 93—New Restrictions on Lobbying.

viii. 29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

ix. 29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

x. 29 CFR Part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

xi. 29 CFR Part 99—Federal Standards for Audits of States, Local Governments, and NonProfit Organizations.

Copies of all regulations referenced in this solicitation are available at no cost, on-line, at *http://www.dol.gov*.

D. Key Personnel

As noted in Section V, the applicant must list all key personnel candidates. After the Cooperative Agreement has been awarded and throughout the life of the project, the Grantee agrees to inform the Grant Officer's Technical Representative (GOTR) whenever it appears impossible for key personnel to continue work on the project as planned. The Grantee must nominate, through the submission of a formal project revision, new personnel; however, the Grantee must obtain approval from the Grant Officer before all changes to key personnel are formalized. If the Grant Officer is unable to approve the key personnel change, she or he reserves the right to terminate the Cooperative Agreement or disallow costs.

E. Encumbrance of Grant Funds

Grant funds may not be encumbered/obligated by the Grantee(s) before or after the period of performance. Encumbrances/obligations outstanding as of the end of the grant period may be liquidated (paid out) after the end of the grant period. Such encumbrances/obligations may involve only commitments for which a need existed during the grant period and which are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the Grantee's purchasing procedures and incurred within the grant period. All encumbrances/ obligations incurred during the grant period must be liquidated within 90 days after the end of the grant period, if practicable.

F. Acknowledgement on Printed Materials

In all circumstances, the following shall be displayed on printed materials: Preparation of this item was funded by the United States Department of Labor under Grant No. [insert the appropriate grant number]'' In addition, the Grantee is required to include a disclaimer in publications and materials that have been directly funded by USDOL as follows: This (* * *) does not necessarily reflect the views or policies of the United States Department of Labor, nor does the mention of trade names, commercial products, or organizations imply endorsement by the United States Government. This acknowledgement and disclaimer must be included in documents (reports and other materials) produced, edited and published for distribution beyond the Grantee and USDOL (i.e., to other donors, organizations, or the general public).

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all Grantees receiving Federal funds must clearly state:

- The percentage of the total costs of the program or project that will be financed with Federal money;
- The dollar amount of Federal funds for the project or program; and
- The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

G. Use of the USDOL Logo

In consultation with ILAB, the Grantee(s) will acknowledge USDOL's role in one of the following ways:

- The USDOL logo may be applied to USDOL-funded material prepared for public distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of public interest. The Grantee(s) must consult with USDOL on whether the logo may be used on any such items prior to final draft or final preparation for distribution. In no event shall the USDOL logo be placed on any item until USDOL has given the Grantee written permission to use the logo on the item.
- All documents should include the following notice: ''This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.''

H. Privacy and Freedom of Information

Any information submitted in response to this solicitation will be subject to the provisions of the Privacy Act and the Freedom of Information Act, as appropriate.

I. Site Visits

USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of the Grantee or a subawardee(s) under this grant, the Grantee must provide and must require its subawardee(s) to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations will be performed so as not to unduly delay the work.

*3. Reporting and Deliverables*

Guidance on USDOL procedures and management requirements will be provided to Grantees in the Management Procedure Guidelines with the Cooperative Agreement. Unless otherwise indicated, a Grantee must submit copies of all required reports and deliverables to USDOL by the specified due dates. Exact timeframes for the completion of deliverables will be addressed in the Cooperative Agreement and the MPGs. Specific deliverables are outlined below.

A. Required Deliverables

Following the award of the grant, the Grantee(s) shall collaborate with USDOL/ILAB to:

• Develop a Project Document (including a project budget) that will set the technical parameters and provide guidance to the project. It must include all information and be prepared according to the standardized format outlined by USDOL. While the applicant's original proposal will serve as the basis of the Project Document, in every case USDOL has found it advantageous to visit the field and reach consensus on the project strategy with host country counterparts in order to further inform the project design. USDOL may choose to participate on these field visits. USDOL must receive a draft of the Project Document 45 days after returning from travel to the relevant area(s). The Project Document must be finalized no later than 30 days after receipt of USDOL comments on the draft.

• Establish a Work plan identifying major project activities, deadlines for their completion, and person(s) responsible for completing these activities (within 60 days after the Project Document is finalized).

• Set project indicators, including indicators that support ILAB's GPRA goal: ''Improve living standards and conditions of work for workers in developing and transition countries.'' (within 90 days of finalizing the Project Document).

• Create a Performance Monitoring Plan (PMP) to establish the data needed to measure achievement of project indicators and the methods for collection and reporting. It should include all information and be prepared according to the standardized format outlined by USDOL (within 90 days of finalizing the Project Document).

B. Required Reporting

• The Grantee(s) must submit financial reports on a quarterly basis. The first reporting period ends on the last day of the fiscal quarter (December 31, March 31, June 30, or September 30) during which the grant was signed. The Grantee(s) must use Standard Form (SF) 269A, Financial Status Report, to report the status of the funds, at the project level, during the grant period. A final SF269A must be submitted no later than 90 days following completion of the grant period. If the Grantee(s) uses the U.S. Department of Health and Human Services Payment Management System (HHS PMS), it shall also send USDOL copies of the PSC 272 that it submits to HHS, on the same schedule. Otherwise, the Grantee(s) must submit Standard Form (SF) 272, Federal Cash Transactions Report, on the same schedule as the SF269A. Financial reports are due within 30 days of the end of the reporting period (i.e., by April 30, July 30, October 30, and January 30).

Technical Reporting Requirements

• After signing the agreement, the Grantee(s) must submit progress reports to USDOL/ILAB at the end of each fiscal quarter. The first reporting period ends on the last day of the fiscal quarter (December 31, March 31, June 30, or September 30) during which the Grant was signed. Between reporting dates, the Grantee(s) must also immediately inform USDOL/ILAB of significant developments and/or problems affecting the organization's ability to accomplish work. The Grantee(s) must submit two types of progress reports according to the standardized format used by USDOL/ILAB.

**VII. Agency Contacts**

All inquiries regarding this solicitation should be directed to: Ms. Lisa Harvey, U.S. Department of Labor, Procurement Services Center, 200 Constitution Ave, NW., Room N–5416, Washington DC 20210; telephone (202) 693–4570 (this is not a toll-free number) or e-mail: *harvey.lisa@dol.gov*.

Successful proposals submitted in response to this SGA will be incorporated into the text of the grant with the selected applicant(s).

**Lisa Harvey,**

*Grant Officer.*

BILLING CODE 4510–28–P

ANNEX 1.

OUTPUT BASED BUDGET

SAMPLE BUDGET (This is only a sample and does not reflect the outputs included in the SGAs.

| | | | yr 1 | | yr 2 | | yr 3 | | yr 4 | | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **I. DIRECT LABOR** | notes | unit costs | unit | fed $ | unit | fed $ | unit | fed $ | unit | fed $ | |
| A.. Int'l Field Staff Salaries/Fringe Benefits | | | | | | | | | | | |
| Project Director | | | | | | | | | | | |
| Fringe Benefit | | | | | | | | | | | |
| Allowances | a | | | | | | | | | | |
| | b | | | | | | | | | | |
| | c etc | | | | | | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| B. Home Office Salary/Benefits<br>Project Coordinator and Salary and FB<br>oversight Team<br>Fringe Benefits<br><br>C. Local Technical Staff<br>Project director<br>Mediation Specialist<br>M and E Specialist<br>Security<br>Fringe Benefits<br>D. Allowance for local Staff<br>E. Short Term Consultants<br>1. Local<br>**TOTAL SALARIES** | | | | | |
| | | | | | |
| **II. EQUIPMENT**<br>A. Laptops<br>**B. Desktop Computer**<br>C.<br>Printer<br>**D. Photocopier**<br>K. Office Furniture<br>**TOTAL**<br>**EQUIPMENT** | | | | | |
| | | | | | |
| **III. OFFICE EXPENSES**<br>A. Translation<br>B. Internet<br>C. Computer maintenance<br>D. Rent<br>C#. Communication<br>F. Office Utilities<br>G. Supplies<br>H. Copying<br>K Wire Transfers | | | | | |
| **TOTAL OFFICE EXPENSES** | | | | | |
| | | | | | |
| **IV. GENERAL TRAVEL AND PER DIEM**<br>A. Airfares<br>B. Ground Travel<br>C. Per Diem<br>D. Misc<br>**TOTAL GENERAL TRAVEL** | | | | | |
| **OUTPUT BUDGETS** | | | | | |
| **V. OUTPUT 1 MOL ADR Centers**<br>A. refurbish centers | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| IT equipment<br>furniture<br>B. Training Salaries<br>Mediation trainer Salary<br>Assistant Salary<br>C. Training for mediators<br>training materials<br>venue rental<br>D. Per Diem Travel<br>M & E visit<br>Trainer travel<br>regional mediators travel<br>**TOTAL OUTPUT 1** | | | | | |
| | | | | | |
| **VI. OUTPUT 2: ENTERPRISE ADR TRAINING**<br>A. Salaries<br>Labor relations expert<br>Trainer<br>B.Travel per diem<br>1. travel to workplaces<br>2. trip to headquarters<br>C. Trainings<br>venue rental<br>material production<br>**TOTAL OUTPUT 2** | | | | | |
| **VII. OUTPUT 3: UNION TRAINING**<br>A. Salaries<br>Trainer<br>B.Travel per diem<br>1. participant travel<br>2. trainer travel<br>C. Trainings<br>venue rental<br>material production | | | | | |
| **VIII. OUTPUT 4: PUBLIC AWARENESS**<br>A. Awareness material development (f)<br>B. National Conferences<br>1. launch<br>2. sustainability<br><br>C. Development of information tool kits<br>D. Quarterly Awareness Workshop for National Leaders<br>1. venue rental<br>2. training material<br><br>D. Travel and per diem<br>A. Trainings<br>B. launch | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| C. sustainability | | | | | |
| E. Sub contractors<br>1. event organizer<br>**TOTAL OUTPUT 4** | | | | | |

**ANNEX 2:**

## INDIRECT CHARGES

**This clause is applicable to all entities (non-profit, for-profit organizations, and State and local organizations, etc.) receiving Federal** cost reimbursable **grants or contracts.**

**Indirect cost charges should be based on allowable, allocable, and reasonable costs based on the applicable cost principles[1]. It is important to highlight the submission requirements of indirect cost proposals. As an example, OMB Circular A-122, Attachment A, Section E. 2. Negotiation and Approval of Indirect Rates, states:**

- *A non-profit organization which has not previously established an indirect cost rate with a Federal agency **shall** submit its initial indirect cost proposal immediately after the organization is advised that an award will be made and, in no event, later than three months after the effective date of the award.*
- *Organizations that have previously established indirect cost rates **must** submit a new indirect cost proposal to the cognizant agency[2] within six months after the close of each fiscal year.*

Negotiated Indirect Cost Rate Agreements (NICRAs) are used to support indirect cost claims. These documents should be current at the time of the award (See statement on "Adequate NICRAs" further below). The final rates in the NICRAs are used for "close-out" purposes.

**Regarding allocable costs, attachment A of the Circular, also states:**

[1] OMB Circular A-122 for non-profit organizations or OMB Circular A-87 for State and local organizations available at: http://www.whitehouse.gov/omb/circulars/index.html; Federal Acquisition Regulations, Part 31.2 for for-profit organizations available at http://www.arnet.gov/far/.

[2] Federal agency providing the preponderance of direct Federal funds.

- *Any cost allocable to a particular award or other cost objective under these principles* ***may not be shifted*** *to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.*

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**In light of the above requirements, mark the appropriate clause below (A, B, or C) for the organization and fill in the blanks, as appropriate:**

_____ A. A current approved cost allocation plan (CAP) or NICRA has been provided and approved - *Copy Attached).*

**Note**: Future NICRAs, showing provisional/final rates for each applicable fiscal year, must be submitted to the GO and GOTR for the entire grant period.

_____ B. No CAP or NICRA has been approved by the Federal Cognizant Agency.

**Note**: A "Temporary Billing Rate", not exceeding 90 days, may be negotiated by the Grant/Contract Officer. Future billings of indirect costs, however, should be based on approved NICRAs.

Within this 90-day period, the organization must submit an acceptable indirect cost proposal or CAP to their Federal cognizant agency to obtain a provisional indirect rate or an approved CAP. ***Failure of the organization to submit an indirect cost proposal or CAP within this 90 day period means that it shall not receive further (if applicable) reimbursement for indirect costs.***

The 90 days are provided to:

1. allow the entity to bill indirect costs during this time (subject to future adjustments),
2. provide the entity enough time to prepare the initial provisional indirect cost rate proposal to be submitted to the Federal cognizant agency.

In light of the above, a temporary billing rate of (N/A or %) _____% has been approved by_____
(grant/contracting officer at the Departmental agency; example: ETA, OASAM, etc.) for the first ***90 days*** of the grant/contract period. This rate is based on the fact that the organization has not established a NICRA or approved CAP.

DOL – Federal Cognizant Agency

If DOL is the Federal cognizant agency, please contact Victor M. Lopez, Chief, Division of Cost Determination (DCD) at 202-693-4106. DCD's main phone number is 202-693-4100. For more information, visit DCD's Web site available at: http://www.dol.gov/oasam/programs/boc/costdeterminationguide/main.htm.

_____ C. No indirect costs are claimed in the proposed budget.

**Notes:** As stated previously,

| |
|---|
| - *Any cost allocable to a particular award or other cost objective under these principles **may not be shifted** to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.* |

**In light of the above statement, a "Certificate of Direct Costs" must be completed in support of future claims of direct costs (see attached).**

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**Adequate NICRAs**

Some federal agencies issue indirect cost rate agreements that are effective "***until amended.***" These rate agreements will not be accepted by the grant officer if the last negotiated fiscal year shown in the agreement is more than one year past the date of the DOL award.

For example, a provisional rate approved for FYE 12/31/03 "until amended" will not be accepted for any DOL award issued after 12/31/04. This statement is based on the federal cost principles (see footnote 1 above) that require organizations to submit a final indirect cost proposal to the Federal cognizant agency no later than six months after the entity's fiscal year ends.

Following the example above, by 6/30/04 the organization should have submitted a new indirect rate proposal to its federal cognizant agency for review and negotiation.

## CERTIFICATE OF DIRECT COSTS

The following must be filled in for organizations that are not proposing any indirect costs.

This is to certify that:

1. All costs budgeted and to be claimed under this proposal supporting the period_____ , through _____ are allowable in accordance with the requirements of grants/contracts to which they apply and with the Federal cost principles; i.e., (please check those applicable cost principles):

   _____ OMB Circular A-87, Cost Principles for State, Local and Federally recognized Indian Tribal Governments.
   _____ OMB Circular A-122, Cost Principles for Non-Profit Organizations
   _____ Federal Acquisition Regulation (FAR), Subpart 31.2, Cost Principles for Commercial Organizations.

2. Claimed costs do not include any costs which are unallowable under applicable Federal cost principles. For example:

advertising, contributions and donations, bad debts, entertainment costs, fines and penalties, general government expenses, and defense of fraud proceedings;

3. The requirements standards on lobbying costs for non-profit (A-122) and commercial (FAR) organizations have been complied with and,

4. All costs included in the proposal are properly allocable to U.S. Department of Labor grants/contracts on the basis of a beneficial or casual relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable Federal cost principles.

Subject to the provisions of the Program Fraud Civil Remedies Act of 1986, (31 USC 3801 et seq.), and the Department of Labor's implementing regulations, (29 CFR Part 22), the False Claims Act (18 USC 287 and 31 USC 3729); and the False Statements Act (18 USC 1001), I declare to the best of my knowledge the foregoing is true and correct.

Grantee/Contractor: _____

Signature: _____

Name of Authorized Official: _____

Title: _____

Date: _____

[FR Doc. E6–22454 Filed 1–8–07; 8:45 am]
BILLING CODE 4510–28–C

## DEPARTMENT OF LABOR

### Office of the Secretary

### Strengthening Career Civil Service Systems of Labor Inspectorates in Central America

**AGENCY:** Bureau of International Labor Affairs, Department of Labor.

*Announcement Type:* New. Notice of Availability of Funds and Solicitation for Cooperative Agreement Applications.
*Funding Opportunity Number:* SGA XX–XX.
*Catalog of Federal Domestic Assistance (CFDA) Number:* Not applicable.
*Key Dates:* The closing date for receipt of applications is February 23, 2007. Applications must be received by 4:45 p.m. (Eastern Time) at the address below.

**ADDRESSES:** Application forms will not be mailed. They are published as part of this **Federal Register** notice and in the **Federal Register**, which may be obtained from your nearest U.S. Government office or public library or online at *http://www.archives.gov/federal_register/index.html*. Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Reference: SGA XX–XX, Washington, DC 20210.

*Executive Summary:* This notice contains all of the necessary information and forms needed to apply for grant funding. The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be granted by cooperative agreement to one or more qualifying organizations. USDOL will award up to U.S. $990,000 through one or more grants to a qualified organization(s) that will promote and support the strengthening of a career civil service by establishing or reforming systems and norms within the Labor Ministry Inspectorates of the beneficiary countries. Applicants should submit proposals that encompass El Salvador *and* one or two of either Guatemala, Honduras, or Nicaragua and that demonstrate the organization's capabilities to implement a project in accordance with the Statement of Work and the selection criteria. Applicants will not be penalized for lacking previous experience working with multiple country projects. For example, organizations with experience in only one country will be judged based on the success they achieved in that country and their proposal for working successfully throughout the rest of the targeted countries. USDOL encourages applicants to be creative in proposing innovative and cost-effective interventions that will produce a demonstrable and sustainable impact. The award of any sub-award will be subject to USDOL policies and approval.

### I. Funding Opportunity Description

The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be awarded by Cooperative Agreement (hereinafter referred to as ''grant'' or ''Cooperative Agreement'') to one or more qualifying organizations for the purpose of promoting and supporting a career civil service by establishing or reforming systems and norms within the Labor Ministry Inspectorates of the beneficiary countries. ILAB is authorized to award and administer this program by the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2006, Public Law 109–102, 119 Stat. 2172 (2005) and 22 U.S.C. 2392(a). Cooperative Agreements awarded under this initiative will be managed by ILAB's Office of Trade and Labor Affairs. The duration of the projects funded by this solicitation is four years. The start date of program activities will be negotiated upon award of the Cooperative Agreement.

**Statement of Work**

USDOL is seeking qualified organizations that will promote and support the implementation of a career civil service by establishing systems and norms within the Labor Ministry Inspectorates of the beneficiary countries. Specific project objectives are identified in this Section. Applicants should submit proposals that encompass El Salvador and one or two of the following countries (Guatemala, Honduras, and Nicaragua) and demonstrate the organization's capabilities to implement a project in accordance with the Statement of Work and the selection criteria. Applicants, however, will not be penalized for lacking previous experience working with multiple country projects. For example, organizations with experience in only one country will be judged based on the success they achieved in that country and their proposal for working successfully throughout the rest of the targeted countries. USDOL encourages applicants to be creative in proposing innovative and cost-effective interventions that will produce a demonstrable and sustainable impact.

Funds will be provided by grant to qualifying organizations. The grant will be actively managed by USDOL/ILAB to assure achievement of the stated project objectives. The award of any sub-contract will be subject to USDOL policies and approval (see Section IV).

**Note:** Selection of an organization as a grantee does not constitute approval of the grant application as submitted. Before the actual grant is awarded, USDOL may enter into negotiations about such items as program components, funding levels, and administrative systems in place to support grant implementation. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application.

*A. Background and Problem Statement*

The Free Trade Agreement (CAFTA–DR) between the United States and five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic obligates each country to effectively enforce its labor laws. The countries also reaffirm their obligations as members of the International Labor Organization (ILO) and their commitments under the ILO Declaration of Fundamental Principles and Rights at Work and its follow-up (1998).

In the Department of State's FY2006 budget, Congress provided funding for labor and environmental capacity building activities in support of Central American Free Trade Agreement (CAFTA–DR). A portion of these funds were transferred to the Department of Labor to administer projects related to labor capacity building in CAFTA–DR countries.

Concerns exist regarding the professional status and career paths of the Ministry of Labor Inspectors. A tradition of replacing technical level inspector positions with each change of government detracts from their objectivity and credibility, and negates the value from previous training initiatives making the Ministry less effective in carrying out its inspection responsibilities. This project provides assistance to effective enforcement of the national labor legislation by reinforcing the inspectorate staff and enabling it to maintain an experienced career civil service.

This strategy would address the concerns that are identified in the April 2005 ''White Paper'' of the Working Group of the Vice Ministers Responsible for Trade and Labor in the countries of Central America and the Dominican Republic-b titled: ''the Labor Dimension in Central America and the Dominican Republic—Building on Progress: Strengthening Compliance and Enhancing Capacity''. The White Paper contains recommendations to strengthen labor law compliance and improve the capacity of labor-related institutions in key areas and clearly conveys the need to strengthen professional career civil service systems within the Labor Ministry Inspectorate in order to maintain a high level, experienced and knowledgeable staff for labor law enforcement.

The award will grant funds to an organization or organizations to initiate, implement and promote a civil service improvement component to the Labor Inspectorate. A strong civil service will invigorate the inspectorate and provide a consistently higher level of service to the workers and employers.

*B. Target Population*

Applicants shall target Ministries of Labor in El Salvador and one or two of either Guatemala, Honduras, or Nicaragua based on the following criteria: (1) Laws are in place to allow for implementation of civil service reform; (2) government counterparts demonstrate the political will and institutional commitments to implement civil service reforms; and (3) countries demonstrate a clear need for the assistance.

*C. Objectives*

The Grantee(s) must implement, in partnership with USDOL, a project whose overarching objective is to improve the effectiveness and transparency of Labor Inspectorates in El Salvador and one or two of the following countries (Guatemala, Honduras, and Nicaragua) by strengthening the civil service systems. Particular focus will be placed on improving hiring and oversight mechanisms to strengthen continuity in the workforce, improve accountability and management, and provide civil servants with appropriate incentives, skills, and motivation.

*D. Relationship to USDOL Program Strategy*

By helping to improve labor law compliance in Central America, the proposed project supports achievement of USDOL's Government Performance Results Act (GPRA) goal (2k), ''promote internationally recognized workers rights and labor standards, including those related to the elimination of exploitive child labor, in the global community''.

*E. Type of Work To Be Performed/ Activities*

This project would promote and support reforms in personnel systems of Labor Inspectorates to reclassify and improve career status; strengthen capacity of inspectors through development of career track for civil servants through promulgation of administrative rules (positions descriptions, transparent and objective hiring/promotion/dismissal procedures), and other aspects of implementing a civil service program. It may also work with local universities to provide ongoing professional development in subject matter relevant to area of staff expertise.

In order to ensure achievement of the project objectives and the most effective use of the Labor Ministries' time, the Grantee(s) will first coordinate with the USG and other projects beginning in the region to avoid any duplication of efforts and ensure input from Labor Ministries on project designs.

The Grantee(s) will be responsible for coordinating with other programs in the region, particularly USDOL and other USG-funded efforts that are working toward similar objectives, and adapt its work plan to avoid duplication of activities.

Applicants are responsible for developing a strategy for successfully achieving the above-stated objectives and addressing the problem(s) identified in the Background and Problem Statement (Section I.A.), developing and implementing the major tasks and activities to be accomplished as part of that strategy, tracking and reporting on

progress in achieving the stated objectives, and providing any necessary services.

*An outline of illustrative activities include:*

Year One

- Hire staff to oversee project in beneficiary countries.
- Analyze existing civil service legislation/policies within labor ministries in countries with systems in place or in practice and/or supporting projects. (*e.g.* Dominican Republic, Costa Rica).
- Work with tripartite group to assist in the development of a proposal to enact a civil service within designated countries.
- Create or identify requirements (*e.g.* course credits) for different levels of knowledge and experience for labor inspectorate staff (*e.g.* novice, intermediate, and journeyman).
- Work with Ministry of Labor (MOL) leadership and technical staff to develop or revise position descriptions and performance standards for Labor Inspectorate staff with novice, intermediate, and journeymen levels incorporated.
- Conduct assessments of current personnel systems, including hiring practices employee evaluations and standards, and training plans.
- Develop recommendations to improve systems, practices and standards in order to implement career civil service program.

Year Two

- Support the implementation of the recommendations to implement career civil service with promotion opportunities.
- Modify civil service systems and norms to incorporate input from inspectorate staff.
- Provide training to all inspectorate staff and management on the civil service systems and norms.
- Create systems to sustain the career civil service.

*F. Expected Outcomes/Project Outputs/Results*

- Attraction and retention of qualified, experienced, and highly competent inspectorate staff.
- Increased transparency and credibility within the labor inspectorate.
- Create smoother transition during changes of administration.
- More efficient and established personnel processes.
- Retention of institutional strategic planning.

*G. Conditions Precedent*

Applicants are requested to provide in their technical proposal proposed organizations and the merits of those organizations, and their relationship with the different stakeholders. Sub-contracts awarded after the Cooperative Agreement is signed, and not proposed in the application, must be awarded through a formal competitive bidding process, unless prior written approval is obtained by USDOL. Prior to providing any technical assistance to any project country, partner organizations, that were not included in the proposal, must also be approved by USDOL.

**II. Award Information**

Type of Assistance instrument: Cooperative Agreement. USDOL's involvement in project implementation and oversight is outlined in Section VI.3. The duration of the project(s) funded by this solicitation is up to two (2) years. The start date of program activities will be negotiated upon awarding of the Cooperative Agreement, but will be no later than September 30, 2007.

Up to USD $990,000 will be awarded under this solicitation. USDOL may award more than one Cooperative Agreement to one, several, or a partnership or association (see Section III) of more than one organization(s) that may apply to implement the program. A Grantee must obtain prior USDOL approval for any subawardee not proposed in the application before the award of the Cooperative Agreement. (See Section IV.E.3. for further information on subawards.)

**III. Eligibility Information**

*A. Eligible Applicants*

Any commercial, international, educational, or non-profit organization(s), including any faith-based, community-based, or public international organization(s) with experience in effectively implementing projects in the relevant technical field(s) and working with foreign national government ministries, regional and local government entities, employers and employer organizations, workers and labor organizations, and non-governmental and community-based organizations is eligible for this grant(s). Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of Cooperative Agreement recipients. Applications from foreign government and quasi-government agencies will not be considered. An applicant must demonstrate a country presence, independently or through a relationship with another organization(s) with country presence, which gives it the ability to initiate program activities upon award of the Cooperative Agreement. *See* Section V. (Institutional Qualifications/Past Performance) If it is deemed the most effective and efficient strategy for achieving the goals outlined in the Scope of Work, USDOL may award one or more Cooperative Agreements to a partnership of more than one organization. If two or more applicants, who do not constitute a single legal entity (hereinafter referred to as ''Associations''), join in applying for an award, each member of the Association (hereinafter referred to as an ''Associate'') must be individually eligible for award. All references to ''the Applicant'' refer to Associations as well as individual applicants. All Associates must sign, and agree to be bound jointly and severally by, the awarded Cooperative Agreement, and all must designate one Associate as the ''Lead.'' Any such Association must submit to USDOL, as an attachment to the application, an Association agreement, reflecting an appropriate joint venture, partnership, or other contractual agreement and outlining the deliverables, activities, and corresponding timeline for which each Associate will be responsible. Copies of such agreements will not count toward the page limit.

If any entity identified in the application as an Associate does not sign the Cooperative Agreement, the Lead must provide, within 60 days of award, either a written subaward agreement with such entity, acceptable to USDOL, or an explanation as to why that entity will not be participating in the Cooperative Agreement. USDOL reserves the right to re-evaluate the award of the Cooperative Agreement in light of any such change in an entity's status, and may terminate the award if USDOL deems appropriate.

For the purposes of this proposal and the Cooperative Agreement award, the Lead will be: (1) The primary point of contact with USDOL to receive and respond to all inquiries, communications and orders under the project; (2) the only entity with authority to withdraw or draw down funds through the HHS system; (3) responsible for submitting to USDOL all deliverables, including all technical and financial reports related to the project, regardless of which Associate performed the work; (4) the sole entity to request or agree to a revision or amendment of the award or the project document; and (5) responsible for working with USDOL to close out the project. Note, however, that each Associate is ultimately

responsible for overall project performance, regardless of any assignment of specific tasks, but Associates may agree, among themselves only, to apportion the liability for such performance. Each Associate must comply with all applicable federal regulations, and is individually subject to audit.

In accordance with 29 CFR Part 98, entities that are debarred or suspended from receiving federal contracts or grants shall be excluded from Federal financial assistance and are ineligible to receive funding under this solicitation. See Section V (Leveraging of Grant Funds).

*B. Cost Sharing or Matching Funds*

This solicitation does not require applicants to share costs or provide matching funds. However, the leveraging of resources and in-kind contributions is strongly encouraged and is a rating factor worth up to five (5) additional points (see Section V).

*C. Dun and Bradstreet Number*

The organizational unit section of Block 8 of the SF–424 must contain the Dun and Bradstreet Number (DUNS) of the applicant. Beginning October 1, 2003, all applicants for Federal grant funding opportunities are required to include a DUNS number with their application. *See* OMB Notice of Final Policy Issuance, 68 **Federal Register** 38402 (June 27, 2003). Applicants' DUNS number is to be entered into Block 8 of SF–424. The DUNS number is a nine-digit identification number that uniquely identifies business entities. There is no charge for obtaining a DUNS number. To obtain a DUNS number call 1–866–705–5711 or access the following Web site: *http://www.dunandbradstreet.com/*.

Requests for exemption from the DUNS number requirement must be made to the Office of Management and Budget. If no DUNS number is provided, without such an exemption, the grant application will be considered non-responsive.

After receiving a DUNS number, all grant applications must also register as a vendor with the Central Contractor Registration (CCR) through the following Web site: *http:www.ccr.gov* or by phone at 1–888–227–2423. CCR registration should become active within 24 hours of completion. If grant applicants have questions regarding registration, please contact the CCR Assistance Center at 1–888–227–2423. After registration, grant applicants will receive a confirmation number. The Grantee listed as the Point of Contact will receive a Trader Partnership Identification Number (TPIN) via mail. The TPIN is, and should remain, a confidential password.

## IV. Application and Submission Information

*A. Application Package*

This solicitation contains all of the necessary information and forms needed to apply for Cooperative Agreement funding. This solicitation is published as part of this **Federal Register** notice. Additional copies of the **Federal Register** may be obtained from your nearest U.S. Government office or public library or online at *http://www.archives.gov/federal_register/index.html*.

*B. Content and Form of Application Submission*

Applicants must submit one (1) Blue ink-signed original, complete application in English plus two (2) copies of the application to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210, no later than 4:45 p.m. Eastern Time on the established due date. To aid with review of applications, applicants may elect to submit three (3) additional paper copies of the application (five total). Applicants who do not provide additional copies will not be penalized.

The application must consist of two (2) separate parts. Part I of the application must contain the Standard Form (SF) 424, ''Application for Federal Assistance'' and sections A–F of the Budget Information Form SF 424A (see Appendix A). These forms are also available at *http://www.whitehouse.gov/omb/grants.* Part II must contain a technical proposal that demonstrates capabilities in accordance with the statement of work (Section III) and the selection criteria (Section V). The application should include the name, address, telephone and fax numbers, and e-mail address (if applicable) of a key contact person at the applicant's organization in case questions should arise.

To be considered responsive to this solicitation, the application must consist of the above-mentioned separate sections with part II not to exceed 45 single-sided (8½″ x 11″ or A4), double-spaced, 12-point font, typed pages. Major sections and sub-sections of the application should be divided and clearly identified (*e.g.*, with tab dividers), and all pages must be numbered. Applicants are required to propose that a project address the project objectives identified in the Statement of Work in Section I. Any applications that do not conform to these standards may be deemed non-responsive to this solicitation and may not be evaluated. The application must include a table of contents and an abstract summarizing the application in not more than two (2) pages. Standard forms, attachments, résumés, exhibits, letters of support, and the abstract are not counted towards the page limit. If an applicant exceeds the stated page limit, the review panel has the discretion to deduct 10 points.

Upon completion of negotiations, the individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant.

*C. Submission Dates, Times, and Address*

The grant application package must be received at the designated place by February 23, 2007, or it will not be considered. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted; the applicant, however, bears the responsibility for timely submission. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing, delivery, and hand-delivery conditions set forth in this notice will be granted.

Any application received at the Office of Procurement Services after 4:45 p.m. Eastern Time 45 days after publication will not be considered unless it is received before the award is made and:

- It was sent by registered or certified mail no later than the fifth calendar day before the closing date; or
- It was sent by U.S. Postal Service Express Mail/Next Day Service from the post office to the addressee no later than 5 p.m. at the place of mailing two (2) working days (excluding weekends and Federal holidays), prior to the closing date; or
- It is determined by the USG that the late receipt was due solely to mishandling by the USG after receipt at the U.S. DOL at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily

identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail/Next Day Service from the post office to the addressee is the date entered by the Post Office receiving clerk on the ''Express Mail/Next Day Service—Post Office to Addressee'' label and the postmark on the envelope or wrapper on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the USDOL is the date/time stamp of the Procurement Service Center on the application wrapper or other documentary evidence or receipt maintained by that office.

All applicants are advised that U.S. mail delivery in the Washington, DC area has been slow and erratic due to concerns involving anthrax contamination. Applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application with your delivery service from Lisa Harvey (see Section VII for contact information).

Applicants may also apply online at *http://www.grants.gov.* Applicants submitting proposals online are requested to refrain from mailing a hard copy application as well. It is strongly recommended that applicants using www.grants.gov immediately initiate and complete the ''Get Started'' registration steps at *http://www.grants.gov/GetStarted.* These steps may take multiple days to complete, and this time should be factored into plans for electronic submission in order to avoid facing unexpected delays that could result in the rejection of an application. If submitting electronically through www.grants.gov, applicants must save the application document as a .doc, .pdf, .txt or .xls file.

Any application received on grants.gov after the deadline will be considered as non-responsive and will not be evaluated.

*D. Intergovernmental Review*

This funding opportunity is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs''

*E. Funding Restrictions, Unallowable Activities, and Specific Prohibitions*

In addition to those specified under OMB Circular A–122, the following costs and activities are also unallowable or contain specific restrictions:

1. Pre-award Costs

Pre-award costs are not reimbursable.

2. Alternative Income-Generating Activities

USDOL funds awarded under all USDOL Cooperative Agreements may not be used to provide micro-credits, revolving funds, or loan guarantees. Permissible costs related to alternative income-generating activities for workers may include, but are not limited to, vocational or skills training, incidental tools and equipment, guides, manuals, and market feasibility studies. USDOL reserves the right to negotiate the exact nature, form, or scope of alternative income-generating activities and to approve or disapprove these activities at any time after award of the Cooperative Agreement.

3. Subawards to Organizations, Groups, and/or Persons

Grantees may procure sub-contracts or sub-grants with other organizations to fulfill the purpose and activities of the Cooperative Agreement award. Subawards may be included as a budget line item. Subawards must be awarded in accordance with 29 CFR 95.40–48 and are subject to audit, in accordance with the requirements of 29 CFR 95.26(d). Subawards awarded after the Cooperative Agreement is signed, and not proposed in the application, must be awarded through a formal competitive bidding process, unless prior written approval is obtained from USDOL. In addition, all subawards are subject to the restrictions and prohibitions related to prostitution, inherently religious activities, and terrorism as outlined in this section (6–8). Detailed information on subawards should be provided during the project document review process. Copies of all subawards above $100,000 must be provided to USDOL prior to implementation of the contract.

4. Lobbying or Fund-Raising the U.S. Government With Federal Funds

Under the Cooperative Agreements, no activity, including awareness raising and advocacy activities, may include fund-raising, or lobbying of all Governments (see OMB Circular A–122). COOPERATIVE AGREEMENT APPLICANTS CLASSIFIED UNDER THE INTERNAL REVENUE CODE AS A 501(c)(4) ENTITY (see 26 U.S.C. 501(c)(4)), MAY NOT ENGAGE IN LOBBYING ACTIVITIES. According to the Lobbying Disclosure Act of 1995, as codified at 2 U.S.C. 1611, an organization, as described in Section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities directed toward the USG will not be eligible for the receipt of Federal funds constituting an award, grant, Cooperative Agreement, or loan.

5. Funds to Host Country Governments

USDOL funds awarded under this solicitation are not intended to duplicate or substitute for host-country government efforts or resources. Therefore, in general, Grantees may not provide any of the funds obligated under the Cooperative Agreement to foreign government entities, ministries, officials, or political parties. However, subcontracts with foreign government agencies may be awarded to provide direct services or undertake project activities subject to applicable laws and only after a competitive procurement process has been conducted and no other entity in the country is able to provide these services. Grantees must receive prior USDOL approval before subcontracting to foreign government agencies for the provision of direct educational services.

6. Prostitution

The USG is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. U.S. non-governmental organizations, and their subawardees, cannot use USG funds to lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work. Foreign non-governmental organizations, and their subawardees, that receive USG funds cannot lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work; this includes organizations receiving both general and trafficking-related grants. It is the responsibility of the Grantees to ensure its subawardees meet these criteria.

7. Inherently Religious Activities

The USG is generally prohibited from providing direct financial assistance for inherently religious activities. Federal funds provided under a USDOL-awarded Cooperative Agreement may not be used for religious instruction,

worship, prayer, proselytizing or other inherently religious activities. Neutral, non-religious criteria that neither favor nor disfavor religion must be employed by the Grantee in the selection of subawardees. This provision must be included in all subawards issued under the Cooperative Agreement.

8. Terrorism

Applicants are reminded that U.S. Executive Orders and U.S. law prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of Grantees to ensure compliance with these Executive Orders and laws. This provision must be included in all subawards issued under the Cooperative Agreement.

**V. Application Review Information**

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable, including the technical proposal, cost proposal, recent audits, partnership agreements where applicable, the Curricula Vitae of key personnel, and personnel agreements. A Technical Panel will objectively rate each complete application against the criteria described in this announcement. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select one or more Grantees on the basis of the initial proposal submission, or the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of proposals, the evaluation process described above will be repeated to consider such revisions. The Grant Officer will make a final selection determination based on what is most advantageous to the USG, considering factors such as panel findings based on the criteria listed below and the best value to the government, cost, and other factors. The Grant Officer's determination for award under this Solicitation is final.

*A. The Review Process*

The criteria below will serve as the basis upon which submitted applications will be evaluated. Technical aspects of the application will constitute 100 points of the total evaluation. Up to five (5) additional points will be given for leveraging non-Federal resources.

In order to assist USDOL in assessing the efficient and effective allocation of project funding, the Applicant must submit a project budget that clearly details the costs for performing all of the requirements presented in this solicitation which is attached to the PRODOC in section II but does not count against the page limit, including producing all deliverables, reporting on implementation and progress, and monitoring progress. Applicants are reminded to budget for compliance with the administrative requirements set forth (copies of all regulations referenced in this solicitation are available at no cost, on-line, at *http://www.dol.gov*). This includes the costs of performing activities such as travel to Washington, DC to meet with USDOL/ILAB, financial audit, project closeout, project evaluation, document preparation (*e.g.*, progress reports, project document), and ensuring compliance with procurement and property standards. The Project Budget must identify administrative costs separately from programmatic costs. In addition to the costs identified previously, administrative costs include indirect costs from the costs pool and the cost of activities, materials (*e.g.*, project car), and personnel (*e.g.*, administrative assistants, office drivers) that support the management and administration of the project, but do not provide direct services to project beneficiaries.

*B. Technical Approach—65 points*

The extent to which the application sets forth a clear and supportable course of action to improve labor law compliance in Central America by: (a) Supporting the implementation of a career civil service; (b) attracting and retaining qualified, experienced and highly competent inspectorate staff; (c) increasing transparency and credibility within the labor inspectorate; (d) creating a smoother transition during changes in the administration; (e) creating more efficient and established personnel systems; and (f) retaining institutional strategic planning.

In developing the strategy, applicants are expected to take into consideration the following issues:

- The level of technical assistance that Central American Ministries of Labor have received in the past five (5) years and continue to receive from bilateral donors and international organizations;
- The need to ensure that the project strategy is consistent with any national strategy to increase labor law compliance.
- The need to sustain project improvements, including retaining the new knowledge and practices of project-trained ministry staff.
- The need to engage local stakeholders in the design and implementation of the project strategy.

Points

Applicants will be evaluated on the clear identification and description of the specific strategy(s) the applicant proposes to use, and the effectiveness and attainability of project objectives by the end of the grant period. Proposals should include a work plan that is practical, manageable, and can achieve project results. Applicants must include an implementation plan that lists a schedule of activities and list of deliverables that would be completed by the Grantee each quarter. The strategy must include a sustainability plan outlining clearly how the project activities will be sustained when the project has been completed. (20 points)

Applicants will be evaluated on demonstrated familiarity with the major issues related to the components being addressed (Labor Inspectorate continuity, hiring and oversight mechanisms, accountability and management, and providing appropriate incentives, skills, and motivation). Applicants will be evaluated on the thorough and accurate assessment of the implementing environment and the problems that exist and clear identification of the specific problem(s) the applicant proposes to address. (10 points)

Applicants will be evaluated on their monitoring and evaluation plan for measuring project performance that includes challenging but realistic targets and measurable, verifiable project indicators that measure achievement of project objectives and performance in project implementation. The plan should show how the information and data will be collected and what systems will be put in place for self-assessment, monitoring, and continuous improvement. (5 points)

Applicants will be evaluated on their approach to expending funds in the most cost-effective method possible in order to achieve the project objectives. Applicants must submit an Outputs-based Budget, a sample of which is provided in Annex 1. Applicants must refer to its submitted budget in explaining how the budgeted funds will be utilized cost-effectively. In order to assist USDOL in assessing the efficient and effective allocation of project funding, applicants must submit, at minimum, supporting budget information indicating how the applicant arrived at estimating the costs of the following items/activities:

Salaries and benefits for all key personnel, 2–3 key activities proposed by the applicant under its project design, and meeting all USDOL close-out requirements. Applicants will be evaluated based on the clear identification of all project costs and efficient and effective allocation of funding. The project budget should clearly demonstrate that the total amount and distribution of funds is sufficient to cover the cost of all major project activities identified by the applicant in its proposal, management of the project, monitoring and evaluation, and project close-out and that the distribution of funds maximizes the provision of goods and/or services to project beneficiaries. Higher ratings may be given to applicants with low administrative costs and with a budget breakdown that provides a larger amount of resources to project activities. The Grant Officer reserves the right to negotiate administrative cost levels prior to award. Indirect cost charges should be based on allowable, allocable, and reasonable costs based on the applicable cost principles included in the OMB Circular A–122 and Indirect Charges Instructions included in Annex 2. This section will be evaluated in accordance with applicable Federal laws and regulations. Applicants should submit output-based budgets. A sample of an output-based budget format is included in Annex 1. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars) and with ILAB budget requirements contained in the application instructions in Section VI of this solicitation. Applicants must also be required to include an indirect cost certification, the SF 424, SF 424A, and the Equal Employment Opportunity Commission (EEOC) survey. (15 points)

Applicants will be evaluated on the use of existing expertise from the recipient country in order to reduce costs and further develop local capacity. The proposal should identify specific organizations that are to carry out the work in each country. Local organizations will be rated on their ability to effectively carry out the proposed work, including experience implementing labor projects, their experience working with the Ministries of Labor in target countries, and their ability to implement activities in a timely manner. (10 points)

Applicants will be evaluated on a schedule of quarterly deliverables that will serve to determine the level of performance of the contractor. The identification of deliverables that are presented in the proposal should be objective, verifiable, and demonstrate progress in achieving project objectives. (5 points)

• Institutional Qualifications/Past Performance—20 points

Applicants will be evaluated on prior experience in designing and implementing activities in developing countries, especially in Central America, related to the support of career civil service implementation; including but not limited to improving hiring and oversight mechanisms to strengthen continuity in the workforce, improving accountability and management, and providing civil servants with appropriate incentives, skills, and motivation. Applicants must include information as an attachment (which will not count towards the page limit) regarding previous grants or contract for the project(s) including: (a) The organization for which the work was done, (b) a contact person in that organization with his/her current phone number, (c) the dollar value of the grant, contract, or Grant for the project(s), (d) the time frame and professional effort, either directly by key personnel, by consultants, or under contractual arrangements involved in the project(s), (e) a brief summary of the work performed; and f) a brief summary of accomplishments. (10 points)

Applicants will be evaluated on their demonstration of strong financial management and internal control systems. If the applicant is a U.S.-based, non-profit organization already subject to the single audit requirements, the applicant's most recent single audit, as submitted to the Federal Audit Clearinghouse, must accompany the application as an attachment. In addition, applications must show that they have complied with report submission timeframes established in OMB Circular A–133. If an applicant is not in compliance with the requirements for completing their single audit, the application will be considered nonresponsive and will be rejected. If the applicant is a for-profit or foreign-based organization, a copy of its most current independent financial audit must accompany the application as an attachment. Applicants must also submit a copy of the most recent single audit report for all proposed U.S.-based, non-profit partners, Associates and subcontractors that are subject to the Single Audit Act. If the proposed Associate(s) or partner(s) is a for-profit or foreign-based organization, a copy of its most current independent financial audit should accompany the application as an attachment. If the audit submitted by the applicant reflects any adverse opinions, the application will not be further considered by the technical review panel and will be rejected. USDOL reserves the right to ask further questions on any audit report submitted as part of an application. USDOL also reserves the right to place special conditions on Grantees if concerns are raised in their audit reports. In order to expedite the screening of applications and to ensure that the appropriate audits are attached to the proposals, the applicant must provide a cover sheet to the audit attachments listing all proposed partners and subcontractors. These attachments will not count toward the application page limit. (10 points)

• Experience of Personnel/Management plan—15 points

The applicant must propose key personnel with prior experience directly related to the proposed work, including technical and language qualifications, professional competence, relevant academic background, and demonstrated experience. Applicants must submit a résumé for each key personnel proposed, which includes the individual's current employment status and previous work experience, including position title, duties performed, salary history, dates in position, employing organizations, and educational background. Duties must be clearly defined in terms of role performed (i.e., manager, team leader, consultant). Résumés must be included as attachments, which do not count against the page limitation. Management and professional technical staff members comprising the applicant's proposed team must be individuals who have prior experience with organizations working in similar efforts, and who are fully qualified to perform the work specified in the Scope of Work. (10 points)

The applicant must demonstrate successful performance of the proposed work depending heavily on the management of the project. Accordingly, in its evaluation of each application, USDOL will place emphasis on the applicant's management approach involved in accomplishing the assigned tasks. This section of the application must include sufficient information to judge management and staffing plans. Where subawards or outside assistance are proposed, organizational lines of authority and responsibility should be clearly delineated to ensure responsiveness to the needs of USDOL. (5 points)

• Leveraging of Grant Funding—5 points

USDOL will award up to five (5) additional rating points to applications that include non-Federal resources that significantly expand the size and scope

of project-related activities. These programs must not be financed by the project, but can complement and enhance project objectives. To be eligible for the additional points, the applicant must list the resource(s), the nature, and possible activities anticipated and any partnerships, linkages, or coordination of activities, cooperative funding, etc., including the specific value of such contributions.

- Suggested Outline for Technical Proposal

This outline is provided as a guideline. Organizations may elect a format of their choosing, subject to the requirements of this announcement.

i. Executive Summary
ii. Program Description
iii. Goal and Objectives
iv. Background
v. Technical Approach and Implementation Timetable (Proposed Intervention)
vi. Monitoring and Evaluation Plan
vii. Experience of Personnel
viii. Identification of Deliverables and Quarterly Schedule of their submission to determine contractor performance
ix. Staffing Pattern and Project Management Organizational Chart
x. Leveraging of non-Federal Resources
xi. Budget
xii. Attachments:
- Summaries of other relevant organizational experiences
- Résumés of key personnel and signed letters of commitment to the project

Successful proposals submitted in response to this solicitation will be incorporated into the text of the grant with the selected applicant(s).

## VI. Award Administration Information

### *1. Award Notices*

The Grant Officer will notify applicants of designation results as follows:

*Designation Letter:* The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The designation letter will be accompanied by a Cooperative Agreement and ILAB's Management Procedures and Guidelines (MPG).

*Non-Designation Letter:* Any organization not designated will be notified formally of the non-designation and given the basic reasons for the determination. Notification of designation by a person or entity other than the Grant Officer is not valid.

### *2. Administrative and National Policy Requirements*

A. General

Grantees are subject to applicable U.S. Federal laws (including provisions of appropriations law) and regulations, Executive Orders, applicable OMB Circulars, and USDOL policies. If during project implementation a Grantee is found in violation of USG laws and regulations, the terms of the Cooperative Agreement awarded under this solicitation may be modified by USDOL, costs may be disallowed and recovered, the Cooperative Agreement may be terminated, and USDOL may take other action permitted by law. Determinations of allowable costs will be made in accordance with the applicable U.S. Federal cost principles.

B. Audits

After award, Grantees must also submit an annual independent audit regardless of grant amount.

i. For U.S. based non-profit organizations expending $500,000 or more in a year in Federal awards: a ''single'' or ''program specific'' audit conducted under the provisions of OMB Circular A–133 is required.

ii. For all other organizations (including foreign-based and private for-profit grantees): an audit conducted in accordance with the U.S. Government Accountability Office's (GAO) ''Government Auditing Standards'' is required. The audit must address the following:

(a) Compliance with the Department's regulations and the provisions of the Cooperative Agreement; and

(b) Reliability of the organization's financial and performance reports.

Costs for audits or attestation engagements should be included in direct or indirect costs, whichever is appropriate.

**Please Note:** USDOL generally allows the costs to be allocated based on the following (applicable to U.S. based agencies only): 1) A–133 ''single audit'' costs as part of the indirect cost rate/pool for organizations with *more than* one Federal source of funding. Organizations with only one Federal source could charge the A–133 single audit cost as direct costs; 2) A–133 ''*compliance supplement*'' costs—as direct costs for Federal sources only through a cost allocation methodology approved by the Federal cognizant agency; or 3) A–133 *program specific* audits as direct costs. Any deviations from the above must be explained and justified in the application.

C. Administrative Standards and Provisions

The Cooperative Agreements awarded under this solicitation are subject to the following administrative standards and provisions, and any other applicable standards that come into effect during the term of the Cooperative Agreement, if applicable to a particular Grantee: i. 29 CFR Part 2 Subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries. ii. 29 CFR Part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.

i. CFR Part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance. iv. 29 CFR Part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor.

ii. 29 CFR Part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor.

iii. 29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

iv. 29 CFR Part 93—New Restrictions on Lobbying.

v. 29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

vi. 29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

vii. 29 CFR Part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement).

viii. 29 CFR Part 99—Federal Standards for Audits of States, Local Governments, and Nonprofit Organizations.

ix. 29 CFR Part 94—Government-wide Requirements for Drug-Free Work Place.

Copies of all regulations referenced in this solicitation are available at no cost, on-line, at *http://www.dol.gov.*

D. Key Personnel

As noted in Section V, the applicant must list all key personnel candidates. After the Cooperative Agreement has been awarded and throughout the life of the project, the Grantee agrees to inform the Grant Officer's Technical Representative (GOTR) whenever it

appears impossible for key personnel to continue work on the project as planned. The Grantee must nominate, through the submission of a formal project revision, new personnel; however, the Grantee must obtain approval from the Grant Officer before all changes to key personnel are formalized. If the Grant Officer is unable to approve the key personnel change, she or he reserves the right to terminate the Cooperative Agreement or disallow costs.

E. Encumbrance of Grant Funds

Grant funds may not be encumbered/obligated by the Grantee(s) before or after the period of performance. Encumbrances/obligations outstanding as of the end of the grant period may be liquidated (paid out) after the end of the grant period. Such encumbrances/obligations may involve only commitments for which a need existed during the grant period and that are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the Grantee's purchasing procedures and incurred within the grant period. All encumbrances/obligations incurred during the grant period must be liquidated within 90 days after the end of the grant period, if practicable.

F. Acknowledgement on Printed Materials

In all circumstances, the following shall be displayed on printed materials: Preparation of this item was funded by the United States Department of Labor under Grant No. [insert the appropriate grant number]. In addition, the Grantee is required to include a disclaimer in publications and materials that have been directly funded by USDOL as follows: This (* * *) does not necessarily reflect the views or policies of the United States Department of Labor, nor does the mention of trade names, commercial products, or organizations imply endorsement by the United States Government. This acknowledgement and disclaimer must be included in documents (reports and other materials) produced, edited and published for distribution beyond the Grantee and USDOL (*i.e.*, to other donors, organizations, or the general public).

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all Grantees receiving Federal funds must clearly state:

- The percentage of the total costs of the program or project, which will be financed with Federal money;
- The dollar amount of Federal funds for the project or program; and
- The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

G. Use of the USDOL Logo

In consultation with ILAB, the Grantee(s) will acknowledge USDOL's role in one of the following ways:

- The USDOL logo may be applied to USDOL-funded material prepared for public distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of public interest. The Grantee(s) must consult with USDOL on whether the logo may be used on any such items prior to final draft or final preparation for distribution. In no event shall the USDOL logo be placed on any item until USDOL has given the Grantee written permission to use the logo on the item.
- All documents should include the following notice: ''This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.''

H. Privacy and Freedom of Information

Any information submitted in response to this solicitation will be subject to the provisions of the Privacy Act and the Freedom of Information Act, as appropriate.

I. Site Visits

USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of the Grantee or a subawardee(s) under this grant, the Grantee must provide and must require its subawardee(s) to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations will be performed so as not to unduly delay the work.

*3. Reporting and Deliverables*

Guidance on USDOL procedures and management requirements will be provided to Grantees in the MPGs with the Cooperative Agreement. Unless otherwise indicated, a Grantee must submit copies of all required reports and deliverables to USDOL by the specified due dates. Exact timeframes for the completion of deliverables will be addressed in the Cooperative Agreement and the MPGs. Specific deliverables are outlined below.

A. Required Deliverables

Following the award of the grant, the Grantee(s) must collaborate with USDOL/ILAB to:

- Develop a Project Document (including a project budget) that will set the technical parameters and provide guidance to the project. It must include all information and be prepared according to the standardized format outlined by USDOL. While the applicant's original proposal will serve as the basis of the Project Document, in every case USDOL has found it advantageous to visit the field and reach consensus on the project strategy with host country counterparts in order to further inform the project design. USDOL may choose to participate on these field visits. USDOL must receive a draft of the Project Document 45 days after returning from travel to the relevant area(s). The Project Document must be finalized no later than 30 days after receipt of USDOL comments on the draft.
- Establish a Work plan identifying major project activities, deadlines for their completion, and person(s) responsible for completing these activities (within 60 days after the Project Document is finalized).
- Set project indicators, including indicators that support ILAB's GPRA goal: ''Improve living standards and conditions of work for workers in developing and transition countries.'' (within 90 days of finalizing the Project Document).
- Create a Performance Monitoring Plan (PMP) to establish the data needed to measure achievement of project indicators and the methods for collection and reporting. It should include all information and be prepared according to the standardized format outlined by USDOL (within 90 days of finalizing the Project Document).

B. Required Reporting

- The Grantee(s) must submit financial reports on a quarterly basis. The first reporting period ends on the last day of the fiscal quarter (December 31, March 31, June 30, or September 30) during which the grant was signed. The Grantee(s) must use Standard Form (SF) 269A, Financial Status Report, to report the status of the funds, at the project level, during the grant period. A final

SF269A must be submitted no later than 90 days following completion of the grant period. If the Grantee(s) uses the U.S. Department of Health and Human Services Payment Management System (HHS PMS), it shall also send USDOL copies of the PSC 272 that it submits to HHS, on the same schedule. Otherwise, the Grantee(s) must submit Standard Form (SF) 272, Federal Cash Transactions Report, on the same schedule as the SF269A. Financial reports are due within 30 days of the end of the reporting period (*i.e.,* by April 30, July 30, October 30, and January 30).

Technical Reporting Requirements

- After signing the agreement, the Grantee(s) must submit progress reports to USDOL/ILAB at the end of each fiscal quarter. The first reporting period ends on the last day of the fiscal quarter (December 31, March 31, June 30, or September 30) during which the Grant was signed. Between reporting dates, the Grantee(s) must also immediately inform USDOL/ILAB of significant developments and/or problems affecting the organization's ability to accomplish work. The Grantee(s) must submit two types of progress reports according to the standardized format used by USDOL/ILAB.

**VII. Agency Contacts**

All inquiries regarding this solicitation should be directed to: Ms. Lisa Harvey, U.S. Department of Labor, Procurement Services Center, 200 Constitution Ave., NW., Room N–5416, Washington, DC 20210; telephone (202) 693–4570 (this is not a toll-free number) or e-mail: *harvey.lisa@dol.gov.*

Successful proposals submitted in response to this SGA will be incorporated into the text of the grant with the selected applicant(s).

**Lisa Harvey,**

*Grant Officer.*

BILLING CODE 4510–28–P

ANNEX 1.

OUTPUT BASED BUDGET

SAMPLE BUDGET (This is only a sample and does not reflect the outputs included in the SGAs.

| | | unit | yr 1 | | yr 2 | | yr 3 | | yr 4 | | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **I. DIRECT LABOR** | notes | costs | unit | fed $ | unit | fed $ | unit | fed $ | unit | fed $ | |
| A.. Int'l Field Staff Salaries/Fringe Benefits | | | | | | | | | | | |
| Project Director | | | | | | | | | | | |
| Fringe Benefit | | | | | | | | | | | |
| Allowances | a | | | | | | | | | | |
| | b | | | | | | | | | | |
| | c etc | | | | | | | | | | |
| B. Home Office Salary/Benefits | | | | | | | | | | | |
| Project Coordinator and Salary and FB | | | | | | | | | | | |
| oversight Team | | | | | | | | | | | |
| Fringe Benefits | | | | | | | | | | | |
| C. Local Technical Staff | | | | | | | | | | | |
| Project director | | | | | | | | | | | |
| Mediation Specialist | | | | | | | | | | | |
| M and E Specialist | | | | | | | | | | | |
| Security | | | | | | | | | | | |
| Fringe Benefits | | | | | | | | | | | |
| D. Allowance for local Staff | | | | | | | | | | | |
| E. Short Term Consultants | | | | | | | | | | | |
| 1. Local | | | | | | | | | | | |
| **TOTAL SALARIES** | | | | | | | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| **II. EQUIPMENT**<br>A. Laptops<br>**B. Desktop Computer**<br>C.<br>Printer<br>**D. Photocopier**<br>K. Office Furniture<br>**TOTAL EQUIPMENT** | | | | | |
| | | | | | |
| **III. OFFICE EXPENSES**<br>A. Translation<br>B. Internet<br>C. Computer maintenance<br>D. Rent<br>C#. Communication<br>F. Office Utilities<br>G. Supplies<br>H. Copying<br>K Wire Transfers | | | | | |
| **TOTAL OFFICE EXPENSES** | | | | | |
| | | | | | |
| **IV. GENERAL TRAVEL AND PER DIEM**<br>A. Airfares<br>B. Ground Travel<br>C. Per Diem<br>D. Misc<br>**TOTAL GENERAL TRAVEL** | | | | | |
| **OUTPUT BUDGETS** | | | | | |
| **V. OUTPUT 1 MOL ADR Centers**<br>A. refurbish centers<br>IT equipment<br>furniture<br>B. Training Salaries<br>Mediation trainer Salary<br>Assistant Salary<br>C. Training for mediators<br>training materials<br>venue rental<br>D. Per Diem Travel<br>M & E visit<br>Trainer travel<br>regional mediators travel<br>**TOTAL OUTPUT 1** | | | | | |
| | | | | | |
| **VI. OUTPUT 2: ENTERPRISE ADR TRAINING**<br>A. Salaries | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| Labor relations expert<br>Trainer<br>B.Travel per diem<br>1. travel to workplaces<br>2. trip to headquarters<br>C. Trainings<br>venue rental<br>material production<br>**TOTAL OUTPUT 2** | | | | | |
| **VII. OUTPUT 3: UNION TRAINING**<br>A. Salaries<br>Trainer<br>B.Travel per diem<br>1. participant travel<br>2. trainer travel<br>C. Trainings<br>venue rental<br>material production | | | | | |
| **VIII. OUTPUT 4: PUBLIC AWARENESS**<br>A. Awareness material development (f)<br>B. National Conferences<br>1. launch<br>2. sustainability<br><br>C. Development of information tool kits<br>D. Quarterly Awareness Workshop for National Leaders<br>1. venue rental<br>2. training material<br><br>D. Travel and per diem<br>A. Trainings<br>B. launch<br>C. sustainability<br><br>E. Sub contractors<br>1. event organizer<br>**TOTAL OUTPUT 4** | | | | | |

**ANNEX 2:**

## INDIRECT CHARGES

**This clause is applicable to all entities (non-profit, for-profit organizations, and State and local organizations, etc.) receiving Federal** cost reimbursable **grants or contracts.**

**Indirect cost charges should be based on allowable, allocable, and reasonable costs based on the applicable cost principles[1]. It is important to highlight the submission requirements of indirect cost proposals. As an example, OMB Circular A-122, Attachment A, Section E. 2. Negotiation and Approval of Indirect Rates, states:**

- *A non-profit organization which has not previously established an indirect cost rate with a Federal agency **shall** submit its initial indirect cost proposal immediately after the organization is advised that an award will be made and, in no event, later than three months after the effective date of the award.*
- *Organizations that have previously established indirect cost rates **must** submit a new indirect cost proposal to the cognizant agency[2] within six months after the close of each fiscal year.*

Negotiated Indirect Cost Rate Agreements (NICRAs) are used to support indirect cost claims. These documents should be current at the time of the award (See statement on "Adequate NICRAs" further below). The final rates in the NICRAs are used for "close-out" purposes.

**Regarding allocable costs, attachment A of the Circular, also states:**

- *Any cost allocable to a particular award or other cost objective under these principles **may not be shifted** to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.*

[1] OMB Circular A-122 for non-profit organizations or OMB Circular A-87 for State and local organizations available at: http://www.whitehouse.gov/omb/circulars/index.html; Federal Acquisition Regulations, Part 31.2 for for-profit organizations available at http://www.arnet.gov/far/.

[2] Federal agency providing the preponderance of direct Federal funds.

- - - - -

**In light of the above requirements, mark the appropriate clause below (A, B, or C) for the organization and fill in the blanks, as appropriate:**

_____ A. A current approved cost allocation plan (CAP) or NICRA has been provided and approved - *Copy Attached).*

**Note**: Future NICRAs, showing provisional/final rates for each applicable fiscal year, must be submitted to the GO and GOTR for the entire grant period.

_____ B. No CAP or NICRA has been approved by the Federal Cognizant Agency.

**Note**: A "Temporary Billing Rate", not exceeding 90 days, may be negotiated by the Grant/Contract Officer. Future billings of indirect costs, however, should be based on approved NICRAs.

Within this 90-day period, the organization must submit an acceptable indirect cost proposal or CAP to their Federal cognizant agency to obtain a provisional indirect rate or an approved CAP. ***Failure of the organization to submit an indirect cost proposal or CAP within this 90 day period means that it shall not receive further (if applicable) reimbursement for indirect costs.***

The 90 days are provided to:

1. allow the entity to bill indirect costs during this time (subject to future adjustments),
2. provide the entity enough time to prepare the initial provisional indirect cost rate proposal to be submitted to the Federal cognizant agency.

In light of the above, a temporary billing rate of (N/A or %) _____% has been approved by_____
(grant/contracting officer at the Departmental agency; example: ETA, OASAM, etc.) for the first ***90 days*** of the grant/contract period. This rate is based on the fact that the organization has not established a NICRA or approved CAP.

DOL – Federal Cognizant Agency

If DOL is the Federal cognizant agency, please contact Victor M. Lopez, Chief, Division of Cost Determination (DCD) at 202-693-4106. DCD's main phone number is 202-693-4100. For more information, visit DCD's website available at: http://www.dol.gov/oasam/programs/boc/costdeterminationguide/main.htm.

_____ C. No indirect costs are claimed in the proposed budget.

**Notes:** As stated previously,

- *Any cost allocable to a particular award or other cost objective under these principles* ***may not be shifted*** *to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.*

**In light of the above statement, a "Certificate of Direct Costs" must be completed in support of future claims of direct costs (see attached).**

- - - - -

**Adequate NICRAs**

Some federal agencies issue indirect cost rate agreements that are effective "***until amended.***" These rate agreements will not be accepted by the grant officer if the last negotiated fiscal year shown in the agreement is more than one year past the date of the DOL award.

For example, a provisional rate approved for FYE 12/31/03 "until amended" will not be accepted for any DOL award issued after 12/31/04. This statement is based on the federal cost principles (see footnote 1 above) that require organizations to submit a final indirect cost proposal to the Federal cognizant agency no later than six months after the entity's fiscal year ends.

Following the example above, by 6/30/04 the organization should have submitted a new indirect rate proposal to its federal cognizant agency for review and negotiation.

**CERTIFICATE OF DIRECT COSTS**

The following must be filled in for organizations that are not proposing any indirect costs.

This is to certify that:

1. All costs budgeted and to be claimed under this proposal supporting the period_____ , through _____ are allowable in accordance with the requirements of grants/contracts to which they apply and with the Federal cost principles; i.e., (please check those applicable cost principles):

   _____ OMB Circular A-87, Cost Principles for State, Local and Federally recognized Indian Tribal Governments.
   _____ OMB Circular A-122, Cost Principles for Non-Profit Organizations
   _____ Federal Acquisition Regulation (FAR), Subpart 31.2, Cost Principles for Commercial Organizations.

2. Claimed costs do not include any costs which are unallowable under applicable Federal cost principles. For example:

   advertising, contributions and donations, bad debts, entertainment costs, fines and

   penalties, general government expenses, and defense of fraud proceedings;

3. The requirements standards on lobbying costs for non-profit (A-122) and commercial (FAR) organizations have been complied with and,

4. All costs included in the proposal are properly allocable to U.S. Department of Labor grants/contracts on the basis of a beneficial or casual relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable Federal cost principles.

Subject to the provisions of the Program Fraud Civil Remedies Act of 1986, (31 USC 3801 et seq.), and the Department of Labor's implementing regulations, (29 CFR Part 22), the False Claims Act (18 USC 287 and 31 USC 3729); and the False Statements Act (18 USC 1001), I declare to the best of my knowledge the foregoing is true and correct.

Grantee/Contractor: _____

Signature: _____

Name of Authorized Official: _____

Title: _____

Date: _____

ANNEX 1.

OUTPUT BASED BUDGET

SAMPLE BUDGET (This is only a sample and does not reflect the outputs included in the SGAs.

| | | unit | yr 1 | | yr 2 | | yr 3 | | yr 4 | | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **I. DIRECT LABOR** | notes | costs | unit | fed $ | unit | fed $ | unit | fed $ | unit | fed $ | |
| A.. Int'l Field Staff Salaries/Fringe Benefits | | | | | | | | | | | |
| Project Director | | | | | | | | | | | |
| Fringe Benefit | | | | | | | | | | | |
| Allowances | a | | | | | | | | | | |
| | b | | | | | | | | | | |
| | c etc | | | | | | | | | | |
| B. Home Office Salary/Benefits | | | | | | | | | | | |
| Project Coordinator and Salary and FB | | | | | | | | | | | |
| oversight Team | | | | | | | | | | | |
| Fringe Benefits | | | | | | | | | | | |
| C. Local Technical Staff | | | | | | | | | | | |
| Project director | | | | | | | | | | | |
| Mediation Specialist | | | | | | | | | | | |
| M and E Specialist | | | | | | | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| Security<br>Fringe Benefits<br>D. Allowance for local Staff<br>E. Short Term Consultants<br>1. Local<br>**TOTAL SALARIES** | | | | | |
| | | | | | |
| **II. EQUIPMENT**<br>A. Laptops<br>**B. Desktop Computer**<br>C.<br>Printer<br>**D. Photocopier**<br>K. Office Furniture<br>**TOTAL**<br>**EQUIPMENT** | | | | | |
| | | | | | |
| **III. OFFICE EXPENSES**<br>A. Translation<br>B. Internet<br>C. Computer maintenance<br>D. Rent<br>C#. Communication<br>F. Office Utilities<br>G. Supplies<br>H. Copying<br>K Wire Transfers | | | | | |
| **TOTAL OFFICE EXPENSES** | | | | | |
| | | | | | |
| **IV. GENERAL TRAVEL AND PER DIEM**<br>A. Airfares<br>B. Ground Travel<br>C. Per Diem<br>D. Misc<br>**TOTAL GENERAL TRAVEL** | | | | | |
| **OUTPUT BUDGETS** | | | | | |
| **V. OUTPUT 1 MOL ADR Centers**<br>A. refurbish centers<br>IT equipment<br>furniture<br>B. Training Salaries<br>Mediation trainer Salary<br>Assistant Salary<br>C. Training for mediators<br>training materials<br>venue rental<br>D. Per Diem Travel | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| M & E visit<br>Trainer travel<br>regional mediators travel<br>**TOTAL OUTPUT 1** | | | | | |
| | | | | | |
| **VI. OUTPUT 2: ENTERPRISE ADR TRAINING**<br>A. Salaries<br>Labor relations expert<br>Trainer<br>B.Travel per diem<br>1. travel to workplaces<br>2. trip to headquarters<br>C. Trainings<br>venue rental<br>material production<br>**TOTAL OUTPUT 2** | | | | | |
| **VII. OUTPUT 3: UNION TRAINING**<br>A. Salaries<br>Trainer<br>B.Travel per diem<br>1. participant travel<br>2. trainer travel<br>C. Trainings<br>venue rental<br>material production | | | | | |
| **VIII. OUTPUT 4: PUBLIC AWARENESS**<br>A. Awareness material development (f)<br>B. National Conferences<br>1. launch<br>2. sustainability<br><br>C. Development of information tool kits<br>D. Quarterly Awareness Workshop for National Leaders<br>1. venue rental<br>2. training material<br><br>D. Travel and per diem<br>A. Trainings<br>B. launch<br>C. sustainability<br><br>E. Sub contractors<br>1. event organizer<br>**TOTAL OUTPUT 4** | | | | | |

[FR Doc. E6–22457 Filed 1–8–07; 8:45 am]
BILLING CODE 4510–28–C

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA,

records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before February 8, 2007. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

*Mail:* NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

*E-mail: requestschedule@nara.gov.*

*FAX:* 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. *Telephone:* 301–837–1539. *E-mail: records.mgt@nara.gov.*

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

*Schedules Pending* (Note that the new time period for requesting copies has changed from 45 to 30 days after publication):

1. Department of Defense, Defense Commissary Agency, Agency-wide (N1–506–07–7, 2 items, 2 temporary items). Records pertaining to the designation and training of authorized procurement personnel utilizing the Government Purchase Card. These files consist of procurement authorities, authorization limitations, and registers reflecting appointments and terminations. Also included are correspondence, reports and related records on purchases made using the card. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

2. Department of Defense, Defense Commissary Agency, Agency-wide (N1–506–07–8, 4 items, 4 temporary items). Records related to the maintenance of facilities, management and consumption of energy, and environmental policy. Included are correspondence, contract information, case files, status reports and logs. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of Energy, Agency-wide (N1–434–02–2, 10 items, 5 temporary items). Older records accumulated primarily between 1940 and 1979, pertaining to minerals, fuels, and other energy-related matters. Included are case files on petroleum importers, case files on feasibility of power companies' conversion from oil to coal, determinations on applications for hydroelectric power sites, and survey forms and manual tabulations concerning production and shipment of fuels. Proposed for permanent retention are correspondence and reports on national and international production and distribution of minerals, records relating to fuel conservation during World War II, research reports relating to explosives, and records relating to stone quarries.

4. Department of Health and Human Services, Office of the Secretary (N1–468–06–2, 2 items, 2 temporary items). Records accumulated by the Program Support Center including indirect cost agreements and proposals between the government and grantee institutions documenting the negotiated rate for reimbursement for administrative costs related to Federal programs. Also included are associated electronic tracking systems. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

5. Department of Homeland Security, Transportation Security Administration (N1–560–06–6, 10 items, 10 temporary items). Inputs, master files, outputs, and program documentation associated with electronic information systems used to conduct threat assessments for individuals who require credentials to access the nation's transportation infrastructure or assets or who may otherwise be required by Federal statute or regulation to undergo a security threat assessment. This schedule does not include records associated with Secure Flight. For all items on this schedule except the master files and the program documentation, the agency is authorized to apply the proposed disposition instructions to any recordkeeping medium.

6. Department of Homeland Security, U.S. Customs and Border Protection (N1–568–06–1, 5 items, 3 temporary

items). Interim delegations of authority, duplicates of program and administrative delegations of authority and related program support records. Proposed for permanent retention are recordkeeping copies of program and administrative delegations of authority. For all items on this schedule except the recordkeeping copies of delegations of authority, this schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of Justice, Bureau of Prisons (N1–129–06–2, 2 items, 2 temporary items). Records of the Psychology Services Department relating to drug education and drug abuse testing and treatment.

8. Department of Justice, Drug Enforcement Administration (N1–170–06–3, 4 items, 4 temporary items). Inputs, outputs, master files, and system documentation for the Centers for Drug Information database, which is a clearinghouse for international illegal drug trafficking information.

9. Department of Justice, Federal Bureau of Investigation (N1–65–07–3, 32 items, 32 temporary items). Inputs, outputs, master files, documentation, audit logs, appeal files and related records associated with the National Instant Criminal Background Check System used to determine whether a prospective purchaser is prohibited from owning a firearm.

10. Department of Justice, Federal Bureau of Investigation (N1–65–07–6, 4 items, 4 temporary items). Outputs, master file, and system documentation of a subscription management system which delivers to subscribers e-mail alerts of changes to the FBI public Web site for specific content areas.

11. Department of the Treasury, Bureau of the Public Debt (N1–53–06–3, 4 items, 4 temporary items). Records relating to agreements with franchise customers, related billing information, initial development of services to be provided, estimated costs, charges submitted to customers, associated costs, and promotion of franchise services.

12. Department of the Treasury, Bureau of the Public Debt (N1–53–06–6, 10 items, 9 temporary items). Records relating to accounting functions, including working documents, financial research reports, debt statements and reconciliations, and financial statements and reconciliations. Proposed for permanent retention are recordkeeping copies of monthly financial statements detailing the financial status of the Federal Government.

13. Department of the Treasury, Office of Thrift Supervision (N1–483–07–2, 10 items, 10 temporary items). Litigation files, enforcement files, opinions, subject files, reports and other records of the General Counsel's Office previously approved as temporary in paper format. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

14. National Archives and Records Administration, Office of Inspector General (N1–64–07–1, 5 items, 5 temporary items). Investigative case files, complaint files, and a case tracking system, relating to alleged fraud, abuse, irregularities, and violations of laws and regulations.

15. National Archives and Records Administration, Office of Records Services—Washington, DC (N2–26–07–1, 1 item, 1 temporary item). Records accumulated by the Coast Guard, 1913–1945, consisting of lantern slides of the International Ice Patrol. Records were previously accessioned into the National Archives but lack historical value.

16. National Archives and Records Administration, Office of Records Services—Washington, DC (N2–185–07–1, 1 item, 1 temporary item). Identification photographs accumulated by the Panama Canal Commission, 1917–1945. These records were previously accessioned into the National Archives but lack historical value.

17. National Endowment for the Arts, Administrative Services Division (N1–288–06–2, 4 items, 4 temporary items). Case files and associated end products documenting administrative activities relating to financial awards. Records include application material, award approval material, and final reporting material.

Dated: December 27, 2006.

**Michael J. Kurtz,**

*Assistant Archivist for Records Services, Washington, DC.*

[FR Doc. E7–75 Filed 1–8–07; 8:45 am]

BILLING CODE 7515–01–P

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that three meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending time is approximate):

*Music (application review):* January 23, 2007. This meeting, from 12:30 p.m. to 5 p.m., will be closed.

*Music (nomination review):* January 31, 2007. This meeting, from 12 p.m. to 1 p.m. (by teleconference), will be closed.

*Music (nomination review):* January 31, 2007. This meeting, from 1 p.m. to 2:30 p.m. (by teleconference), will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 27, 2006, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

January 3, 2007.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. E7–107 Filed 1–8–07; 8:45 am]

BILLING CODE 7537–01–P

## NATIONAL INSTITUTE FOR LITERACY

### National Institute for Literacy Advisory Board

**AGENCY:** National Institute for Literacy

**ACTION:** Notice of a partially closed meeting.

**SUMMARY:** This notice sets forth the schedule and a summary of the agenda for an upcoming meeting of the National Institute for Literacy Advisory Board (Board). The notice also describes the functions of the Board. Notice of this meeting is required by section 10 (a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or materials in alternative format) should notify Shelly Coles at telephone number (202) 233–2044 no later than January 16, 2007. We will attempt to meet requests for accommodations after this date but

cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

**Date and Time**

*Open sessions*—January 25, 2007, from 8:30 a.m. to 6 p.m.; and January 26, 2007, from 8:30 a.m. to 10 a.m.

*Closed session*—January 26, 2007, from 10 a.m. to 1 p.m.

**ADDRESSES:** The Jefferson Hotel, 1200 16th Street, NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Shelly Coles, National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006; telephone number: (202) 233–2044; e-mail: *scoles@nifl.gov.*

**SUPPLEMENTARY INFORMATION:** The Board is established under section 242 of the Workforce Investment Act of 1998, Pub.L. 105–220 (20 U.S.C. 9252). The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board advises and makes recommendations to the Interagency Group that administers the Institute. The Interagency Group is composed of the Secretaries of Education, Labor, and Health and Human Services. The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in implementing any programs to achieve those goals. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Institute's Director.

The National Institute for Literacy Advisory Board will meet January 25–26, 2007. On January 25, 2007 from 8:30 a.m. to 6 p.m.; and January 26, 2007 from 8:30 a.m. to 10 a.m., the Board will meet in open session to discuss the Institute's future and current program priorities; status of on-going Institute work; other relevant literacy activities and issues; and other Board business as necessary.

On January 26, 2007 from 10 a.m. to 1 p.m., the Board meeting will meet in closed session in order to discuss personnel issues. This discussion relates to the internal personnel rules and practices of the Institute, including consideration of the Director's performance. The discussion is likely to disclose information of personal nature where disclosure would constitute a clearly unwarranted invasion of personnel privacy. The discussion must therefore be held in closed session under exemptions 2 and 6 of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (6). A summary of the activities at the closed session and related matters that are informative to the public and consistent with the policy of 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

The National Institute for Literacy Advisory Board meeting on January 25–26, 2007, will focus on future and current program activities, and other relevant literacy activities and issues.

Records are kept of all Advisory Board proceedings and are available for public inspection at the National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006, from 8:30 a.m. to 5 p.m.

Dated: January 3, 2007.

**Sandra L. Baxter,**

*Director.*

[FR Doc. E7–66 Filed 1–8–07; 8:45 am]

BILLING CODE 6055–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos.: 50–263, 50–255; 50–266; 50–301, 50–282, 50–306 License Nos.; DPR–22, DPR–20 DPR–24; DPR–27, DPR–42, DPR–60; EA–06–178]**

### In the Matter of Nuclear Management Company, Monticello Nuclear Generating Plant, Palisades Nuclear Power Plant, Point Beach Nuclear Plant Units 1 & 2, Prairie Island Nuclear Generating Plant Units 1 & 2; Confirmatory Order Modifying License (Effective Immediately)

**I**

Nuclear Management Company, LLC (NMC or Licensee) is the holder of Facility Operating License Nos. DPR–20, DPR–42, and DPR–60 and renewed Facility Operating License Nos. DPR–22, DPR–24, and DPR–27 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on, February 21, 1991, April 5, 1974, October 29, 1974, November 8, 2006, December 22, 2005, and December 22, 2005, respectively. The licenses authorize the operation of Monticello Nuclear Generating Plant, Palisades Nuclear Power Plant, Point Beach Nuclear Plant (PBNP), and Prairie Island Nuclear Generating Plant in accordance with conditions specified therein. The facilities are located on the Licensee's sites in Monticello, Minnesota; South Haven, Michigan; Two Rivers, Wisconsin; and Red Wing, Minnesota.

**II**

On March 18, 2005, the NRC's Office of Investigations (OI) began an investigation to determine whether a senior reactor operator (SRO) at the PBNP was the subject of employment discrimination in violation of 10 CFR 50.7, ''Employee protection.'' In OI Report No. 3–2005–010, OI concluded that an SRO was discriminated against by PBNP management, in part, for raising safety concerns using the Licensees' corrective action program (CAP). By letter dated August 22, 2006, the NRC identified to the Licensee an apparent violation of 10 CFR 50.7, and offered NMC the opportunity to provide a written response, attend a predecisional enforcement conference, or to request alternative dispute resolution (ADR) in which a neutral mediator with no decision-making authority would facilitate discussions between the NRC and NMC and, if possible, assist the NRC and NMC in reaching an agreement. NMC chose to participate in ADR. On October 31, 2006, the NRC and NMC met in Green Bay, Wisconsin, in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution.

**III**

This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

Specifically, NMC agreed to the following:

1. By no later than nine (9) months after the issuance of this Confirmatory Order, NMC agrees to review, revise, and communicate to NMC employees and managers its policy relating to the writing of corrective action program (CAP) reports, and provide training to NMC employees and managers to clarify management's expectation regarding the use of the program with the goal to ensure employees are not discouraged, or otherwise retaliated or perceived to be retaliated against, for using the CAP.

2. By no later than June 30, 2007, NMC agrees to communicate its safety culture policy (including safety conscious work environment (SCWE)) to NMC employees, providing employees with the opportunity to ask questions in a live forum.

3. By no later than nine (9) months after the issuance of this Confirmatory Order, NMC agrees to train its employees holding supervisory positions and higher who have not had formal training on SCWE principles within the previous two years of the Confirmatory Order. NMC agrees to use

a qualified training instructor (internal or external) for such training.

NMC shall review and enhance, if necessary, its refresher SCWE training consistent with NMC's refresher training program and provide such refresher training to its employees. New employees holding supervisory positions and higher shall be trained on SCWE principles within nine (9) months of their hire dates unless within the previous two years of their hire dates, they've had the same or equivalent SCWE training.

4. By no later than March 30, 2007, NMC agrees: To develop action plans to address significant issues identified as needing management attention in the NMC 2004 and 2006 Comprehensive Cultural Assessments at PBNP; to conduct focus group interviews with Priority 1 & 2 organizations to understand the cause of the survey results; and to review and, as appropriate, reflect nuclear industry best practices in its conduct of focus groups and action plans to address the issues at PBNP.

NMC has agreed that this Confirmatory Order shall include the commitments noted above, and NRC has agreed it will not pursue any further enforcement action for this issue and will not count this matter as previous enforcement for the purposes of assessing potential future enforcement action civil penalty assessments in accordance with Section VI.C of the Enforcement Policy.

On December 20, 2006, NMC consented to the NRC issuing this Confirmatory Order with the commitments, as described in Section IV, below. NMC further agreed in its December 20, 2006, letter that this Confirmatory Order is to be effective upon issuance and that it has waived its right to a hearing. The NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that the Licensee's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments be confirmed by this Confirmatory Order. Based on the above and the Licensee's consent, this Confirmatory Order is immediately effective upon issuance. NMC is required to provide the NRC with a letter summarizing its actions when all of the Section IV requirements have been completed.

**IV**

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *it is hereby ordered,* effective immediately, that license nos. DPR–22, DPR–20, DPR–24, DPR–27, DPR–42, and DPR–60 are modified as follows:

1. By no later than nine (9) months after the issuance of this Confirmatory Order, NMC shall review, revise, and communicate to NMC employees and managers its policy relating to the writing of corrective action program (CAP) reports, and provide training to NMC employees and managers to clarify management's expectation regarding the use of the program with the goal to ensure employees are not discouraged, retaliated against, or perceived to be retaliated against, for using the CAP.

2. By no later than June 30, 2007, NMC shall communicate its safety culture policy (including safety conscious work environment (SCWE)) to NMC employees, providing employees with the opportunity to ask questions in a live forum.

3. By no later than nine (9) months after the issuance of this Confirmatory Order, NMC shall train its employees holding supervisory positions and higher who have not had formal training on SCWE principles within the previous two years of the confirmatory order. NMC agrees to use a qualified training instructor (internal or external) for such training.

NMC shall review and enhance, if necessary, its refresher SCWE training consistent with NMC's refresher training program and provide such refresher training to its employees. New employees holding supervisory positions and higher shall be trained on SCWE principles within nine (9) months of their hire dates unless within the previous two years of their hire dates, they've had the same or equivalent SCWE training.

4. By no later than March 30, 2007, NMC shall develop action plans to address significant issues identified as needing management attention in the NMC 2004 and 2006 Comprehensive Cultural Assessments at PBNP; to conduct focus group interviews with Priority 1 & 2 organizations to understand the cause of the survey results; and to review and, as appropriate, reflect nuclear industry best practices in its conduct of focus groups and action plans to address the issues at PBNP.

As part of the development of the action plans, NMC shall also assess and address any legacy issues identified in prior safety culture assessments (i.e. CAP report AR00510074 and Synergy Safety Culture Assessment) that impact the safety culture at PBNP.

The executive summary, analysis, and contemplated action plans shall also be submitted to the NRC.

5. By no later than December 31, 2008, NMC shall perform another survey at PBNP comparable to the 2004 and 2006 surveys to assess trends of the safety culture at the site and the overall effectiveness of corrective actions taken in response to prior year assessments (i.e. CAP report AR00510074 and 2006 Synergy survey).

6. By no later than 3 months after the receipt of the next cultural survey results at PBNP, NMC shall submit the executive summary, analysis of the results, and the contemplated corrective actions to the NRC.

7. NMC shall continue to implement a process which ensures that adverse employment actions are in compliance with NRC employee protection regulations and principles of SCWE.

.8. In the event of the transfer of the operating license of any NMC operated facility to another entity, the commitments shall survive for the NMC fleet generally and PBNP specifically.

9. Any reference to NMC employees includes all NMC employees fleet wide. The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

**V**

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532–4352, and to the Licensee. Because of potential disruptions in delivery of mail to United States

Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV shall be final 20 days from the date of this Order without further order or proceedings. If an extension of times for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. A request for hearing shall not stay the immediate effectiveness of this order.

Dated this 3rd day of January, 2007.

For the Nuclear Regulatory Commission.

**Cynthia A. Carpenter,**

*Director Office of Enforcement.*

[FR Doc. E7–74 Filed 1–8–07; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 40–2377, License No. Stb–472 (Terminated)**

## Kaiser Aluminum & Chemical Corporation; Notice of Completion of Decommissioning of Kaiser Aluminum & Chemical Corporation Site, Tulsa, OK

**ACTION:** Notice of Completion of Decommissioning of the Kaiser Aluminum & Chemical Corporation (Kaiser) Tulsa Site.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is noticing the completion of decommissioning activities at the Kaiser Tulsa Site located in Tulsa, Oklahoma.

**Background**

The Kaiser plant in Tulsa, Oklahoma, was built by the Standard Magnesium Corporation (SMC) in the early to mid-1950s to manufacture magnesium products. SMC received a source materials license from the Atomic Energy Commission (AEC) in March 1958, authorizing possession and title to magnesium-thorium alloy with up to 4 percent thorium content for processing. Scrap magnesium-thorium alloy was smelted along with other magnesium materials to recover the magnesium. Thorium alloy material comprised a small fraction of the total magnesium refined on site. Kaiser purchased the facility in 1964. Kaiser's license was terminated in 1971, by the AEC at Kaiser's request.

The Kaiser facility was placed on the Site Decommissioning Management Plan (SDMP) list in 1994, after the NRC detected surface contamination on, and adjacent to, the Kaiser property in 1993. Kaiser elected to remediate the site in two phases.

In Phase 1, Kaiser remediated the land adjacent to the Kaiser property. In Phase 2, Kaiser remediated the Kaiser property itself.

Kaiser conducted off-site remediation activities from October 2000, through May 2001. Remediation activities primarily involved excavating affected soil and moving it onto Kaiser's property. A final status survey (FSS) was performed following completion of remediation/excavation in each survey unit to demonstrate that post-remediation radiological conditions satisfied the SDMP Action Plan criteria for unrestricted release as specified in the Phase 1 Decommissioning Plan (DP). Following successful remediation, excavations were backfilled. In March 2002, NRC informed Kaiser that the adjacent land areas met NRC's criteria for unrestricted release.

Kaiser submitted the Phase 2 DP on May 25, 2001, [with revisions on May 31, 2003, October 6, 2003, May 5, 2005, September 8, 2005 and March 21, 2006] and DP Addendum on May 9, 2002, with a revision on May 31, 2003. NRC approved these documents on June 8, 2003, January 7, 2004, June 22, 2005, and October 3, 2005.

Although Kaiser is not a licensee, it agreed to perform remediation activities in accordance with 10 CFR Part 40. Kaiser conducted decommissioning activities at the site in accordance with its approved DP from June 2003 to June 2006. In accordance with the DP, Kaiser conducted FSSs to demonstrate that the facility and site meet the criteria for unrestricted release as defined it its DP. Details of the FSS results were submitted to the NRC in six separate FSS reports (FSSRs). On September 14, 2006, Kaiser notified NRC that it had completed decommissioning and FSSs of the Tulsa, Oklahoma site, and that the FSSs demonstrate that the site meets the criteria for decommissioning and release for unrestricted use.

NRC conducted a number of independent confirmatory surveys to verify FSS results obtained by Kaiser. Confirmatory surveys consisted of surface scans for beta and gamma radiation, direct measurements for total beta activity, collection and analysis of soil samples for thorium, and collection of smear samples for determining removable radioactivity levels.

The Commission has concluded, based on the considerations discussed above, that: (1) Radioactive material above release limits has been properly disposed; (2) reasonable effort has been made to eliminate residual radioactive contamination; (3) submitted FSSRs and associated documentation, demonstrate that the facility and site are suitable for release in accordance with the criteria for decommissioning in 10 CFR Part 20, Subpart E; and (4) records required by 10 CFR 40.61(d) and (f) have been received. Therefore, the Kaiser Tulsa Site is suitable for unrestricted release.

**FOR FURTHER INFORMATION CONTACT:** See the letter dated September 14, 2006, and the Safety Evaluation Report dated December 29, 2006, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agency-wide 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* (ADAMS Accession Nos. ML062700322, and ML062360251).

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 29th day of December, 2006.

For the Nuclear Regulatory Commission.

**Keith I. McConnell,**

*Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.*

[FR Doc. E7–73 Filed 1–8–07; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for written submissions from the public.

**SUMMARY:** Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. (Section 182 is commonly referred to as the ''Special ''301'' provisions of the Trade Act.) In addition, the USTR is required to determine which of these countries should be identified as Priority Foreign Countries. Acts, policies or practices that are the basis of a country's identification as a priority foreign country are normally the subject of an investigation under the Section 301 provisions of the Trade Act. Section 182 of the Trade Act contains a special rule for the identification of actions by Canada affecting United States cultural industries.

USTR requests written submissions from the public concerning foreign countries' acts, policies, and practices that are relevant to the decision whether particular trading partners should be identified under Section 182 of the Trade Act.

**DATES:** Submissions must be received on or before *10 a.m. on Monday, February 12, 2007.*

**ADDRESSES:** All comments should be addressed to Sybia Harrison, Special Assistant to the Section 301 Committee, and sent (i) electronically, to *FR0606@ustr.eop.gov* (please note, ''FR0606'' consists of the *numbers* ''zero-six-zero-six,'') with ''Special 301 Review'' in the subject line, or (ii) by fax, to (202) 395–9458, with a confirmation copy sent electronically to the e-mail address above.

**FOR FURTHER INFORMATION CONTACT:** *Jennifer Choe Groves,* Director for Intellectual Property and Innovation and Chair of the Special 301 Committee, Office of the United States Trade Representative.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 182 of the Trade Act, USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are to be identified as Priority Foreign Countries. Acts, policies or practices that are the basis of a country's designation as a Priority Foreign Country are normally the subject of an investigation under the Section 301 provisions of the Trade Act.

USTR may not identify a country as a Priority Foreign Country if it is entering into good faith negotiations, or making significant progress in bilateral or multilateral negotiations, to provide adequate and effective protection of intellectual property rights.

USTR requests that, where relevant, submissions mention particular regions, provinces, states, or other subdivisions of a country in which an act, policy, or practice deserve special attention in this year's report. Such mention may be positive or negative, so long as it deviates from the general norm in that country.

Section 182 contains a special rule regarding actions of Canada affecting United States cultural industries. The USTR must identify any act, policy or practice of Canada that affects cultural industries, is adopted or expanded after December 17, 1992, and is actionable under Article 2106 of the North American Free Trade Agreement (NAFTA). Any act, policy or practice so identified shall be treated the same as an act, policy or practice which was the basis for a country's identification as a Priority Foreign Country under Section 182(a)(2) of the Trade Act, unless the United States has already taken action pursuant to Article 2106 of the NAFTA.

USTR must make the above-referenced identifications within 30 days after publication of the National Trade Estimate (NTE) report, i.e., no later than April 30, 2007.

*Requirements for comments:* Comments should include a description of the problems experienced and the effect of the acts, policies, and practices on U.S. industry. Comments should be as detailed as possible and should provide all necessary information for assessing the effect of the acts, policies, and practices. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses.

Comments must be in English. No submissions will be accepted via postal service mail. Documents should be submitted as either WordPerfect, MS Word, .pdf, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel files. A submitter requesting that information contained in a comment be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. A non-confidential version of the comment must also be provided. For any document containing business confidential information, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the character ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Submissions should not include separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

All comments should be addressed to Sybia Harrison, Special Assistant to the Section 301 Committee, and sent (i) electronically, to *FR0606@ustr.eop.gov* (please note, ''FR0606'' consists of the *numbers* ''zero-six-zero-six,'') with ''Special 301 Review'' in the subject line, or (ii) by fax, to (202) 395–9458, with a confirmation copy sent electronically to the email address above.

*Public inspection of submissions:* (1) Within one business day of receipt, non-confidential submissions will be placed in a public file open for inspection at the USTR reading room, Office of the United States Trade Representative, Annex Building, 1724 F Street, NW., Room 1, Washington, DC. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling Jacqueline Caldwell at (202) 395–6186. The USTR reading room is open to the public from 10 a.m. to noon and from 1 p.m. to 4 p.m., Monday through Friday; or (2)

non-confidential submissions received in electronic form will be made available on USTR's Web site at *http://www.ustr.gov.*

**Chris Wilson,**

*Acting Assistant USTR for Intellectual Property and Innovation.*

[FR Doc. E7–108 Filed 1–8–07; 8:45 am]

**BILLING CODE 3190–W7–P**

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Sunshine Act Meeting Notice

**TIME AND DATE:** Thursday, January 18, 2007, 9:30 a.m. (Open Portion) 9:45 a.m. (Closed Portion).

**PLACE:** Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

**STATUS:** Meeting Open to the Public from 9:30 a.m. to 9:45 a.m., Closed portion will commence at 9:45 a.m. (approx.)

**MATTERS TO BE CONSIDERED:**

1. President's Report.
2. Tribute—Collister Johnson.
3. Approval of September 21, 2006 Minutes (Open Portion).

**FURTHER MATTERS TO BE CONSIDERED:** (Closed to the Public 10:15 a.m.)

1. Report from Audit Committee.
2. Auditor's Report to the Board.
3. Finance Project—Afghanistan.
4. Finance Project—Russia.
5. Finance Project—Jordan.
6. Finance Project—Global.
7. Finance Project—Global.
8. Finance Project—Latin America.
9. Finance Project—Jordan.
10. Finance Project—Lebanon/Jordan/Middle East.
11. Approval of September 21, 2006 Minutes (Closed Portion).
6. Pending Major Projects.
7. Reports.

**CONTACT PERSON FOR INFORMATION:** Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: January 5, 2007.

**Dev Jagadesan,**

*Deputy General Counsel, Overseas Private Investment Corporation.*

[FR Doc. 07–41 Filed 1–5–07; 11:51 am]

**BILLING CODE 3210–01–M**

## POSTAL REGULATORY COMMISSION

### Sunshine Act Meetings

**NAME OF AGENCY:** Postal Regulatory Commission.

**TIME AND DATE:** Convening on Tuesday, January 9, 2007, at 9:30 a.m., and continuing daily thereafter as needed, at 9:30 a.m. or after, until completed.

**PLACE:** Commission conference room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Recommendations in Docket No. R2006–1.

**CONTACT PERSON FOR MORE INFORMATION:** Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, 202–789–6820.

Dated: January 5, 2007.

**Steven W. Williams,**

*Secretary.*

[FR Doc. 07–40 Filed 1–5–07; 12:35 pm]

**BILLING CODE 7710–FW–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–27652; 812–13351]**

### FBR Fund Advisers, Inc., et al.; Notice of Application

December 29, 2006.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (the ''Act'').

**SUMMARY OF APPLICATION:** Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Friedman, Billings, Ramsey & Co., Inc. (''FBR & Co.'') on or about December 22, 2006 by the United States District Court for the District of Columbia, until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

**APPLICANTS:** FBR Fund Advisers, Inc. (''FBR Advisers''), FBR Investment Services, Inc. (''FBRIS''), and FBR Investment Management, Inc. (''FBRIM'') (collectively, the ''Applicants'').[1]

**FILING DATE:** The application was filed on December 22, 2006. Applicants have agreed to file a final amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 23, 2007, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o William Ginivan, General Counsel, Friedman, Billings, Ramsey Group, Inc., Potomac Tower, 1001 Nineteenth Street North, Arlington, VA 22209.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Mann, Senior Counsel, at (202) 551–6813, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (tel. 202–551–5850).

#### Applicants' Representations

1. FBR Advisers, FBRIS, and FBRIM are wholly-owned subsidiaries of Friedman, Billings, Ramsey Group, Inc. (''FBR''). FBR, a Virginia corporation, is a diversified financial services holding company that engages in investment banking, institutional brokerage and asset management services, among other activities. FBR Advisers, an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act''), serves as investment adviser to certain series of FBR Funds (the ''Funds''), an open-end management investment company organized as a Delaware statutory trust and registered under the Act. FBRIS, a broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act''), serves as principal underwriter and distributor of shares of the Funds. FBRIM, an investment adviser registered under the Advisers Act, serves as investment adviser to certain employees' securities companies (''ESCs''), as defined in section 2(a)(13) of the Act, which are

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which FBR & Co. is or becomes an affiliated person, other than any company of which Emanual J. Friedman is or becomes an affiliated person (together with Applicants, ''Covered Persons'').

investment vehicles formed for the benefit of employees of FBR and its affiliates.

2. On or about December 22, 2006, the United States District Court for the District of Columbia entered a final judgment against FBR & Co., a broker-dealer registered under the Exchange Act, in a matter brought by the Commission (the ''Final Judgment'').[2] FBR & Co. is a wholly-owned subsidiary of FBR. The Commission alleged in the complaint (''Complaint'') that, in connection with a Private Investment in Public Equity offering of stock by CompuDyne Corporation, for which FBR & Co. served as placement agent, FBR & Co. failed to establish, maintain and enforce policies and procedures reasonably designed to prevent the misuse of material, nonpublic information, unlawfully traded while aware of material nonpublic information and conducted unregistered sales of securities. One of the individuals alleged to have been involved in the conduct underlying the Complaint is Emanuel J. Friedman, the former co-chairman and co-chief executive officer of FBR, former chairman and co-chief executive officer of FBR & Co., and former chairman and co-chief executive officer of FBRIM. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, FBR & Co. consented to the entry of the Final Judgment. The Final Judgment permanently restrains and enjoins FBR & Co., and its agents, servants, employees, and attorneys, from violating sections 10(b) and 15(f) of the Exchange Act and rule 10b–5 thereunder and sections 5 and 17(a) of the Securities Act of 1933 (''Securities Act'') (the ''Injunction'').[3] FBR & Co. also consented to the payment of disgorgement plus prejudgment interest in addition to civil penalties in an aggregate amount of approximately $3.7 million.[4]

**Applicants' Legal Analysis**

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). ''Affiliated person'' is defined in section 2(a)(3) of the Act to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that FBR & Co. is an affiliated person of each of the Applicants within the meaning of section 2(a)(3) of the Act because FBR controls FBR & Co., FBR Advisers, FBRIS and FBRIM. Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) of the Act if it is established that these provisions, as applied to the applicants, are unduly or disproportionately severe or that the conduct of the applicants has been such as not to make it against the public interest or protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking temporary and permanent orders exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that although Mr. Friedman was co-chairman and co-chief executive officer of FBR, co-chairman and co-chief executive officer of FBRIM and also participated in the conduct described in the Injunction, Mr. Friedman is no longer employed by FBR, FBRIM or FBR & Co. Applicants also state that none of their officers, directors or employees who are engaged in the provision of investment advisory or underwriting services to the Funds or investment advisory services to the ESCs participated in any way in the conduct underlying the Injunction. Applicants further state that the conduct underlying the Injunction did not involve any Funds or ESCs.

5. Applicants state that the inability to continue providing advisory and underwriting services to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also state that they have distributed, or will distribute as soon as reasonably practicable, written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds (the ''Boards''), including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of such Funds and their independent legal counsel, as defined in rule 0–1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. Applicants will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in underwriting and advising the Funds. The Applicants have never before received an exemptive order under section 9(c).

7. Applicants further state that prohibiting FBRIM from continuing to serve as investment adviser to the ESCs is not in the public interest or in furtherance of the protection of investors. Because the ESCs relate to employee retention and compensation matters and are sponsored for employees of FBR and its affiliates, it would not be consistent with the purposes of the employees' securities company provisions of the Act to require another entity not affiliated with FBR to serve as investment adviser to the ESCs. In addition, the participating employees have agreed to participate in the ESCs with the expectation that the ESCs will be managed by their employer.

[2] *Securities and Exchange Commission* v. *Friedman, Billings, Ramsey & Co., Inc., et al.*, Final Judgment as to Friedman, Billings, Ramsey & Co., Inc., 06–CV–02160 (RCL) (D.D.C., filed Dec. 22, 2006).

[3] The Final Judgment also enjoins Mr. Friedman from violating section 5 of the Securities Act and, as a controlling person pursuant to section 20(a) of the Exchange Act, from violating sections 10(b) and 15(f) of the Exchange Act and rule 10b-5 thereunder. The Final Judgment also imposes civil penalties on Mr. Friedman. Mr. Friedman is an affiliated person of FBR under section 2(a)(3)(A) of the Act by virtue of his ownership of 6.09% of the outstanding voting securities of FBR. The requested temporary and permanent orders will not apply to Mr. Friedman or to any company of which Mr. Friedman is or becomes an affiliated person, which currently includes FBR.

[4] FBR & Co. also has agreed to certain undertakings designed to ensure that it does not commit future violations with respect to the misuse of material nonpublic information.

**Applicants' Condition**

Applicants agree that any order granting the requested relief shall be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemption granted under the Act in connection with the application.

**Temporary Order**

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly, *it is hereby ordered*, pursuant to section 9(c) of the Act, that the Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective as of the date of the Injunction, solely with respect to the Injunction, subject to the condition in the application, until the date the Commission takes final action on an application for a permanent order.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E7–60 Filed 1–8–07; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–27651; File No. 812–13282]**

## Sun Life Assurance Company of Canada (U.S.), et al., Notice of Application

December 29, 2006.

**AGENCY:** Securities and Exchange Commission (the ''Commission'').

**ACTION:** Notice of application for an order of approval pursuant to Section 26(c) of the Investment Company Act of 1940, as amended (the ''Act''), and an order of exemption pursuant to Section 17(b) of the Act from Section 17(a) of the Act.

**APPLICANTS:** Sun Life Assurance Company of Canada (U.S.) (''Sun Life U.S.''), Sun Life Insurance and Annuity Company of New York (''Sun Life N.Y.'') (together with Sun Life U.S., the ''Companies''), Keyport Variable Account A (''Keyport Account A''), Sun Life of Canada (U.S.) Variable Account F (''Account F''), Sun Life of Canada (U.S.) Variable Account I (''Account I''), KBL Variable Annuity Account (''KBL Annuity Account''), KBL Variable Account A (''KBL Account A''), and Sun Life (N.Y.) Variable Account C (''Account C'') (collectively, the ''Applicants''). Applicants, together with Sun Capital Advisers Trust (''Sun Capital Trust'') are ''Section 17(b) Applicants.''

**SUMMARY OF APPLICATION:** Applicants seek an order approving the proposed substitutions (the ''Substitutions'') of Class O shares of Alger American Growth Portfolio of the Alger American Fund and Class A and Class B shares of the AllianceBernstein VPS Large Cap Growth Portfolio of the AllianceBernstein Variable Product Series Fund (collectively, the ''Old Portfolios'') with Initial and Service Class Shares of the SC FI Large Cap Growth Fund of Sun Capital Trust (the ''New Portfolio'') under certain variable life insurance policies and variable annuity contracts (''Contracts''). Section 17(b) Applicants also seek an order pursuant to Section 17(b) of the Act to permit certain in-kind transactions in connection with the Substitutions.

**FILING DATE:** The application was originally filed on April 19, 2006, and an amended and restated application was filed on December 20, 2006.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on January 24, 2007, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

**ADDRESSES:** The Commission: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: c/o Maura A. Murphy, Esq., Sun Life Assurance Company of Canada (U.S.), One Sun Life Executive Park, Wellesley Hills, Massachusetts 02481.

**FOR FURTHER INFORMATION CONTACT:** Rebecca A. Marquigny, Senior Counsel, or Joyce M. Pickholz, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 100 F Street, NE., Washington, DC 20549 (202–551–8090).

**Applicants' and Section 17 Applicants' Representations**

1. Sun Life U.S. is a stock life insurance company ultimately controlled by Sun Life Financial Inc. (''Sun Life Financial''), a Canadian reporting company under the Securities Exchange Act of 1934 (the ''1934 Act''). Pursuant to a 2003 merger, Keyport Life Insurance Company (''Keyport'') was merged with and into Sun Life U.S. with Sun Life U.S. as the survivor. Sun Life U.S. is the depositor and sponsor of Keyport Account A, Account F, and Account I.

2. Keyport Account A is registered with the Commission under the Act as a unit investment trust (File No. 811–07543) with interests are offered through Contracts (the ''Keyport Contracts'') registered under the Securities Act of 1933 (''1933 Act'') on Form N–4 (File Nos. 333–114126, 333–114129, 333–114132, 333–111642, 333–111645, 333–111646, 333–111647, and 333–111648). Account F is registered as a unit investment trust (File No. 811–05846); its interests are also offered through Contracts (the ''Account F Contracts'') registered under the 1933 Act on Form N-4 (File Nos. 33–29852, 33–41628, 333–37907, 333–05227, 333–82957, 333–30844, 333–31248, 333–41438, 333–74844, 333–83256, 333–83362, 333–83364, 333–83516, 333–74972, 333–115525, and 333–115536). Account I, registered as a unit investment trust (File No. 811–09137) also offers its interests through Contracts (the ''Account I Contracts'') registered under the 1933 Act on Form N–6 (File Nos. 333–68601, 333–59662, 333–94359, 333–100831, and 333–100829).

3. Sun Life N.Y., a wholly owned subsidiary of Sun Life U.S., is a stock life insurance company which merged with Keyport Benefit Life Insurance Company (''KBL''), a subsidiary of Keyport, in 2002. Sun Life N.Y. is the depositor and sponsor of the KBL Annuity Account, KBL Account A, and Account C.

4. KBL Annuity Account is a registered unit investment trust (File No. 811–05422) for which interests are offered through a Contract (the ''KBL

Annuity Contract'') registered under the 1933 Act on Form N–4 (File No. 333–102275). KBL Account A is a registered unit investment trust (File No. 811–08635) with interests are offered through other Contracts (the ''KBL Account A Contracts'') registered under the 1933 Act on Form N–4 (File Nos. 333–102274, 333–102278, 333–102279, and 333–102280). Account C, a registered unit investment trust (File No. 811–04440), also offers its interests through certain Contracts (the ''Account C Contracts'') registered under the 1933 Act on Form N–4 (File Nos. 33–41629, 333–05037, 333–67864, 333–100475, 333–100474, 333–99907, and 333–107983).

5. All of the Contracts involved in the Substitutions (a) reserve the right to substitute shares of one portfolio for shares of another; (b) permit transfers of contract value among the subaccounts pursuant to the limitations of the particular Contract, (c) impose or reserve the right to impose a transfer charge; and (d) are subject to market timing policies and procedures that may operate to limit transfers.

6. Applicants represent that: (a) The Keyport Contracts involved in the Substitutions are no longer offered for sale, except to certain employee plans; (b) none of the Account I, KBL Account A, or KBL Annuity Contracts involved in the Substitutions are still offered for sale; and (c), the subaccounts investing in the Old Portfolios are no longer offered as investment options to new Contract owners under the Account F Contracts and Account C Contracts.

7. Alger American Growth Portfolio (''Alger Growth'' or ''Old Portfolio'') is a portfolio of Alger American Fund, a registered, diversified, open-end management investment company (File No. 811–05550). Class O and Class S of its shares are registered under the 1933 Act on Form N–1A (File No. 33–21722). The shares are the same except Class S shares are subject to a distribution and shareholder servicing fee while Class O shares are not. The portfolio's investment adviser is Fred Alger Management, Inc. (''FAM'').

8. AllianceBernstein VPS Large Cap Growth Portfolio (''AB Large Cap Growth'') is a portfolio of the AllianceBernstein Variable Product Series Fund, a registered diversified, open-end management investment company (File No. 811–05398). Class A and B shares of AB Large Cap Growth (also referred to as ''Old Portfolio'') are registered under the 1933 Act on Form N–1A (File No. 33–18647). The shares are the same except Class B shares are subject to a distribution fee and Class A shares are not. AllianceBernstein L.P. (''AB L.P.'') is the portfolio's investment adviser.

9. SC FI Large Cap Growth Fund (''SC Large Cap Growth'' or ''New Portfolio'') is a portfolio of Sun Capital Trust, a registered, diversified, open-end management investment company (File No. 811–08879). Initial and Service Class shares of New Portfolio are registered under the 1933 Act on Form N–1A (File No. 333–59093); the shares are the same except that Service Class shares are subject to a distribution fee and Initial Class shares are not.

10. Sun Capital Advisers LLC (''Sun Capital''), an indirect, wholly owned subsidiary of Sun Life Financial, is investment adviser to all the Sun Capital Trust portfolios. Through an order from the Commission pursuant to Section 6(c) of the Act, Sun Capital is exempt from Section 15(a) of the Act and Rule 18f–2 thereunder with respect to subadvisory agreements (the ''Manager of Managers Order'').[1]

11. Applicants represent that the relief granted in the Manager of Managers Order extends to New Portfolio permitting it to enter into and materially amend investment subadvisory agreements without obtaining shareholder approval. Applicants also indicate that the prospectus for the New Portfolio discloses and explains the existence, substance and effect of the Manager of Managers Order.

12. Applicants propose to substitute (a) Initial Class shares of New Portfolio for Class O shares of Alger Growth; (b) Initial Class shares of New Portfolio for Class A shares of AB Large Cap Growth; and (c) Service Class shares of New Portfolio for Class B shares of AB Large Cap Growth. Applicants state that the proposed Substitutions are part of an overall business goal of the Companies to make the Contracts more attractive to Contract owners by providing a diverse array of investment options that are not redundant or duplicative in terms of the investment types and styles of mutual funds underlying such options. Applicants assert their belief that:

(a) Reducing the number of nonproprietary funds will provide the Companies with more control over fund changes that affect their Contracts, allowing for appropriate long-term strategic planning;

(b) The New Portfolio better promotes their goals of increasing administrative efficiency of, and control over, their Contracts because the New Portfolio is part of their affiliated fund family;

(c) Streamlining the number of nonproprietary funds available through the Contracts and altering the available portfolios will simplify the administration of the Contracts, particularly with regard to communications with the fund families and the preparation of various reports and disclosure documents; and

(d) This streamlining will allow the Companies to enhance their communication efforts to Contract owners and sales representatives regarding the available portfolios, and may provide for more enhanced and timely reporting to the Companies from fund families and therefore from the Companies to Contract owners.

13. Regarding Contracts that offer both of the Old Portfolios as investment options, Applicants assert that a more concentrated and streamlined array of investment options could result in increased operational and administrative efficiencies and economies of scale for the Companies. Applicants note that Contract owners could benefit from streamlining Contract investment options. Specifically, Applicants state that Contracts that offer too many similar investment options may be unnecessarily confusing to Contract owners and may increase the Companies' costs of administering the Contracts.

14. Applicants represent that because the New Portfolio operates pursuant to the Manager of Managers Order, the Substitutions would provide protection to Contract owners by giving Sun Capital the agility and flexibility to change the subadviser of the New Portfolio should such a change become warranted or advisable. In support of the Substitutions, Applicants further represent that the Substitutions will provide Contract owners with substantially similar investment vehicles. Specifically, Applicants assert that the investment objectives, principal investment strategies and principal investment risks of the New Portfolio are substantially similar to those of the Old Portfolios. The following summarizes the more complete comparison of New and Old Portfolios provided in the Application.

15. *Alger Growth Substitution.*

Applicants describe the investment objective of Alger Growth as ''to seek long-term capital appreciation'' and the investment objective of New Portfolio as ''to seek long-term growth of capital.'' Applicants state that the principal investment strategies of the two portfolios are substantially similar

[1] Sun Capital Advisers Trust and Sun Capital Advisers, Inc., 1940 Act Rel. No. 24401 (April 24, 2000) (Order), File No. 812–11790; see also Sun Capital Advisers Trust and Sun Capital Advisers, Inc., 1940 Act Rel. No. 23793 (Apr. 20, 1999) (Order), File No. 812-11464.

noting that both invest primarily in common stocks with an emphasis on ''growth'' stocks and the stocks of highly capitalized companies. Alger Growth invests at least 65% of its total assets in equity securities of companies that, at the time of purchase, have total market capitalization of $1 billion or greater. SC Large Cap Growth invests at least 80% of its assets in the common stocks of companies with large market capitalizations. Both portfolios may invest up to 20% of the value of their total assets in foreign securities (not including American Depositary Receipts, American Depositary Shares, or U.S. dollar denominated securities of foreign issuers). Applicants represent that both Alger Growth and New Portfolio have substantially similar risk characteristics and share substantially similar risk profiles.

Charges for Class O of Alger Growth include Management Fees of 0.75%, Other Expenses of 0.06%, and no 12b–1 Fee.[2] Charges for the Initial Class shares of New Portfolio include: Management Fees of 0.75% and Other Expenses of 0.30%; it does not charge a 12b–1 Fee. Alger Growth's total gross and net operating expenses are both 0.81%. Respectively, New Portfolio's total gross and net operating expenses are 1.05% and 0.81% (reflecting a 0.24% contractual fee reduction arrangement).

16. *AB Large Cap Growth Substitutions*.

Applicants represent that the investment objectives of AB Large Cap Growth and New Portfolio are identical; both portfolios see long-term growth of capital. Applicants state that the principal investment strategies of the two portfolios are substantially similar noting that New Portfolio invests at least 80% of its net assets in common stocks of large-capitalization companies based on the market capitalization of companies in the Russell 1000 Index or the S&P 500. Old Portfolio invests an identical 80% of its assets in common stock of companies with large market capitalizations based on the market capitalization range of companies appearing in the Russell 1000 Growth Index. Applicants represent that both AB Large Cap Growth and New Portfolio have substantially similar risk characteristics as both invest in substantially similar securities.

For the proposed substitution involving Class A of AB Large Cap Growth, charges for Class A of Old Portfolio include Management Fees of 0.75% and Other Expenses of 0.06%. Charges for the Initial Class of New Portfolio include Management Fees of 0.75% and Other Expenses of 0.30%. Neither imposes a 12b–1 Fee. The Old Portfolio's total gross and net operating expenses for Class A shares are both 0.81%. Respectively, New Portfolio's total gross and net operating expenses for Initial Class shares are 1.05% and 0.81% (reflecting a 0.24% contractual fee reduction arrangement).

For the proposed substitution involving Class B of AB Large Cap Growth, charges for Class B of Old Portfolio include Management Fees of 0.75%, 12b–1 Fees of 0.25%, and Other Expenses of 0.06%. Charges for the Service Class of New Portfolio include Management Fees of 0.75%, 12b–1 Fees of 0.25%, and Other Expenses of 0.30%. The Old Portfolio's total gross and net operating expenses for Class B shares are both 1.06%. Respectively, New Portfolio's total gross and net operating expenses for Service Class shares are 1.30% and 1.06% (reflecting a 0.24% contractual fee reduction arrangement).

17. Applicants assert that as of the effective date of the Substitutions (''Effective Date''), each Separate Account will redeem shares of the applicable Old Portfolio in-kind. Applicants state that if Sun Capital declines to accept particular portfolio securities of either of the Old Portfolios for purchase in-kind of shares of the New Portfolio, the applicable Old Portfolio will liquidate portfolio securities as necessary and shares of the New Portfolio will be purchased with cash. Applicants represent that in either event, the proceeds of such redemptions will then be used to purchase shares of the corresponding class of the New Portfolio, with each subaccount of the applicable Separate Account investing the proceeds of its redemption from the Old Portfolios in the applicable class of the New Portfolio.

18. Applicants further state that redemption requests and purchase orders will be placed simultaneously so that contract values will remain fully invested at all times. Applicants represent that all redemptions of shares of the Old Portfolios and purchases of shares of the New Portfolios will be effected in accordance with Section 22(c) of the Act and Rule 22c–1 thereunder. Applicants state that the Substitutions will take place at relative net asset value as of the Effective Date with no change in the amount of any Contract owner's contract value or death benefit or in the dollar value of his or her investments in any of the subaccounts. Applicants represent that Contract owners will receive Service Class shares of the New Portfolio in the Substitutions only if they are currently invested in Class B shares of the AB Large Cap Growth, which also imposes a distribution fee.

19. Applicants further represent that all expenses incurred in connection with the Substitutions, including legal, accounting, transactional, and other fees and expenses, including brokerage commissions, will be paid by Sun Life U.S. or Sun Life N.Y. Applicants also state that, as a result of the Substitutions, Contract owners will not incur any additional fees or charges, nor will their rights or insurance benefits or the Companies' obligations under the Contracts be altered. Applicants assert that the Substitutions: (a) Will not impose any tax liability on Contract owners; and (b) will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the Substitutions than before the Substitutions. Applicants represent that neither Sun Life U.S. nor Sun Life N.Y. will exercise any right either may have under the Contracts to impose restrictions on transfers under the Contracts for a period of at least thirty days following the Substitutions.

20. Applicants represent that during the twenty-four months following the date of the Substitutions, the total net operating expenses of the applicable class of the New Portfolio (taking into account any expense waiver or reimbursement) will not exceed the net expense level of the corresponding class of the Old Portfolio for the fiscal year ended December 31, 2005. Applicants also state that through the twenty-four months following the date of the Substitutions, Sun Capital has contractually agreed to waive its management fee and, if necessary, to limit other ordinary operating expenses so that total operating expenses, as a percentage of average net assets, do not exceed 0.81% or 1.06%, as applicable. In addition, Applicants represent that for twenty-four months following the date of the Substitutions, the Companies will not increase asset-based fees or charges for Contracts outstanding on the date of the Substitutions.

21. Applicants represent that a prospectus for the New Portfolio containing disclosure about the Manager of Managers Order will be provided to each Contract owner prior to or at the time of the Substitutions. Notwithstanding the Manager of Managers Order, after the Effective Date of the Substitutions, the Applicants agree not to change the New Portfolio's subadviser, add a new subadviser, or

[2] For the descriptions of charges involved in the Substitution, all percentages for the Management Fees, 12b–1 Fees, Other Expenses, Fee Reductions, Total Gross and Net Annual Operating Expenses, and Separate Account Fees represent a percentage of average annual assets.

otherwise rely on the Manager of Managers Order without first obtaining shareholder approval of either: (1) The subadviser change; or (2) the New Portfolio's continued ability to rely on the Manager of Managers Order.

22. Applicants state that Contract owners were notified of the initial application by means of a prospectus supplement for each of the Contracts stating that the Applicants filed the initial application and seek approval for the Substitutions (''Pre-Substitution Notice''). The Pre-Substitution Notice set forth the anticipated Effective Date and advised Contract owners that contract values attributable to investments in the Old Portfolios will be transferred to the New Portfolios, without charge (including sales charges or surrender charges) and without counting toward the number of transfers that may be permitted without charge, on the Effective Date. Applicants indicate that the Pre-Substitution Notice stated that, from the date the initial application was filed with the Commission through the date thirty days after the Substitutions, Contract owners may make one transfer of contract value from the subaccounts investing in the Old Portfolios (before the Substitutions) or the New Portfolio (after the Substitutions) to one or more other subaccount(s) without charge (including sales charges or surrender charges) and without that transfer counting against their contractual transfer limitations.

23. Applicants represent that all Contract owners will have received a copy of the most recent New Portfolio prospectus prior to the Substitutions. Applicants also agree that, within five days following the Substitutions, Contract owners affected by the Substitutions will be notified in writing that the Substitutions were carried out and that this notice will restate the information set forth in the Pre-Substitution Notice.

**Applicants' Legal Analysis**

1. Section 26(c) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission may approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants submit that the Substitutions meet the standards set forth in Section 26(c) and assert that replacement of the Old Portfolios with the New Portfolio is consistent with the protection of Contract owners and the purposes fairly intended by the policy and provisions of the Act. Applicants have reserved the right to make such a substitution under the Contracts and represent that this reserved right is disclosed in the prospectus for the Contracts.

3. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits the persons described above, acting as principal, from knowingly purchasing any security or other property from the registered company. Pursuant to Section 10(a)(1) of the Act, the Section 17(b) Applicants may be considered affiliates of one or more of the portfolios involved in the Substitutions. Because the Substitutions may be effected, in whole or in part, by means of in-kind redemptions and subsequent purchases of shares and by means of in-kind transactions, the Substitutions may be deemed to involve one or more purchases or sales of securities or property between affiliates.

4. Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that: The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and records filed under the Act; and the proposed transaction is consistent with the general purposes of the Act.

5. The Section 17(b) Applicants state that the terms under which the in-kind redemptions and purchases will be effected are reasonable and fair and do not involve overreaching on the part of any person principally because the Substitutions will conform with all but two of the conditions enumerated in Rule 17a–7. Applicants assert that the use of in-kind transactions will not cause Contract owner interests to be diluted. In support, Applicants represent that: (a) The proposed transactions will take place at relative net asset value as of the Effective Date in conformity with the requirements of Section 22(c) of the 1940 Act and Rule 22c–1 thereunder with no change in the amount of any Contract owner's contract value or death benefit or in the dollar value of his or her investment in any of the Separate Accounts; (b) Contract owners will not suffer any adverse tax consequences as a result of the Substitutions; and (c) Fees and charges under the Contracts will not increase because of the Substitutions.

6. Further, though the Section 17(b) Applicants may not rely on Rule 17a–7 because they cannot meet all of its conditions, the Section 17(b) Applicants agree to carry out the proposed in-kind purchases in conformity with all of the conditions of Rule 17a–7 and the procedures adopted thereunder, except that: (1) The consideration paid for the securities being purchased or sold may not be entirely cash; and (2) the Sun Capital Trust board will not separately review each portfolio security purchased by the New Portfolio. However, Applicants assert that the circumstances surrounding the Substitutions will offer the same degree of protection to the New Portfolio from overreaching that Rule 17a–7 provides to it generally in connection with its purchase and sale of securities under that Rule in the ordinary course of its business.

7. Applicants assert that the Board of Sun Capital Trust has adopted procedures, as required by Rule 17a–7, and that Sun Capital or any subadviser to the New Portfolio will review the securities holdings of the Old Portfolio to determine whether their portfolio holdings would be suitable investments for the New Portfolio in the overall context of its investment objectives and policies and consistent with its management. Applicants also note that the Companies (or any of their affiliates) cannot effect the proposed Substitutions at a price disadvantageous to the New Portfolio. Although the Substitutions may not be entirely for cash, Applicants represent that each will be effected based upon (1) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a–7, and (2) the net asset value per share of each portfolio involved valued according to the procedures disclosed in its registration statement and as required by Rule 22c–1 under the Act. The Section 17(b) Applicants state that securities to be paid out as redemption proceeds and subsequently contributed to the New Portfolio to effect the in-kind purchases of shares will be valued based on the normal valuation procedures of the redeeming and purchasing Portfolios, and redeeming and purchasing values will be the same. Applicants note that if Sun Capital

declines to accept particular portfolio securities of either of the Old Portfolios for purchase in-kind of shares of the New Portfolio, the applicable Old Portfolio will liquidate portfolio securities as necessary and purchase New Portfolio shares with cash. Consistent with Rule 17a–7(d), Applicants also agree that no brokerage commissions, fees, or other remuneration will be paid in connection with the in-kind transactions.

**Conclusions**

1. Applicants submit that for the reasons and upon the facts set forth in their application, the requested order meets the standards set forth in Section 26(c) and should, therefore, be granted.

2. Section 17 Applicants represent that the proposed in-kind transactions meet all of the requirements of Section 17(b) of the Act and that an exemption should be granted, to the extent necessary, from the provisions of Section 17(a).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E7–61 Filed 1–8–07; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55018; File No. SR–Amex–2006–109]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Listing Standards for Series of Portfolio Depositary Receipts and Index Fund Shares

December 28, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 21, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. Amex filed Amendment No. 1 with the Commission on December 20, 2006. This order provides notice of the proposed rule change as modified by Amendment No. 1 and approves the proposed rule change on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make clarifying changes to Amex Rules 1000, 1002, 1000A and 1002A and minor, typographical changes to Amex Rules 1000, 1002 and 1002A, relating to listing standards for series of portfolio depositary receipts and index fund shares (collectively, ''exchange-traded funds'' or ''ETFs''). The text of the proposed rule change is available at Amex, at *http://www.amex.com*, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex 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 Amex 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 Exchange proposes to clarify the listing standards in Amex Rules 1000, 1002, 1000A and 1002A governing ETFs, amendments to which were approved by the Commission on November 9, 2006.[3] In particular, the Commission approved changes to Rules 1000 and 1000A to include generic listing standards for series of ETFs that are based on international or global indexes. Additionally, the Commission approved revisions to Amex Rules 1000 and 1000A to include generic listing standards for ETFs that are based on indexes or portfolios previously approved by the Commission as an underlying benchmark for the trading of ETFs, options or other specified index-based securities. These changes enable the Exchange to list exchange-traded funds pursuant to Rule 19b–4(e) of the Act [4] if each of the conditions set forth in Commentary .03 to Rule 1000 or Commentary .02 to Rule 1000A is satisfied.

Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change under Rule 19b–4(c)(1) of the Act [5] if the Commission has approved, pursuant to Section 19(b) of the Act, the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivatives securities product and the self-regulatory organization has a surveillance program for the product class.[6]

The Commission also approved other minor clarifying changes to Amex Rules 1000, 1002, 1000A and 1002A.

In connection with those approved changes, the Exchange now proposes to make additional clarifying changes to Rules 1000, 1002, 1000A and 1002A. Specifically, the Exchange proposes to amend the definition of ''US Component Stock'' in Rules 1000(b)(3) and 1000A(b)(3). The definition of U.S. Component Stock was designed to include any equity security that is registered under Sections 12(b) or 12(g) of the Act, and therefore to comprise all securities that are subject to Commission oversight through registration. This definition was intended to include American Depositary Receipts (''ADRs''), the underlying security of which is registered under Section 12(b) or 12(g) of the Act. In the case of listed ADRs, it is the equity security underlying an ADR that is registered pursuant to Section 12 of the Act, not the ADRs.[7] Under Amex's generic listing standards,[8] the ADR would also be required to be listed on a national securities exchange and be an NMS Stock as defined in Rule 600 of Regulation NMS.[9] Consequently, the Exchange proposes to revise the definition of U.S. Component Stock to clarify that, while the ADR would be considered the U.S. Component Stock and therefore the index component for purposes of satisfying the eligibility criteria, the ADR can only qualify as a ''US Component Stock'' if the equity security underlying that ADR is

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240. 19b–4.

[3] *See* Securities Exchange Act Release No. 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (SR–Amex–2006–78).

[4] 17 CFR 240.19b–4(e).

[5] 17 CFR 240.19b–4(c)(1).

[6] When relying on Rule 19b–4(e), the SRO must submit Form 19b–4(e) to the Commission within five business days after the exchange begins trading the new derivative securities products. *See* Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[7] *See* 17 CFR 240.12a–8.

[8] *See* Amex Rule 1000, Commentary .03(a)(A)(5), (a)(B)(5) and (a)(C), and Amex Rule 1000A, Commentary .02(a)(A)(5), (a)(B)(5) and (a)(C).

[9] 17 CFR 242.600.

registered under Section 12(b) or Section 12(d) of the Act.

The Exchange also proposes to modify Rule 1002(a)(ii) and Rule 1002A(a)(ii) to specify that the ETF issuer must provide the Exchange with a representation that the net asset value per share will be calculated daily and made available to all market participants at the same time.

Finally, the Exchange is proposing to make a number of minor, typographical changes to Rules 1000, 1002 and 1002A.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange did not receive any written comments on 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 at *http://www.sec.gov/rules/sro.shtml* or send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Amex–2006–109 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–Amex–2006–109. 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 at *http://www.sec.gov/rules/sro.shtml*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of 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–Amex–2006–109 and should be submitted on or before January 30, 2007.

## IV. Discussion and Commission's Findings

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.[12] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[13] which requires that the rules of an exchange be 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 transactions in securities, and to 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 proposal clarifies the Exchange's listing criteria applicable to ETFs. The definition of ''US Component Stock'' in Amex Rules 1000(b)(3) and 1000A(b)(3)1000 and 1000A will be amended to make clear that it is the equity security underlying an ADR that must be registered pursuant to Section 12 of the Act, not the ADR itself. The Commission believes that this change is consistent with the intent that the Exchange's definition of ''US Component Stock'' includes only securities that publicly disclose information under the federal securities laws.[14] In addition, the Commission believes the Exchange's revisions to its Rules 1002(a)(ii) and 1002A(a)(ii) specifying that the ETF issuer must provide a representation that the net asset value per share will be calculated daily and disseminated to market participants at the same time is consistent with the Act. The Commission further believes that the additional proposed revisions to Amex Rules 1000, 1002 and 1002A are minor, and should serve to clarify the Exchange's listing standards.

*Accelerated Approval*

The Commission finds good cause, consistent with Section 19(b)(2) of the Act,[15] for approving this proposed rule change, as amended, before the thirtieth day after the publication of notice thereof in the **Federal Register**. The Commission notes that accelerating approval will enable the proposed rule clarifications to be implemented immediately to the benefit of market participants.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change, as amended (SR–Amex–2006–109), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E7–62 Filed 1–8–07; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] The Commission notes that, pursuant to the Amex's listing rules, an ADR must also be listed on a national securities exchange and must be an NMS stock under Rule 600 of Regulation NMS. 17 CFR 242.600.

[15] 15 U.S.C. 78s(b)(2).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55032; File No. SR–NYSEArca–2006–36]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Trade the streetTRACKS® Dow Jones STOXX 50 Fund and the streetTRACKS® Dow Jones EURO STOXX 50 Fund Pursuant to Unlisted Trading Privileges

December 29, 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 October 18, 2006, NYSE Arca, Inc. (''NYSE Arca'' 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 substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposal from interested persons and to approve the proposal on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'') proposes to trade shares (''Shares'') of the following index funds (''Funds'') pursuant to unlisted trading privileges (''UTP'') based on NYSE Arca Equities Rule 5.2(j)(3):

- streetTRACKS Dow Jones STOXX 50 Fund (Symbol: FEU); and
- streetTRACKS Dow Jones EURO STOXX 50 Fund (FEZ)

The text of the proposed rule change is available on the Exchange's Web site (*http://www.nysearca.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item 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

The Exchange is proposing to trade the Shares pursuant to UTP. Each Fund represents the performance of the 50 largest companies, across all components of the 18 Dow Jones STOXX 600 and Dow Jones EURO STOXX 600 market sector indexes (each, an ''Index''). Each Index is a subset of the pan-European Dow Jones STOXX Total Market Index and contains the 600 largest stocks traded on the major exchanges in Europe or the Eurozone (*i.e.*, the countries of the European Monetary Union). Each Fund's components have a high degree of liquidity and represent the largest companies across all 18 market sectors defined by the Dow Jones Global Classification Standard. Each Fund seeks to replicate as closely as possible, before expenses, the price and yield of the underlying Index and uses a passive or indexing approach in seeking to achieve its investment objectives.

The Commission previously approved the original listing and trading of the Shares of the Funds on the New York Stock Exchange (''NYSE'').[3] The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The trading hours for the Shares on the Exchange are the same as those set forth in NYSE Arca Equities Rule 7.34, except that the Shares will not trade during the Opening Session (4 a.m. to 9:30 a.m. Eastern Time) unless the Indicative Optimized Portfolio Value (''IOPV'') is calculated and disseminated during that time.

Quotations for and last sale information regarding the Shares for each Fund are disseminated through the Consolidated Quotation System. The value of each underlying Index is updated intra-day on a real-time basis as individual component securities of the underlying Index change in price. The intra-day values of the underlying Indexes are disseminated every 15 seconds throughout the NYSE trading day. In addition, a value for each underlying Index is disseminated once each trading day, based on closing prices of the Index components in the relevant foreign market. The net asset value (''NAV'') of each Fund is calculated by the Fund's custodian and disseminated each business day, normally at the close of regular trading on NYSE.

To provide updated information relating to the Shares for use by investors, professionals, and persons wishing to create or redeem them, NYSE disseminates the IOPV for each Fund as calculated by a securities information provider. The IOPV is disseminated on a per-share basis every 15 seconds during regular NYSE trading hours of 9:30 a.m. to 4:15 p.m. Eastern Time.

Each Fund includes companies trading in markets with trading hours overlapping regular NYSE trading hours. During the overlap period, an IOPV calculator updates an IOPV every 15 seconds to reflect price changes in the principal foreign markets, and converts such prices into U.S. dollars based on the currency exchange rates. When the foreign market or markets are closed but the NYSE is open for trading, the IOPV is updated every 15 seconds to reflect changes in currency exchange rates.

The IOPV may not reflect the value of all securities included in the applicable underlying Index. In addition, the IOPV does not necessarily reflect the precise composition of the current portfolio of securities held by each Fund at a particular point in time. Therefore, the IOPV on a per-share basis disseminated during NYSE's regular trading hours should not be viewed as a real-time update of the NAV of a particular Fund, which is calculated only once a day. The IOPV is intended to closely approximate the value per-share of the portfolio of securities for a Fund and provide for a close proxy of the NAV at a greater frequency for investors.

The Commission has granted each Fund an exemption from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 (''1940 Act'').[4] Any product description used in reliance on the Section 24(d) exemptive order will comply with all representations made and all conditions contained in the application for orders under the 1940 Act.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46686 (October 18, 2002), 67 FR 65388 (October 24, 2002) (SR–NYSE–2002–51). The Funds were originally listed on NYSE as the Fresco Dow Jones STOXX 50 Fund and the Fresco Dow Jones Euro STOXX 50 Fund, respectively. As of July 1, 2004, SsgA Management, Inc. replaced UBS Global Asset Management (U.S.) Inc. as investment advisor for the Funds. At that time, the name of the Funds was changed from Fresco to streetTRACKS®.

[4] 15 U.S.C. 87a–24(d).

[5] *See* Investment Company Act Release No. 25738 (October 11, 2002).

In connection with the trading of the Shares, the Exchange would inform ETP Holders in an Information Circular of the special characteristics and risks associated with trading the Shares, including how they are created and redeemed, the prospectus or product description delivery requirements applicable to the Shares, applicable Exchange rules, how information about the value of each underlying Index is disseminated, and trading information. In addition, before an ETP Holder recommends a transaction in the Shares, the ETP Holder must determine that the Shares are suitable for the customer, as required by NYSE Arca Equities Rule 9.2(a)–(b).

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to monitor Exchange trading of the Shares.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [6] in general and Section 6(b)(5) of the Act [7] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanisms of a free and open market, and to protect investors and the public interest. In addition, the Exchange believes that the proposal is consistent with Rule 12f–5 under the Act [8] because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

*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.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 240.12f–5.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2006–36 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–2006–36. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–36 and should be submitted on or before January 30, 2007.

**IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change**

After careful review, 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.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] 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. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[11] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[12] The Commission notes that it previously approved the listing and trading of the Shares on NYSE.[13] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[14] 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. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[15] which sets forth Congress' 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. Quotations for

[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. 78*l*(f).

[12] Section 12(a) of the Act, 15 U.S.C. 78*l*(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.

[13] *See supra* note 3.

[14] 17 CFR 240.12f–5.

[15] 15 U.S.C. 78k–1(a)(1)(C)(iii).

and last sale information regarding the Shares are disseminated through the Consolidated Quotation System. Furthermore, an IOPV calculator updates the applicable IOPV every 15 seconds to reflect price changes in the principal foreign markets, and converts such prices into U.S. dollars based on the current currency exchange rate. When the foreign market or markets are closed but NYSE is open for trading, the IOPV is updated every 15 seconds to reflect changes in currency exchange rates. Furthermore, NYSE Arca Equities Rule 7.34 describes the situations when the Exchange would halt trading when the IOPV or the value of the Index underlying one of the Funds is not calculated or widely available.

The Commission notes that, if the Shares should be delisted by NYSE, the original listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to monitor the trading of the Shares.

2. In connection with the trading of the Shares, the Exchange would inform ETP Holders in an Information Circular of the special characteristics and risks associated with trading the Shares.

3. The Information Circular would inform participants of the prospectus or product delivery requirements applicable to the Shares.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal 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 the Shares on NYSE is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that earlier finding or preclude the trading of Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NYSEArca–2006–36) is approved on an accelerated basis.

[16] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E7–59 Filed 1–8–07; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55017; File No. SR–NYSEArca–2006–34]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Trade the iShares® MSCI Index Funds Pursuant to Unlisted Trading Privileges

December 28, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2006, NYSE Arca, Inc. (''NYSE Arca'' 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 substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposal from interested persons and to approve the proposal on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'') proposes to trade shares (''Shares'') of the following Index Funds (''Funds'') pursuant to unlisted trading privileges (''UTP'') based on NYSE Arca Equities Rule 5.2(j)(3):

- iShares MSCI Belgium (Symbol: EWK)
- iShares MSCI France (EWQ)
- iShares MSCI Hong Kong (EWH)
- iShares MSCI Italy (EWI)
- iShares MSCI Japan (EWJ)
- iShares MSCI Malaysia (EWM)
- iShares MSCI Netherlands (EWN)
- iShares MSCI Singapore (EWS)
- iShares MSCI Spain (EWP)
- iShares MSCI Sweden (EWD)
- iShares MSCI Switzerland (EWL)
- iShares MSCI United Kingdom (EWU).

The text of the proposed rule change is available on the Exchange's Web site (*http://www.nysearca.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### 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

The Exchange is proposing to trade the Shares pursuant to UTP. Each Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of publicly traded securities in the aggregate in the respective country's markets, as measured by the applicable MSCI Index (each, an ''Index''). Each MSCI Index is calculated by Morgan Stanley Capital Investment (''MSCI'') and consists of stocks traded primarily on the respective country's stock exchange. Information regarding the largest stocks and industry categories in each Index can be found in the iShares MSCI Series prospectus, which is available via the iShares Web site (*http://www.ishares.com*). Each Fund uses a representative sampling strategy to track the applicable Index and normally will invest at least 95% of its total assets in stocks that are represented in the relevant Index and will at all times invest at least 90% of its total assets in such stocks.

The Commission previously approved the original listing and trading of the Shares of the Funds on the American Stock Exchange, LLC (''Amex'').[3] The Commission subsequently approved listing of the Shares on the New York Stock Exchange (''NYSE'').[4] The Exchange deems the Shares to be equity securities, thus rendering trading in the

[3] *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (SR–Amex–95–43). The Funds were formerly known as World Equity Benchmark Shares or WEBS.

[4] *See* Securities Exchange Act Release No. 52816 (November 21, 2005), 70 FR 71574 (November 29, 2005) (SR–NYSE–2005–70).

Shares subject to the Exchange's existing rules governing the trading of equity securities. The trading hours for the Shares on the Exchange are the same as those set forth in NYSE Arca Equities Rule 7.34, except that the iShares MSCI Belgium, France, Italy, Netherlands, Spain, Sweden, Switzerland, and United Kingdom Index Funds will not trade during the Opening Session (4 a.m. to 9:30 a.m. Eastern Time) unless the Indicative Optimized Portfolio Value (''IOPV'') is calculated and disseminated during that time. The iShares MSCI Hong Kong, Japan, Malaysia, and Singapore Index Funds will trade during the Opening Session since there is no overlap in trading hours of the Opening Session and the foreign markets trading the applicable Index securities. The last calculated IOPV for each of these four Funds is available to investors during the Opening Session through facilities of the Consolidated Tape Association (''CTA'') or major market data vendors. These IOPVs are unchanged during the Opening Session from their last calculated value.

Quotations for and last sale information regarding the Shares for each Fund are disseminated through the Consolidated Quotation System. The MSCI Index on which each Fund is based is calculated by MSCI for each trading day in the applicable foreign market based on official closing prices in such markets. The value of each underlying MSCI Index is updated intra-day on a real-time basis as individual component securities of each underlying Index change in price. The intra-day values of these MSCI Indices are disseminated every 15 seconds throughout the trading day by organizations authorized by MSCI. The net asset value (''NAV'') of each Fund is calculated and disseminated each business day, normally at the close of regular trading of the NYSE.

To provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem the Shares, NYSE disseminates through the facilities of the CTA the IOPV for each Fund as calculated by Bloomberg, L.P. The IOPV is disseminated on a per-share basis every 15 seconds during regular NYSE trading hours of 9:30 a.m. to 4:15 p.m. Eastern Time.

The IOPV may not reflect the value of all securities included in the applicable underlying Index. In addition, the IOPV does not necessarily reflect the precise composition of the current portfolio of securities held by each Fund at a particular point in time. Therefore, the IOPV on a per-share basis disseminated during NYSE's regular trading hours should not be viewed as a real-time update of the NAV of a particular Fund, which is calculated only once a day. The IOPV is intended to closely approximate the value per share of the portfolio of securities for a Fund and provide for a close proxy of the NAV at a greater frequency for investors.

For the iShares MSCI Hong Kong, Japan, Malaysia, and Singapore Index Funds, there is no overlap in trading hours between the foreign markets and NYSE. Therefore, for these Funds, the IOPV is calculated based on closing prices in the principal foreign market for securities in the Funds' portfolios, which are then converted from the applicable foreign currency to U.S. dollars. This IOPV is updated every 15 seconds during NYSE regular trading hours of 9:30 a.m. to 4:15 p.m. E.T. to reflect changes in currency exchange rates between the U.S. dollar and the applicable foreign currency.

The iShares MSCI Belgium, France, Italy, Netherlands, Spain, Sweden, Switzerland, and United Kingdom Index Funds include companies trading in markets with trading hours overlapping regular NYSE trading hours. For these Funds, the IOPV calculator updates the IOPV during the overlap period every 15 seconds to reflect price changes in the principal foreign market, and converts such prices into U.S. dollars based on the current currency exchange rate. When the foreign market or markets are closed but NYSE is open for trading, the IOPV is updated every 15 seconds to reflect changes in currency exchange rates.

The Commission has granted each Fund an exemption from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 (''1940 Act'').[5] Any product description used in reliance on the Section 24(d) exemptive order will comply with all representations made and all conditions contained in the Funds' application for orders under the 1940 Act.[6]

In connection with the trading of the Shares, the Exchange would inform ETP Holders in an Information Circular of the special characteristics and risks associated with trading the Shares, including how Shares are created and redeemed, the prospectus or product description delivery requirements applicable to the Shares, applicable Exchange rules, how information about the value of each underlying Index is disseminated, and trading information.

In addition, before an ETP Holder recommends a transaction in the Shares, the ETP Holder must determine the Shares are suitable for the customer, as required by NYSE Arca Equities Rule 9.2(a)–(b).

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to monitor Exchange trading of the Shares.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[7] in general and Section 6(b)(5) of the Act[8] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanisms of a free and open market, and to protect investors and the public interest. In addition, the Exchange believes that the proposal is consistent with Rule 12f–5 under the Act[9] because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

*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.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

[5] 15 U.S.C. 80a–24(d).

[6] *See In the Matter of iShares, Inc., et al.*, Investment Company Act Release No. 25623 (June 25, 2002).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 240.12f–5.

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2006–34 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–2006–34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–34 and should be submitted on or before January 30, 2007.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, 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.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[11] 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. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[12] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[13] The Commission notes that it previously approved the listing and trading of the Shares on Amex and subsequently on NYSE.[14] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[15] 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. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[16] which sets forth Congress' 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. Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Quotation System. Furthermore, an IOPV calculator updates the applicable IOPV every 15 seconds to reflect price changes of the applicable Index components in the principal foreign markets, and converts such prices into U.S. dollars based on the current currency exchange rate. When the foreign market or markets are closed but NYSE is open for trading, the IOPV will be updated every 15 seconds to reflect changes in currency exchange rates. NYSE Arca Rule 7.34 describes the situations when the Exchange would halt trading when the IOPV or the value of the Index underlying one of the Funds is not calculated or widely available.

The Commission notes that if the Shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to monitor the trading of the Shares.

2. In connection with the trading of the Shares, the Exchange would inform ETP Holders in an Information Circular of the special characteristics and risks associated with trading the Shares.

3. The Information Circular would inform participants of the prospectus or product delivery requirements applicable to the Shares.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal 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 the Shares on Amex and subsequently NYSE is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that earlier finding or preclude the trading of Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSEArca–2006–34) is approved on an accelerated basis.

[10] 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).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78*l*(f).

[13] 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.

[14] *See supra* notes 3 and 4.

[15] 17 CFR 240.12f–5.

[16] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E7–63 Filed 1–8–07; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55019; File No. SR–NYSEArca–2006–35]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Trade the iShares® S&P Global 100 Index Fund Pursuant to Unlisted Trading Privileges

December 28, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2006, NYSE Arca, Inc. (''NYSE Arca'' 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 substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposal from interested persons and to approve the proposed rule change on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'') proposes to trade shares (''Shares'') of the iShares® S&P Global 100 Index Fund (''Fund'') (Symbol: IOO) pursuant to unlisted trading privileges (''UTP'') based on NYSE Arca Equities Rule 5.2(j)(3).

The text of the proposed rule change is available on the Exchange's Web site (*http://www.nysearca.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item 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

The Exchange is proposing to trade the Shares pursuant to UTP. The Fund measures the performance of 100 multinational companies that comprise the S&P Global 100 Index (''Index'') that are also part of the S&P Global 1200. Their businesses are global in nature and they derive a substantial portion of their operating income from multiple countries. The Fund represents an effort to meet the needs of investors wishing to track the performance of global companies. With 100 highly liquid components, the Index is designed to support low-cost, index-investment products, including exchange-traded funds. The Fund will use an ''indexing'' investment approach that attempts to replicate, before expenses, the performance of the Index.

The Commission previously approved the original listing and trading of the Fund on the New York Stock Exchange (''NYSE'').[3] The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The trading hours for the Shares on the Exchange would be the same as those set forth in NYSE Arca Equities Rule 7.34, except that the Shares will not trade during the Opening Session (4 a.m. to 9:30 a.m. Eastern Time) unless the Indicative Optimized Portfolio Value (''IOPV'') is calculated and disseminated during that time.

Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Quotation System. The value of the underlying Index is updated intra-day on a real-time basis as individual component securities of the underlying Index change in price. These intra-day values of the underlying Index are disseminated every 15 seconds throughout the trading day. In addition, a value for the underlying Index is disseminated once each trading day, based on closing prices of the Index components in the relevant foreign markets. The net asset value (''NAV'') of the Fund is calculated and disseminated each business day, normally at the close of regular trading of NYSE.

To provide updated information relating to the Shares for use by investors, professionals, and persons wishing to create or redeem them, NYSE disseminates the IOPV for the Fund as calculated by a securities information provider. The IOPV is disseminated on a per-share basis every 15 seconds during regular NYSE trading hours of 9:30 a.m. to 4:15 p.m. Eastern Time.

The IOPV will be calculated utilizing closing prices in the principal foreign markets for securities in the Fund portfolio, converted to U.S. dollars. The IOPV is updated during NYSE's trading hours to reflect changes in currency exchange rates between the U.S. dollar and the applicable foreign currency and includes the applicable cash component for the Fund. The Index includes companies trading in markets with trading hours overlapping NYSE's. During the overlap period, the IOPV calculator updates the IOPV every 15 seconds to reflect price changes of the Index components in the principal foreign markets, and converts such prices into U.S. dollars based on the currency exchange rate. When the foreign market or markets are closed but NYSE is open for trading, the IOPV is updated every 15 seconds to reflect changes in currency exchange rates.

The IOPV may not reflect the value of all securities included in the applicable underlying Index. In addition, the IOPV does not necessarily reflect the precise composition of the current portfolio of securities held by the Fund at a particular point in time. Therefore, the IOPV on a per-share basis disseminated during NYSE's regular trading hours should not be viewed as a real-time update of the NAV of the Fund, which is calculated only once a day. The IOPV is intended to closely approximate the value per-share of the portfolio of securities for the Fund and provide for a close proxy of the NAV at a greater frequency for investors.

The Commission has granted the Fund an exemption from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 (''1940 Act'').[4] Any product description used in reliance on the Section 24(d) exemptive order will comply with all representations made and all conditions

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43658 (December 1, 2000), 65 FR 77408 (December 11, 2000) (SR–NYSE–2000–53).

[4] 15 U.S.C. 80a–24(d).

contained in the Fund's application for orders under the 1940 Act.[5]

In connection with the trading of the Fund, the Exchange would inform ETP Holders in an Information Circular of the special characteristics and risks associated with trading the Shares, including how they are created and redeemed, the prospectus or product description delivery requirements applicable to the Shares, applicable Exchange rules, how information about the value of the underlying Index is disseminated, and trading information. In addition, before an ETP Holder recommends a transaction in the Shares, the ETP Holder must determine the Fund is suitable for the customer, as set forth in NYSE Arca Equities Rule 9.2(a)–(b).

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to monitor Exchange trading of the Shares.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[6] in general and Section 6(b)(5) of the Act[7] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest. In addition, the Exchange believes that the proposal is consistent withRule 12f–5 under the Act[8] because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

*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.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange 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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2006–35 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–2006–35. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–35 and should be submitted on or before January 30, 2007.

**IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change**

After careful review, 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.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[10] 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. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[11] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[12] The Commission notes that it previously approved the listing and trading of the Shares on NYSE.[13] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[14] 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. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[15] which sets forth Congress' finding that it is in the

[5] *See In the Matter of iShares, Inc., et al.*, Investment Company Act Release No. 25623 (June 25, 2002).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 240.12f–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. 78*l*(f).

[12] Section 12(a) of the Act, 15 U.S.C. 78*l*(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.

[13] *See supra* note 3.

[14] 17 CFR 240.12f–5.

[15] 15 U.S.C. 78k–1(a)(1)(C)(iii).

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. Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Quotation System. Furthermore, an IOPV calculator updates an IOPV for the Fund every 15 seconds to reflect price changes of the Index components in the principal foreign markets, and converts such prices into U.S. dollars based on the current currency exchange rate. When the foreign market or markets are closed but NYSE is open for trading, the IOPV is updated every 15 seconds to reflect changes in currency exchange rates. Furthermore, NYSE Arca Equities Rule 7.34 describes the circumstances where the Exchange would halt trading when the IOPV or the value of the underlying Index is not calculated or widely available.

The Commission notes that, if the Shares should be delisted by NYSE, the original listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to monitor the trading of the Shares.

2. In connection with the trading of the Shares, the Exchange would inform ETP Holders in an Information Circular of the special characteristics and risks associated with trading the Shares.

3. The Information Circular would inform participants of the prospectus or product delivery requirements applicable to the Shares.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal 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 the Shares on NYSE is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that earlier finding or preclude the trading of Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NYSEArca–2006–35) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E7–64 Filed 1–8–07; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA 2006–26654]**

### Agency Information Collection Activities: Request for Comments for New Information Collection

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FHWA invites public comment regarding our intention to request the Office of Management and Budget (OMB) to approve a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION.** We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Please submit comments by March 12, 2007.

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Number FHWA–2006–26654 to the Docket Clerk, 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:* 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.

*Docket:* For access to the docket to read background documents or comments received go to *http://dms.dot.gov* at any time or to Room 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:** Marshall Wainright, 202–366–4842, Office of Real Estate Services, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** *Title:* Fixed Residential Moving Cost Schedule.

*Background:* Relocation assistance payments to owners and tenants who move personal property for a Federal or federally-assisted program or project is governed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). 49 Code of Federal Regulations (CFR), Part 24, is the implementing regulation for the Uniform Act. 49 CFR 24.301 addresses payments for actual and reasonable moving and related expenses. The fixed residential moving cost schedule is an administrative alternative to reimbursement of actual moving costs. This option provides flexibility for the agency and affected property owners and tenants. The FHWA requests the State Departments of Transportation (State DOTs) to analyze moving cost data periodically to assure that the fixed residential moving cost schedules accurately reflect reasonable moving and related expenses. The regulation allows State DOTs flexibility in determining how to collect the cost data in order to reduce the burden of government regulation. Updated State fixed residential moving costs are submitted to the FHWA electronically.

*Respondents:* State Departments of Transportation (52, including the District of Columbia and Puerto Rico).

*Frequency:* Once every 3 years.

*Estimated Average Burden per Response:* 24 hours per respondent.

*Estimated Total Annual Burden Hours:* 24 hours for each of the 52 State Departments of Transportation. The total is 1,248 burden hours, once every 3 years, or 416 hours annually.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected

information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: January 3, 2007.

**James R. Kabel,**

*Chief, Management Programs and Analysis Division.*

[FR Doc. E7–80 Filed 1–8–07; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–2006–26715]**

### Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection, which is summarized below under **SUPPLEMENTARY INFORMATION.** We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Please submit comments by March 12, 2007.

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Number FHWA–2006–26715 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:* 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.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room 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:** Guan Xu, 202–366–5892, Office of Safety Design, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** *Title:* Developing and Recording Costs for Railroad Adjustments.

*OMB Control #:* 2125–0521.

*Background:* Under 23 U.S.C. 130, the FHWA reimburses the State highway agencies when they have paid for the cost of projects that (1) Eliminate hazards at railroad/highway crossings, or (2) adjust railroad facilities to accommodate the construction of highway projects. The FHWA requires the railroad companies to document their costs incurred for adjusting their facilities. The railroad companies must have a system for recording labor, materials, supplies, and equipment costs incurred when undertaking the necessary railroad work. This record of costs forms the basis for payment by the State highway agency to the railroad company, and in turn FHWA reimburses the State for its payment to the railroad company.

*Respondents:* Approximately 135 railroad companies.

*Frequency:* Nearly 135 railroad companies are involved in an average of 10 railroad/highway projects per year, so the total frequency is 1,350 railroad adjustments.

*Estimated Average Burden per Response:* The average number of hours required to calculate the railroad adjustment costs and maintain the required records per adjustment is 12 hours.

*Estimated Total Annual Burden Hours:* The FHWA estimates that the total annual burden imposed on the public by this collection is 16,200 hours.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**Authority:** 23 U.S.C. 121, 130; 23 CFR 140 Subpart I; the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: December 29, 2006.

**James R. Kabel,**

*Chief, Management Programs and Analysis Division.*

[FR Doc. E7–81 Filed 1–8–07; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2006–26066]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 75 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

**DATES:** The exemptions are effective January 9, 2007. The exemptions expire on January 8, 2009.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Chief,Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@dot.gov,* FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

You may see all the comments online through the Document Management System (DMS) at *http://dmses.dot.gov.*

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* and/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.

*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** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://dms.dot.gov.*

**Background**

On October 30, 2006, FMCSA published a notice of receipt of exemption applications from 75 individuals, and requested comments from the public(71 FR 63380). The 75 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce. They are: Lucas R. Aleman, Michael L. Allen, Jose C. Azuara, Felipe Bayron, Dennis M. Boggs, Daniel D. Bradshaw, Roy L. Brown, Richard A. Brown, Jr., David S. Brumfield, Fabian L. Burnett, David L. Cattoor, Roger E. Clark, Steven J. Clark, Gary C. Cone, Timothy E. Coultas, Cesar A. Cruz, Arthur Dolengewicz, Myron R. Durham, Wayne A. Elkins II, Barry Ferdinando, Leon C. Flynn, David G. Guldan, Richard G. Gruber, Larry W. Hancock, Guadalupe J. Hernandez, James L. Houser, Richard G. Isenhart, Ricky G. Jacks, Damir Kocijan, Timothy P. Keogh, Joe E. Jones, William S. LaMar, Sr., Robert T. Lantry, John W. Laskey, Johnny L. Lindsey, Calvin E. Lloyd, Kenneth Liuzza, Samson B. Margison, Terrence L. McKinney, Michael W. McClain, Ellis T. McKneely, Dennis N. McQuiston, Garth R. Mero, Donald G. Meyer, Ross W. Mockler, Ronald C. Morris, Harry M. Oxendine, Kenneth E. Parrott, Charles R. Patten, Lionel Payne, Jr., Randel G. Pierce, Darrol W. Rippee, Edgardo Rivera, Myriam Rodriguez, Raymond E. Royer, James E. Savage, Steven M. Scholfield, Randal C. Schmude, Raymond C. Simpkins, Dennis J. Smith, W.C. Sparks, James A. Strickland, David C. Stitt, Jesse J. Sutton, Gary L. Taylor, Kevin L. Truxell, Brian S. Tuttle, Humberto A. Valles, Earl M. Vaughan, Bruce A Walker, Harold R. Wallace, Lee A. Wiltjer, John H. Wisner, Harold E. White, and Theron L. Wood.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 75 applications on their merits and made a determination to grant exemptions to all of them. The comment period closed on Nov 29, 2006.

**Vision and Driving Experience of the Applicants**

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 75 exemption applicants listed in this Notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, glaucoma, macular scar, aphakia, retinal detachment, optic neuropathy, esotropia, choroidal hemangioma, corneal scaring, prosthesis, corneal opacity, optic atrophy, macular hemorrhage, and loss of vision due to trauma. In most cases, their eye conditions were not recently developed. All but twenty-two of the applicants were either born with their vision impairments or have had them since childhood. The twenty-two individuals who sustained their vision conditions as adults have had them for periods ranging from 3 to 45 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 75 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 45 years. In the past 3 years, seven of the drivers have had convictions for traffic violations and two of them were involved in crashes.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the October 30, 2006 Notice (71 FR 63380).

**Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA–98–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996.) The fact that

experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes. (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 75 applicants, three of the applicants had traffic violations for speeding, three applicants failed to obey a traffic sign, one applicant failed to drive within the proper lane, and two of the applicants were involved in crashes. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 75 applicants listed in the notice of October 30, 2006 (71 FR 63380).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 75 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

**Discussion of Comments**

Advocates for Highway and Auto Safety (Advocates) expressed opposition to FMCSA's policy to grant exemptions from the FMCSR, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which FMCSA presents driver information to the public and makes safety determinations; (2) objects to the Agency's reliance on conclusions drawn from the vision waiver program; (3) claims the Agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31136(e) and 31315); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

A representative from the Wisconsin Department of Transportation reported that two of the drivers from the State of Wisconsin were given interstate Medical Examiner Certificates by medical examiners although they did not qualify due to their vision deficiency. However, this did not result in improper licensure by the State of Wisconsin. FMCSA will follow up on this reported medical examiner certification issue. These two drivers will be required, as a condition of the exemption to obtain new Medical Examiner Certificates that reflect the need for a Federal exemption from the vision standard.

Nine letters of recommendation were received in favor of granting the Federal vision exemption to Mr. Edgardo Rivera and Mr. Ricky Jacks due to their high level of professionalism and safety while driving. Two comments were received in support of the Federal vision exemption program.

Two individuals oppose the granting of vision exemptions to vision impaired drivers. They believe that granting vision exemptions to drivers makes the roads more dangerous.

In regard to the last two comments, the discussion under the heading, ''Basis for Exemption Determination,'' explains in detail the evaluation methods the Agency utilizes prior to granting an exemption to ensure that the granting of an exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. To evaluate the effect of these exemptions on safety, FMCSA

considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA–98–3637.

**Conclusion**

Based upon its evaluation of the 75 exemption applications, FMCSA exempts Lucas R. Aleman, Michael L. Allen, Jose C. Azuara, Felipe Bayron, Dennis M. Boggs, Daniel D. Bradshaw, Roy L. Brown, Richard A. Brown, Jr., David S. Brumfield, Fabian L. Burnett, David L. Cattoor, Roger E. Clark, Steven J. Clark, Gary C. Cone, Timothy E. Coultas, Cesar A. Cruz, Arthur Dolengewicz, Myron R. Durham, Wayne A. Elkins II, Barry Ferdinando, Leon C. Flynn, David G. Guldan, Richard G. Gruber, Larry W. Hancock, Guadalupe J. Hernandez, James L. Houser, Richard G. Isenhart, Ricky G. Jacks, Damir Kocijan, Timothy P. Keogh, Joe E. Jones, William S. LaMar, Sr., Robert T. Lantry, John W. Laskey, Johnny L. Lindsey, Calvin E. Lloyd, Kenneth Liuzza, Samson B. Margison, Terrence L. McKinney, Michael W. McClain, Ellis T. McKneely, Dennis N. McQuiston, Garth R. Mero, Donald G. Meyer, Ross W. Mockler, Ronald C. Morris, Harry M. Oxendine, Kenneth E. Parrott, Charles R. Patten, Lionel Payne, Jr., Randel G. Pierce, Darrol W. Rippee, Edgardo Rivera, Myriam Rodriguez, Raymond E. Royer, James E. Savage, Steven M. Scholfield, Randal C. Schmude, Raymond C. Simpkins, Dennis J. Smith, W.C. Sparks, James A. Strickland, David C. Stitt, Jesse J. Sutton, Gary L. Taylor, Kevin L. Truxell, Brian S. Tuttle, Humberto A. Valles, Earl M. Vaughan, Bruce A Walker, Harold R. Wallace, Lee A. Wiltjer, John H. Wisner, Harold E. White, and Theron L. Wood from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: January 3, 2007.

**Larry W. Minor,**

*Office Director, Bus and Truck Standards and Operations.*

[FR Doc. E7–96 Filed 1–8–07; 8:45 am]

BILLING CODE 4910–EX–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–02–12844]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 15 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective January 17, 2007. Comments must be received on or before February 8, 2007.

**ADDRESSES:** You may submit comments identified by DOT Docket Management System (DMS) Docket Number FMCSA–02–12844, using any of the following methods.

- *Web site: http://dmses.dot.gov.* 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 numbers 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 our 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, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@dot.gov*, FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Exemption Decision**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level

of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 15 individuals who have requested renewal of their exemptions in a timely manner. FMCSA has evaluated these 15 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are: Thomas J. Boss, Neil W. Jennings, Andrew H. Rusk, Howard F. Breitkreutz, Craig M. Landry, Richard L. Sheppard, John E. Evenson, William R. Mayfield, Kenneth E. Vigue, Jr., Steven C. Humke, Richard E. Nordhausen, Jr., David G. Williams, Leon E. Jackson, Tony E. Parks, Richard A. Winslow.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

**Basis for Renewing Exemptions**

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 15 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (67 FR 68719; 68 FR 2629; 69 FR 71100). Each of these 15 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

**Request for Comments**

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by February 8, 2007.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 15 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: January 3, 2007.

**Larry W. Minor,**

*Office Director, Bus and Truck Standards and Operations.*

[FR Doc. E7–97 Filed 1–8–07; 8:45 am]

BILLING CODE 4910–EX–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–98–3637, FMCSA–00–7165, FMCSA–00–7363, FMCSA–00–8203, FMCSA–02–12294]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 10 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective January 13, 2007. Comments must be received on or before February 8, 2007.

**ADDRESSES:** You may submit comments identified by DOT Docket Management System (DMS) Docket Numbers FMCSA–98–3637, FMCSA–00–7165, FMCSA–00–7363, FMCSA–00–8203, FMCSA–02–12294, using any of the following methods.

- *Web Site: http://dmses.dot.gov.* 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 numbers 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 our 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, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@dot.gov,* FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Exemption Decision

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 10 individuals who have requested renewal of their exemptions in a timely manner. FMCSA has evaluated these 10 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Robert R. Buis
George J. Ghigliotty
Robert J. Johnson
Charles R. Kuderer
Thomas D. Laws
Clifford C. Priesmeyer
Gerald R. Rietmann
Arthur A. Sappington
William H. Smith
Edward C. Williams

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

## Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 10 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285; 63 FR 54519; 65 FR 66293; 68 FR 1654; 69 FR 71098; 65 FR 33406; 65 FR 57234; 67 FR 57266; 65 FR 45817; 65 FR 77066; 67 FR 71610; 67 FR 46016; 67 FR 57267). Each of these 10 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

## Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by February 8, 2007.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 10 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: January 3, 2007.

**Larry W. Minor,**

*Office Director, Bus and Truck Standards and Operations.*

[FR Doc. E7–98 Filed 1–8–07; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–00–7165, FMCSA–04–19477]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 20 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective January 14, 2007. Comments must be received on or before February 8, 2007.

**ADDRESSES:** You may submit comments identified by DOT Docket Management System (DMS) Docket Numbers FMCSA–00–7165, FMCSA–04–19477, using any of the following methods.

- *Web Site: http://dmses.dot.gov.* 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 numbers 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 our 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, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@dot.gov*, FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Exemption Decision

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 20 individuals who have requested renewal of their exemptions in a timely manner. FMCSA has evaluated these 20 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Johnny Becerra
Ross E. Burroughs
Lester W. Carter
Larry Chinn
Christopher L. DePuy
John B. Ethridge
Larry J. Folkerts
Randolph D. Hall
Richard T. Hatchel
Paul W. Hunter
Robert L. LaFollette
Ray P. Lenz
Michael B. McClure
Lamont S. McCord
Francis M. McMullin
Joe L. Meredith, Jr.
Norman Mullins
Harold W. Mumford
Clarence H. Redding
David J. Triplett

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

#### Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 20 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 33406; 65 FR 57234; 69 FR 64806; 70 FR 2705). Each of these 20 applicants has requested timely renewal of the exemption and

has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

**Request for Comments**

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by February 8, 2007.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 20 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: January 3, 2007.

**Larry W. Minor,**

*Office Director, Bus and Truck Standards and Operations.*

[FR Doc. E7–99 Filed 1–8–07; 8:45 am]

BILLING CODE 4910–EX–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of random drug and alcohol testing rates.

**SUMMARY:** This notice announces the random testing rates for employers subject to the Federal Transit Administration's (FTA) drug and alcohol rules.

**DATES:** *Effective Date:* January 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jerry Powers, Drug and Alcohol Program Manager for the Office of Safety and Security, (202) 366–2896 (telephone) and (202) 366–7951 (fax). Electronic access to this and other documents concerning FTA's drug and alcohol testing rules may be obtained through the FTA World Wide Web home page at *http://www.fta.dot.gov*, click on ''Safety and Security.''

**SUPPLEMENTARY INFORMATION:** On January 1, 1995, FTA required large transit employers to begin drug and alcohol testing employees performing safety-sensitive functions and to begin submitting annual reports by March 15 of each year beginning in 1996. The annual report includes the number of employees who had a verified positive for the use of prohibited drugs, and the number of employees who tested positive for the misuse of alcohol. Small employers commenced their FTA-required testing on January 1, 1996, and began reporting the same information as the large employers beginning March 15, 1997. The testing rules were updated on August 1, 2001, and established a random testing rate for prohibited drugs and the misuse of alcohol.

The rules require that employers conduct random drug tests at a rate equivalent to at least 50 percent of their total number of safety-sensitive employees for prohibited drug use and at least 25 percent for the misuse of alcohol. The rules provide that the drug random testing rate may be lowered to 25 percent if the ''positive rate'' for the entire transit industry is less than one percent for two preceding consecutive years. Once lowered, it may be raised to 50 percent if the positive rate equals or exceeds one percent for any one year (''positive rate'' means the number of positive results for random drug tests conducted under 49 CFR 655.45 plus the number of refusals of random tests required by 49 CFR 655.49, divided by the total number of random drug tests, plus the number of refusals of random tests required by 49 CFR Part 655).

The alcohol provisions provide that the random rate may be lowered to 10 percent if the ''violation rate'' for the entire transit industry is less than 0.5 percent for two consecutive years. It will remain at 25 percent if the ''violation rate'' is equal to or greater than 0.5 percent but less than one percent, and it will be raised to 50 percent if the ''violation rate'' is one percent or greater for any one year (''violation rate'' means the number of covered employees found during random tests given under 49 CFR 655.45 to have an alcohol concentration of .04 or greater, plus the number of employees who refuse a random test required by 49 CFR 655.49, divided by the total reported number of random alcohol tests plus the total number of refusals of random tests required by 49 CFR Part 655.)

49 CFR 655.45(b) states that, ''the Administrator's decision to increase or decrease the minimum annual percentage rate for random drug and alcohol testing is based, in part, on the reported positive drug and alcohol violation rates for the entire industry. The information used for this determination is drawn from the drug and alcohol Management Information System (MIS) reports required by 49 CFR Part 655. In determining the reliability of the data, the Administrator shall consider the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry's verified positive results and violation rates.''

The Administrator has determined that the random drug testing rate shall be reduced from 50 to 25 percent for 2007 due to a ''positive rate'' lower than 1.0 percent for random drug test data from 2003 through 2005. The random drug rates for the three preceding consecutive years are 0.96 for 2003, 0.89 percent for 2004 and 0.79 percent for 2005.

In 2006, the FTA retained the random alcohol testing rate of 10 percent (reduced previously from 25 percent)

based on the ''positive rate'' for random alcohol test data from 2003 and 2004. Because the random alcohol violation rate was again lower than 0.5 percent for the two preceding consecutive years (0.11 percent for 2004 and 0.11 percent for 2005), the random alcohol testing rate will remain at 10 percent for 2007.

FTA detailed reports on the drug and alcohol testing data collected from transit employers may be obtained from the Office of Safety and Security, Federal Transit Administration, 400 Seventh Street, SW., Room 9301, Washington, DC 20590, (202) 366–2896 or at *http://transit-safety.volpe.dot.gov/Publications.*

Issued on January 4, 2007.

**James S. Simpson,**

*Administrator.*

[FR Doc. 07–43 Filed 1–5–07; 12:40 pm]

**BILLING CODE 4910–57–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**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 take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the transaction request for U.S. Treasury Securities State and Local Government Series Early Redemption.

**DATES:** Written comments should be received on or before March 12, 2007, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov*.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–8150.

**SUPPLEMENTARY INFORMATION:**

*Title:* U.S. Treasury Securities State and Local Government Series Early Redemption Request.

*OMB Number:* 1535–0121.

*Form Numbers:* PD F 5377.

*Abstract:* The information is requested to process early redemption requests for the owners of securities of State and Local Government Series.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* State or Local Government.

*Estimated Number of Respondents:* 3,350.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 1,675.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 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 the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 3, 2007.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. E7–68 Filed 1–8–07; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**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 take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the application for disposition of savings bonds after the death of the registered owner(s).

**DATES:** Written comments should be received on or before March 12, 2007, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov*.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–8150.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application For Disposition of Series I Savings Bonds After The Death of the Registered Owner(s).

*OMB Number:* 1535–0131.

*Form Number:* PD F 5394.

*Abstract:* The information is requested to request payment or reissue of savings bonds belonging to a deceased owner.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 4,100.

*Estimated Time per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 2,050.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 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 the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 3, 2007.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. E7–69 Filed 1–8–07; 8:45 am]

BILLING CODE 4810–39–P

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**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 take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Regulations Governing Payments by the Automated Clearing House method on Account of United States Securities.

**DATES:** Written comments should be received on or before March 12, 2007, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov*.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–8150.

**SUPPLEMENTARY INFORMATION:**

*Title:* Regulations Governing Payments by the Automated Clearing House Method on Account of United States Securities.

*OMB Number:* 1535–0094.

*Abstract:* The regulations authorize payment to investors in United States securities by the Automated Clearing House (ACH Method).

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals, Businesses or other for-profit, and state or local governments.

*Estimated Total Annual Burden Hours:* 1.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 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 the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 3, 2007.

**Vicki S. Thorpe,**

*Manager, Graphics Printing and Records Branch.*

[FR Doc. E7–70 Filed 1–8–07; 8:45 am]

BILLING CODE 4810–39–P

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**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 take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Regulations Governing United States Savings Bonds Series E/EE and H/HH.

**DATES:** Written comments should be received on or before March 12, 2007, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–8150.

**SUPPLEMENTARY INFORMATION:**

*Title:* Regulations Governing United States Savings Bonds Series E/EE and H/HH.

*OMB Number:* 1535–0095.

*Abstract:* The regulations mandate the payment of H/HH interest by Direct Deposit (ACH Method).

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals, Businesses or other for-profit, and state or local governments.

*Estimated Total Annual Burden Hours:* 1.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 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 the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 3, 2007.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. E7–71 Filed 1–8–07; 8:45 am]

BILLING CODE 4810–39–P

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Proposed Agency Information Collection Activities; Comment Request—Procedures for Monitoring Bank Secrecy Act

**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. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

**DATES:** Submit written comments on or before March 12, 2007.

**ADDRESSES:** Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information about this proposed information collection from Louise Batdorf, Analyst, Consumer Protection and Specialized Programs, (202) 906–7087, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS'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;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

*Title of Proposal:* Procedures for Monitoring Bank Secrecy Act.

*OMB Number:* 1550–0041.

*Form Number:* N/A.

*Regulation requirement:* 12 CFR 563.177.

*Description:* The information collected enables OTS to determine whether a savings association has implemented a program reasonably designed to assure and monitor compliance with the currency recordkeeping and reporting requirements established by Federal Statute and the U.S. Department of Treasury regulations.

*Type of Review:* Renewal.

*Affected Public:* Savings Associations.

*Estimated Number of Respondents:* 845.

*Estimated Burden Hours per Response:* 28 hours.

*Estimated Frequency of Response:* Annually.

*Estimated Total Burden:* 23,660 hours.

*Clearance Officer:* Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: January 3, 2007.

**Deborah Dakin,**

*Senior Deputy Chief Counsel, Regulations and Legislation Division.*

[FR Doc. E7–53 Filed 1–8–07; 8:45 am]

BILLING CODE 6720–01–P

## DEPARTMENT OF THE TREASURY

### United States Mint

### Notification of Citizens Coinage Advisory Committee January 2007 Public Meeting

**SUMMARY:** Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for January 23, 2007.

*Date:* January 23, 2007.

*Time:* Public Meeting Time: 10 a.m. to 2 p.m.

*Location:* United States Mint; 801 Ninth Street, NW., Washington, DC 2nd floor.

*Subject:* Review 2008 commemorative quarter-dollar candidate reverse designs and other business.

*Interested persons should call 202–354–7502 for the latest update on meeting time and room location.*

Public Law 108–15 established the CCAC to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advise the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

**FOR FURTHER INFORMATION CONTACT:** Cliff Northup, United States Mint Liaison to the CCAC, 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

**Authority:** 31 U.S.C. 5135(b)(8)(C).

Dated: January 4, 2007.

**Edmund C. Moy,**

*Director, United States Mint.*

[FR Doc. E7–106 Filed 1–8–07; 8:45 am]

BILLING CODE 4810–37–P

## DEPARTMENT OF VETERANS AFFAIRS

### Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held on March 5–8, 2007, at the Crystal Gateway Marriott Hotel, Arlington, VA. The sessions are scheduled to begin at 8 a.m. and end at 5:30 p.m. each day.

The purpose of the Board is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public for the March 5 and March 7, 2007 sessions from 8 a.m. to 9 a.m. for the discussion of administrative matters, the general status of the program and the administrative details of the review process. The meeting will be closed on March 5 and 7, 2007 from 9 a.m. to 5:30

p.m. and on March 6 and 8, 2007 from 8 a.m. to 5:30 p.m. for the Board's review of research and development applications.

The Board's review of applications involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under Section 10(d) of Public Law 92–463 as amended by Section 5(c) of Public Law 94–409.

Those who plan to attend the open sessions should contact Dr. Denise Burton, Designated Federal Officer, Portfolio Manager, Rehabilitation Research and Development Service (122P), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 254–0268.

Dated: December 27, 2006.

By Direction of the Secretary.

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. 07–15 Filed 1–8–07; 8:45 am]

BILLING CODE 8320–01–M

# Reader Aids

**Federal Register**

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT JANUARY 9, 2007

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**FEDERAL ELECTION COMMISSION**

Purpose of disbursement entries for filings; finance reports by political comittees and other persons; published 1-9-07

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

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Cattle materials; prohibited use; recordkeeping requirements; published 10-11-06

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

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**TRANSPORTATION DEPARTMENT**

**Federal Transit Administration**

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Nurseries; published 1-9-07

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**Internal Revenue Service**

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Qualified amended returns; published 1-9-07

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**Agricultural Marketing Service**

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California; comments due by 1-16-07; published 11-16-06 [FR 06-09251]

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Plant-related quarantine, domestic:

Gypsy moth; comments due by 1-16-07; published 11-17-06 [FR E6-19450]

Oriental fruit fly; comments due by 1-16-07; published 11-17-06 [FR E6-19451]

Plant-related quarantine, foreign:

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**AGRICULTURE DEPARTMENT**

**Federal Crop Insurance Corporation**

Crop insurance regulations:

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**AGRICULTURE DEPARTMENT**

**Forest Service**

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Piscicide applications; comments due by 1-16-07; published 11-16-06 [FR E6-19197]

**COMMERCE DEPARTMENT**

**Economic Analysis Bureau**

International services surveys:

BE-125; transactions in selected services and intangible assets with foreign persons; quarterly survey; comments due by 1-19-07; published 11-20-06 [FR E6-19565]

BE-185; financial services transactions between U.S. providers and foreign persons; quarterly survey; comments due by 1-16-07; published 11-16-06 [FR E6-19409]

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Groundfish; comments due by 1-16-07; published 12-15-06 [FR E6-21303]

Atlantic coastal fisheries cooperative management—

American lobster; comments due by 1-17-07; published 12-18-06 [FR E6-21448]

Bering Sea and Aleutian Islands groundfish; comments due by 1-16-07; published 12-15-06 [FR E6-21447]

**DEFENSE DEPARTMENT**

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**Energy Efficiency and Renewable Energy Office**

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**ENVIRONMENTAL PROTECTION AGENCY**

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Indian country; new sources and modifications review; comments due by 1-19-07; published 10-24-06 [FR E6-17809]

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Air quality designations and classifications; 8-hour ozone; comments due by 1-18-07; published 12-19-06 [FR E6-21379]

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**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

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**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Endangered and threatened species:

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Hawaiian picture-wing flies; comments due by 1-19-07; published 1-4-07 [FR E6-22538]

**NUCLEAR REGULATORY COMMISSION**

Rulemaking petitions:

Ritenour, E. Russell, Ph.D.; comments due by 1-15-07; published 11-1-06 [FR E6-18363]

**NUCLEAR WASTE TECHNICAL REVIEW BOARD**

Privacy Act; implementation; comments due by 1-15-07; published 11-22-06 [FR 06-09346]

**PENSION BENEFIT GUARANTY CORPORATION**

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Mortality assumptions, interest rate structure, etc.; comments due by 1-16-07; published 12-14-06 [FR E6-21279]

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Small business economic injury disaster loans; comments due by 1-16-07; published 12-15-06 [FR E6-21365]

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**Federal Aviation Administration**

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Microturbo Saphir; comments due by 1-17-07; published 12-18-06 [FR E6-21487]

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Turbomeca S.A.; comments due by 1-18-07; published 12-19-06 [FR E6-21586]

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Income attributable to domestic production activities; deduction; hearing; comments due by 1-17-07; published 10-19-06 [FR E6-17409]

Payments in lieu of taxes; treatment; comments due by 1-16-07; published 10-19-06 [FR E6-17408]

**TREASURY DEPARTMENT**

**Monetary Offices**

Coin regulations; amendments relating to exportation, melting and treating of 5-cent and one-cent coins; comments due by 1-19-07; published 12-20-06 [FR 06-09777]

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

**H.R. 5782/P.L. 109–468**

Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (Dec. 29, 2006; 120 Stat. 3486)

**H.R. 6344/P.L. 109–469**

Office of National Drug Control Policy Reauthorization Act of 2006 (Dec. 29, 2006; 120 Stat. 3502)

**Last List January 3, 2007**

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